Conductor Generalis:

OR, THE

OFFICE, DUTY and AUTHORITY

OF

Juſtices of the Peace,

High-Sheriffs, Under-Sheriffs, Goalers, Coroners, Conſtables, Jury-Men, and Overſeers of the Poor.

AS ALSO

The Office of Clerks of Aſſize,

And of the Peace, *&c.*

Collected out of all the Books hitherto written on thoſe Subjects, whether of Common or Statute-Law.

The whole Alphabetically digeſted under the ſeveral Titles; with a Table directing to the ready finding out the proper Matter under thoſe Titles.

To which is added,

A Collection out of Sir *Mathew Hales*, concerning *The Deſcent of Lands*; with ſeveral choice Maxims in Law, and the Office of Mayors, *&c.*

The Second EDITION, *with large Additions.*

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Joseph Clerk

his Book Bot in the

Yrs 1780



Joseph Clerk

1781

THE PREFACE TO THE READER.

IT is generally thought, that a Book ſeems to come naked into the World without a Preface; tho' ſometimes little or nothing to the Purpoſe: Therefore, ſince Cuſtom will have it ſo, that a Man had as good go to Court without being dreſs'd, as a Book to appear in print without a Preface, *we ſhall conform herein, and thereby prevent the Charge of Innovation.*

Another Motive is, to let the Reader know, That the chief Part of this Book conſiſts in Directions to Juſtices of the Peace, taken not only from Mr. Nelſon's *Book, entitled,* The Office and Duty of a Juſtice of the Peace; *but alſo from* Dalton, Shaw, *and others; and only ſuch Things left out of them all as are needleſs, and no Ways relating to theſe Parts of* North-America. *As for Example, in* Great-Britain *there are ſeveral Statutes made to regulate* Hunting, Hawking, Fiſhing, Fowling, *and the like; the Breach of which Statutes are cognizable before the Juſtices either in or out of Seſſions there; but theſe Matters being free here in* America, *there was no Occaſion to ſwell the Bulk of this Book with ſuch Things as would not be of Benefit or Advantage for the Reader to know; and therefore are here omitted.*

That Part ſhewing the Office, Duty and Authority of Sheriffs, *&c. is a Collection from the Book ſo well known and approved of, entitled,* The Office and Duty of Sheriffs,

Sheriffs. *And in this Collection, its presumed, you will find full Directions to High-Sheriffs and Under-Sheriffs, in all the Parts of their Office, with the Name and Nature of all the* Capias's *or* Writs, *and how, when and where they may (and may not) be executed: With Directions to Goalers concerning Prisons, Prisoners, Escapes,* &c.

In the next Place the Duty of Clerk of Assize, *and* the Guide to Juries, *are collected out of the particular Treatises concerning those Offices; as well as the* Coroner's *Duty.*

The Descent of Lands *is collected out of that eminent Judge* Hale's *Book, entitled,* The History of the Laws of *England.*

The whole being carefully collected and abridg'd, and having the Approbation (upon Perusal) of some Learned in the Law; all those Matters are here comprised in one Volumn which lay dispersed in several; the Bulk and Price of this Book not much exceeding any one of those out of which the Matters herein contained were collected.

The good Reception the first Edition of this Book has met with in these Parts, would be itself a sufficient Motive for the Second; supposing it not to be so much enlarged, as indeed it is, there being the Addition of near One Hundred *more useful Precedents in this than in the first, besides other Matters: It will be needless to say much more of the Usefulness and Excellency of this Book; since every Man that has Occasion to peruse it, and follow its Directions, will find it so; and be sensible of the Benefit of its Rules and Directions, in the Course of the several Parts of the Law, wherein his respective Office calls him to officiate. And tho' it is not doubted but this Book will meet with* Momus, *yet 'tis hoped there are some, who, upon finding its Usefulness, will kindly accept what is here collected and offered to publick View for the Benefit of our Countrymen.*

A

A

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An Explanation of ſeveral Writs and Law Terms uſed in the following Treatiſe, viz.

ACCORD, is a Word derived from the *French*, that ſignifies an Agreement between two or more, where any one is injured by a Treſpaſs committed, to make Recompence and Satisfaction to the Party grieved; and which after the Accord is performed and executed, may be pleaded in Bar to any Action brought for the ſame Treſpaſs. *Terms de Ley.*

Accedas ad Curiam, A Writ that lies for him that has received falſe Judgment.

Alias, is a ſecond or another Writ, which iſſues from the Courts after a firſt Writ has been ſued out without any Effect.

Array, a Ranking or ſetting forth a Jury.

Aſſumpſit, from the *Latin*, is taken in the Law for a voluntary Promiſe, whereby a Perſon aſſumes or takes upon him to perform or pay a Thing: And when any one becomes legally indebted to another for Goods ſold, the Law implies a Promiſe that he will pay this Debt; and if he do not, *Indebitatus Aſſumpſit*, or Action of the Caſe lies againſt him.

Averment

Averment, is uſed in order to aſcertain to the Court what is doubtfully alledged; and relates either to Pleadings, or to Deeds, which may ſometimes be made good by Averment, where a Perſon is not certainly named; and if no Uſe is expreſſed, or but uncertainly in any Deed, Averment ſhall be admitted as an Addition or Explication.

Audita Querela, is a Writ that lies where a Perſon has any Thing to plead, but hath not a Day in Court for pleading it; as when one is bound in a Statute or Recognizance, or where Judgment is given in Debt, and the Defendant's Body in Execution, then if he have a Releaſe, or other ſufficient Cauſe to be diſcharged from it, this Writ may be granted him againſt the Perſon that has recovered.

B. R. Bancus Regius, The Court of King's Bench.

Capias, a Writ before Judgment,

Capias ad Satisfaciendum, A Writ where a Man has recovered an Action perſonal, as for Debt, Damages, Detinue, *&c.*

Capias Utlegatum, A Writ againſt one outlaw'd; and by ſpecial *Capias utlegat*, the Sheriff is commanded to ſeize all the Defendant's Lands, Goods and Chattels.

Cepi Corpus, I have the Body of ſuch a Man.

Clauſum fregit, ſignifies as much as an Action of Treſpaſs, and in the *Common Pleas* the uſual Courſe is to declare in Actions, eſpecially upon an *Aſſumpſit*, or the like, on a *Quare Clauſum fregit*, as they do on a *Latitat* in the *King's Bench*.

Diſtringas, a Writ to diſtrain one for a Debt to the King, or for his Appearance at a Day.

Diſſeiſor, he that diſſeiſeth, or putteth another out of his Land.

Dies Juridicus, The Day of the Court.

Elegit, A Writ for him that hath recovered Debt or Damages, or upon Recognizance.

Eſcheat, ſignifies any Lands or Tenements that caſually fall to a *Lord* within his *Manor*, by Way of Forfeiture; or by the Death of his Tenant, leaving no Heir general or ſpecial, *M. C. c.* 15.

Exigent, a Writ where the Defendant cannot be found, for the Sheriff to call him five County Days to appear, under Pain of Out-lawry.

Fieri Facias, is a judicial Writ that lies where a Perſon has recovered Judgment for Debt or Damages in the King's Courts againſt any one, by which the Sheriff is commanded to levy the Debt and Damages on the Defendant's Goods. Upon a *Fieri facias* the Sheriff is to uſe his beſt Endeavours to levy the Money on the Goods and Chattels of the Defendant; he may ſell a Term for Years, or Corn growing, *&c.* and has Power to take any Thing of the Defendant's, except it be wearing Clothes.

Habere facias Poſſeſſionem, a Writ to give a Man Poſſeſſion of Lands.

Habere facias Seiſinam, a Writ commanding the Sheriff to give a Man that hath recovered Lands, Seiſin.

Habeas

Habeas Corpus, a Writ to remove a Man that is indicted or imprisoned for a Trespass.

Habeas Corpora, a Writ to bring such Jury-men as refuse to come upon the *Venire facias*.

Latitat, a Writ where a Man in personal Actions is called to the King's Bench.

Negative, is what cannot be testified or proved by Witnesses in our Law, only an Affirmative; but if a Man be accused to have been at *York*, and there to have done such a Fact, he may prove the Negative by collateral Testimony, that he was at that very same Time, at another Place, in such Company.

Non est inventus, he is not to be found.

Non assumpsit, is the general Plea in a personal Action, whereby one denies any Promise made.

Non Prof. is where a Plaintiff in an Action does not declare in a reasonable Time; and a *Nolle prosequi* may be entered by the Plaintiff, if having commenced an Action, he will not proceed therein.

Nil debet, that he owes nothing, is the usual Plea in an Action of Debt.

Nonsuit, signifies the Dropping of a Suit or Action, and is most commonly upon the Discovery of some Error in the Plaintiff's Proceedings, when the Cause is far proceeded in.

Outlawry, is where a Person is outlawed, that is, deprived of the Benefit of the Law, and therefore held to be out of the King's Protection; as where an original Writ, and the Writs of *Capias*, *Alias*, and *Pluries*, have been issued against him, and are returned by the Sheriff *Non est inventus*, and after *Proclamation* made for him to appear, *&c.* if he omits it, he becomes outlawed.

Per Curia, by the Court.

Pluries, is the Name of a Writ that issues after two former Writs have gone out without Effect.

Quantum Meruit, is a certain Action of the Case, brought where one employs a Person to do a Piece of Work for him, without making any Agreement about the same; in this Case the Law implies, he must pay for the work, *so much as he has deserved.*

Redisseisin, is a Disseisin made by him who before was adjudged to have disseised the same Man of his Lands and Tenements.

Rescous, is an illegal taking away, and setting at Liberty.

Tales, A Book of Jury-Men's Names.

Venire Facias, A Writ to cause Twelve Men of the County, to come and say the Truth upon the Issue joined.

Vendicionis Exponas, A Writ to the Sheriff, commanding him to sell Goods in his Hands taken in Execution.

INTRODUCTION.

The Antiquity of a Juſtice of the Peace, his Power, and what he may do in the Execution of his Office.

THE Power of a Juſtice of the Peace is very great, and is a main Prop and Pillar of good Government, in taking Care to prevent and puniſh Offences, whereby the Peace is conſerved, and Men maintained in their Rights, and the Poſſeſſions of their Goods and Chattels, *&c.* peaceably; whereas, were there not ſuch Over-awing Magiſtrates, Offenders would be emboldened to make more frequent Depredations; and Strength and Violence would ſeize upon what the Weaker could no Ways defend againſt them, were not the Law by this Means very much their Aid and Safeguard. This Office is of great Antiquity, and has all along held up a venerable Eſteem, and good liking among the People, who find great Advantage and Benefit by thoſe ſo commiſſioned, being uſually Men of Eſtates, diſcreet and judicious, capable of diſcerning Truth from Falſhood, and to relieve the Injured and reſtrain Oppreſſors, to puniſh Criminals, and diſcharge the Innocent and Faultleſs.

Juſtices of the Peace were created, 1 *Ed.* 3. But they were firſt named ſo by 36 *Ed.* 3.

A *Juſtice of the Peace* is a Judge of Record, from whence called *Juſtices*; and before 1 *Ed.* 3. they were called *Conſervators.* He may take Recognizance of Peace, which none can do but a Judge of Record. *Lam.* 186. *Dalt.* [beſt Edition] 9. *Crompt.* 196. *Num.* 1.

He is called Commiſſioner of the Peace, by reaſon he is authorized by the King's Commiſſion, ſo Keeper of the Peace, or Juſtice of the Peace. And the Conſtitution of Juſtices of the Peace is

 inherent

inherent, and inſeparable from the Crown, *Stat.* 27. *Hen.* 8. And this Power cannot be transferred, 20 *H.* 7. His Warrant is not to be diſputed by the Conſtable for any thing wherein he hath Juriſdiction of the Cauſe. *Dalt.* 9. *Chap.* 147. 6 *&c.* In ſome Caſes the Teſtimony of a Juſtice of the Peace is of great Force, and in ſome Caſes greater than an Indictment of 12 Men upon Oath, *viz.* in Caſe of Preſentments of Highways, Force, Riot, *Dalt.* 8. *Lam.* 65.

A Juſtice of the Peace being aſſaulted, may commit the Party ſo offending to Priſon, *Dalt.* 379. If a Juſtice ſee one about to make an Affray, and charge him to keep the Peace, and he anſwers he will not, he may bind him to his good Behaviour, *Dalt.* 380. A Juſtice of the Peace muſt proceed by Preſcript of the Statute and Commiſſion, *Dalt.* 22. Where the Statute referreth the Tryal to the Juſtice's Diſcretion, it ſeemeth he may examine upon Oath, *Dalt.* 24. Every Juſtice of the Peace is a proper Conſervator of Rivers within this County, *Lam.* 189. And Juſtices of the Peace at Seſſions are of equal Authority, *Lamb.* 385. If a Felon be brought before a Juſtice of the Peace upon Suſpicion, though it appear to the Juſtice he be not guilty, nevertheleſs he may not be ſet at Liberty, but ſo that he may come to his Tryal, *Lamb.* 233. *Dalt.* 540. *Cro.* 40. *b. Nu.* 20. Otherwiſe it will prove a voluntary Eſcape in the Juſtice; for he is not to be delivered by any Man's Diſcretion, *Dalt.* 8. *Lamb.* 223.

He may record a Demurrer upon Evidences, *Lamb.* 539. He may give a Day to the Party to bring in Records, which is before other Juſtices, which is pleaded by Way of Juſtification, *Lamb.* 539.

In Abſence of the King's Attorney, a Juſtice of the Peace may take Iſſue with one that pleadeth a Pardon, that he is one of the Parties excepted, *Lamb.* 540.

A Juſtice of the Peace may take Money for the Security of the Peace, *indepoſito*, where Bail ca not be procured, and which, upon the Party ſo depoſiting the Money, breaking the Peace ſhall be forfeited to the King, *Juſt. Barclay*, 1 *Cro.* 446.

If upon ſuppoſing an Indictment to be void, the Juſtices have diſcharged the Priſoner, paying his Fees, yet upon change of their Opinion, they may ſtay him any time before Judgment, *Lamb.* 540.

Juſtices of the Peace may enquire of all Manner of Felonies at the Common Law, or given by any Statute, and of all Manner of Treſpaſſes againſt the King's Peace, and ſuch Treſpaſſes wherein Actions of the Caſe will lie for Treſpaſſes or Deceit, and in the End of the Writ grounded upon the Caſe, it is contained, *Contra Pacem noſtram, Crompt, 8. a Num.* 25.

Defaults againſt the Statute of 3 *Hen.* 6. *cap.* 11. For Levying of Wages for Knights of the Shire, are to be heard and determined, by Inquiry for the King, or Action for the Party before the Juſtice of Peace, *Lamb.* 512.

A

A Juſtice of the Peace has no Need to ſhew his Commiſſion, by which he is made Juſtice of the Peace, when he juſtifieth the doing of any Thing as a Juſtice; for he is Juſtice of Record, and the Commiſſion remaineth with the *Cuſtos Rotulorum* of the ſame County; and he is called by Commiſſion in open Aſſize or Seſſions. *Crompt.* 120. *Lamb.* 387.

A Juſtice of Peace may have his Actions of the Caſe againſt the Party that calleth him falſe Juſtice of the Peace; it alſo ſeemeth that he may be indicted; for they may enquire of all Treſpaſſes, where a Man may have his Action of the Caſe. *Crompt.* 121.

A Juſtice of the Peace certifying into the King's Bench, that ſuch a One broke the Peace in his Preſence, the Party ſhall be put to his Fine, without a Traverſe to the ſame. *Crompt.* 132. *a.*

A Juſtice of the Peace, who is of the *Quorum*, ought to be reſident in the County. 2 *Hen.* 5.

The Juſtices at *Newgate*, ſit by Virtue of two Commiſſions; *Goal Delivery*, and *Oyer* and *Terminer*. 4 *Eliz. chap.* 2. And where the ſame Perſons are Juſtices of Goal Delivery, and Oyer, *&c.* they may ſit the ſame Day and Place, and inquire by the ſame Jury; yet the Entry of the Records muſt be ſeveral, as the Indictment is. *Dalt.* 168.

A Juſtice of the Peace commandeth one by his Precept, under Penalty of *Ten Pounds*, to be at the Quarter Seſſions next enſuing it, and he appeareth not, no *Scire Facias* ſhall go forth more than if there had been a *Subpœnâ*; however, it ſeemeth he ſhall be attached to be at the next Seſſions, upon Contempt. *Crompt* 123. *a Num.* 9.

What one Juſtice of Peace may do by Power and Virtue of his Commiſſion,

HE may cauſe all ſuch as are fit to work in Harveſt or Hay-Time, and after, licence them to go unto any other County. He may rate the Price of deceitful Malt, to be ſold, by 2 *Ed.* 6. 10. He may compel one fit (in his Diſcretion) to be bound Apprentice, by 5 *Eliz.* 4. He may, it ſeems, give Directions to Watchmen, Keepers and Searchers of infected Perſons. *Crompt.* 126. *b.* He may cauſe to be whipped, Treſpaſſers in Orchards, Corn, Hedges or Woods, not able to give any Satisfaction.

One Juſtice of Peace may command vagrant Perſons to Priſon, if they will not ſerve. He may upon his View of forcible Detainer, record it, by 15 *Rich.* He may puniſh Deceit in Cloth by Tenters, *&c.* He may cauſe Highways to Markets to be enlarged, and cleanſed of Trees and Buſhes. 13 *Edw.* 1. *chap.* 5. He may puniſh Keepers of Places for unlawful Games, and the Players at thoſe Games. He may puniſh prophane Swearing in his Preſence, made out by Teſtimony or Conviction by the Party's own Confeſſion. He may puniſh Offences in Water-Men and Tranſporters of Corn.

He may puniſh Defaults of Collectors, of Sheriffs, Amercements, and of Bayliffs of the Hundreds. Soldiers that purloin their Horſe or Harneſs. He may prevent a Riot, ſtay it, and commit them that are concerned in acting of it.

He may cauſe an unlicenſed Ale-Houſe-Man openly to be whipped after Conviction, where there is no ſufficient Diſtreſs to pay the Penalties, 2 *Carol.* 1. 3. He may upon View or Proof by two Witneſſes, Warrant the levying *Twenty Pounds* Forfeiture for an unlicenſed Ale-Houſe, to be given to the Poor.

One Juſtice may demand the Peace againſt another Man, *Lamb.* 91. And he may puniſh Perſons going or riding armed, contrary to the Statute of 2 *Edw.* 3.

A Juſtice may inquire of *Felo-de-ſe* hid or caſt into the Sea, where the Coroner cannot have the View of the Body, 3 *Inſt.* 55. And he may ſend Writs for fugitive Labourers, by 2 *H.* 55. He may take an Information out of the County againſt an Offender in the County. ſo a Recognizance to proſecute by Aſſent of the Parties out of the County, but cannot uſe coercive Power, *ibid.*

A Juſtice of the Peace inhabiting in the Hundred where one was robbed, may if he be at *York* or *London*, take the Party's Oath, being but an Examination, and no Act of Juriſdiction. A Juſtice of Peace in *London*, ought to ſend Felons to the Common Goal, not to the Counters. He may take an Indictment of Barretry, without a ſpecial Commiſſion.

He may bind a Cheater to his good Behaviour, &c. *Dalt.* 412. 7. *Jacobi* (1). He may convict of Drunkenneſs, by 12 *Jacobi* 1. He may ſeize the Goods of *Gipſeys*, within a Month after their Arrival, &c. by the 22 *Hen.* 8.

He may record a Riot in his View, and commit the Rioters, or bind them to their good Behaviour; but ſingle or alone proceed no further. *Dalt.* 292. He may puniſh Spoilers of Fiſh-ponds, and cauſe their Nets to be cut and burnt, 17 *Rich.* 2. He may take the Claim of a Horſe ſtolen, 31. *Eliz.* 12. He may examine and bind over unlawful Hunters in the Night time, &c. 1 *Hen.* 7. He may compel a Vintner to draw a Man Wine, who demands it and offers Payment, 24 *Hen.* 8. *Dalt.* 355. He may convict the Breach of the Lord's Day, againſt Stat. 29. *Car.* 2. And may allow of Cauſe for travelling in a Boat on Lord's-Day, according to the ſaid Statute.

The Power of two Juſtices of the Peace acting jointly.

TWO Juſtices of the Peace, upon View of a Riot or Rout, may record the ſame, and with the Sheriff, or Under-Sheriff. 13 *Hen.* 4. *Crompt.* 16. *Num.* 9. to inquire by a *Jury*, and fine the Rioters, *Dalt.* 292. *Quære*, Two *Juſtices* on Complaint that a Servant departed before his Term ended, &c. are to examine and commit

commit, if they ſee Cauſe. See more of *Labourers and Servants, in Office of a Conſtable*, &c. They may bind one to the Quarter Seſſions to anſwer his Offence againſt a Penal Law, *Lam.* 187. They may allow and diſcharge an Ale-houſe-keeper at Diſcretion. They may aſſeſs all Pariſhes within the Hundred, proportionably, towards Contribution for the Parties charged upon a Robbery. They ſhall take Order to ſet poor Soldiers on Work, who cannot get Work, *&c.*

Two *Juſtices* may fine the Head Officers in Burroughs and Market Towns, who are remiſs in viewing the Weights and Meaſures, and break and burn thoſe that are defective; and fine all Buyers and Sellers with unlawful Weights, at Diſcretion. They may allow Surveyors, and their Servants, to make Materials in another Pariſh for the mending the High-Ways where they are defective.

Two *Juſtices*, (one being of the *Quorum*) upon Complaint of the Church Wardens, may convene before them the Bailiff and High-Conſtables, and take their Accounts of Forfeitures and Defaults eſtreated concerning High-ways.

Two *Juſtices* of the Peace may take or adminiſter an Oath of the Under-Sheriff, Bailiff, *&c.* They may (one being of the *Quorum*) bail a Perſon arreſted for Manſlaughter, Felony, or on Suſpicion of them. They may take Order about a Baſtard Child laid in the Pariſh, 18 *Eliz.* 7 *Jacobi.* They may licenſe poor People diſeaſed, to travel to the Bath for Remedy, *&c.* 39 *Eliz.* 4. They may ſend to a Work-Houſe Priſoners brought before them by *Habeas Corpus*, according to 30 *Caroli* 2.

Two Juſtices (one of the *Quorum*) may take an Indictment and Inquiſition. *Lam.* 48. They may bind over one ſuſpected of counterfeiting Tokens and Letters, 33 *Hen.* 8. 1. They may ſearch for Popiſh Books and Relicks, 3 *Jacobi.* 1 *C.* 5. They may puniſh Defaults in the Overſeers of the Poor. They may puniſh Offenders in diſturbing the Execution of the Statute againſt Rogues. They may ſend to the Houſe of Correction Perſons about to leave their Family to the Pariſh. 7 *Jacobi.* 1 *C.* 4. They may examine Offenders in Buck-ſtalls, againſt the 19 *H.* 7. at the Seſſions. *&c.*

Two *Juſtices* of the Peace (one of the *Quorum*) may reform falſe Meaſures, or Neglect of Clerks of the Market, *Dalt.* 260.

They may bind over to the Aſſizes, or Seſſions, one ſuſpected of Deceit, by counterfeit Letters, and proceed in like Nature in ſome other Matters of leſſer Moment; and for many Things more fully ſet down and explained, *vide the Offices of the Conſtable, Overſeers of the Poor*, &c.

Three *Juſtices (Quorum unus)* may take Examination of thoſe that maim Horſes, Cattle, or that deſtroy Nurſeries, or other young Trees, and throw down Encloſures in the Night unlawfully, *&c.*

Where

Where a Juſtice of the Peace lies liable to be fined.

IN the Caſe of bailing one not Bailable, and refuſing to bail one Bailable, and detaining him, he lies liable to a Fine, and to pay double to the Priſoner, 3 *Edw.* 1. 23 *Hen.* 6. In the Statute againſt Riots, if he does not execute it, he is Fineable *One Hundred Pounds*, 13 *Hen.* 4. So in that of forceible Entry, *Ten Pounds*. 8 *Hen.* 6. Exerciſing his Office before the Oath taken, *Dalt.* 13. For not being preſent at the annual Tax of Servants Wages, *Ten Pound.* If a Juſtice of the Peace does not in 40 Days certify unto the King's Bench Preſentments of extolling the Pope's Power, he forfeits *One Hundred Pounds*, 5 *Eliz. c.* 1. For imbezzeling, wilfully raiſing, malicioufly inrolling an Indictment not found, changing an Indictment of Treſpaſs into Felony, is Fine and Impriſonment, and Loſs of Office, *Lamb.* 631. He may be impriſoned for taking Bond in his own Name, and not in *Domino Regi*, the Matter concerning the King, 23 *H.* 8. *c.* 9. For conſpiring with another to indict a Stranger at the Seſſions, otherwiſe as a Thing done by him as Judge, *Crompt.* 122. *a Num.* 32. Where a Juſtice fails to do Juſtice, he may be put out of Commiſſion, and puniſhed, 4 *Hen.* 7. So for refuſing to take Surety for the Peace, when it is tendered. *Vide Crom.* Juriſdiction of Courts. For imbezzeling and razing Records, he forfeits his Office, and may be fined. *Vide antea.*

Directions for granting Warrants by a Juſtice of the Peace.

A Warrant in Writing muſt be under the Juſtices Hand and Seal, his Hand at leaſt. However it is better if it be ſealed, as the uſual Way is, *Dalt.* 574.

A Warrant of the Peace, or good Behaviour muſt contain the ſpecial Matter.

A Warrant for Treaſon, Murder, or ſuch like Capital Offence, need not contain the ſpecial Matter or Cauſe. *Dalt.* 574.

If a Juſtice of the Peace, being out of the County, grants his Warrant to be ſerved in the County, the Officer making the Arreſt muſt carry the Party before ſome Juſtice of the Peace within the County, *Lamb.* 91. *Dalt.* 575.

A Juſtice of the Peace may make his Warrants, to come before himſelf; yet in a Warrant for the Peace, the uſual Manner is otherways.

Upon a general Warrant, an Officer may chuſe to go before what Juſtice he pleaſes.

If a Juſtice of the Peace make a Warrant beyond his Authority, it is not diſputable by a Conſtable, or other Officer, but muſt be obeyed; unleſs it be to do a Thing out of the Juſtices Juriſdiction in a Cauſe where there is no Judge; for if in this latter Caſe the Officer execute the Warrant, he is puniſhable. *Dalt.* 9. 579. *Lam.* 65. *Crompt.* 147. *B, Lamb.* 91. 92.

A

A Warrant directed to two jointly to arreſt a Party, he may be arreſted by either of them.

A Warrant made in the King's Name, ought to be made to all Miniſters, as well within Liberties as without.

Warrants may be made either, 1ſt. in the Name of the King; or 2dly. in the Name of the Juſtice, and either of them muſt be teſtified by the Juſtice from whom they iſſue; or 3dly, without Stile by Superſcription of the Juſtice. *Dalt.* 593. See more of *Warrants in the Office of a Conſtable in this Book*, and how they are to be executed.

Seſſions held, by one Juſtice of the Peace is not good, tho' it were ſummoned by two, and ſtiled by their Names, but two ſufficient Juſtices Warrants ſealed (*Quorum unus.*) The Place where Seſſions is to be held is arbitrable; and therefore though by Summons they are to be kept in one Place, yet they may be kept in another, but then there can be no Amercement for Default of Appearance. *Lamb.* 338. 384. But they muſt be kept within the County. *Dalt.* 24. So in a Town Corporate, but not to intermeddle; unleſs ſuch City or Town Corporate have not its proper Juſtices ſpecially commiſſioned for the ſame. *Dalt.* 24.

Two Seſſions at one Time for one County lawfully ſummoned at two Places are good, but Appearance at one ſhall excuſe the Default of an Appearance at the other, and Preſentment taken before either of them ſhall ſtand good, *Lamb.* 384. But puniſhable without Notice.

At a General Seſſions, all Matters equirable by Juſtices of the Peace, either by Statute, or their Commiſſion, ought to be given in Charge; otherwiſe at ſpecial Seſſions. *Lamb.* 613. and may be held three Days.

At the Quarter Seſſions, Officers and Miniſters of the Court, and Jurors of the County, owe their Attendance, *Lamb.* 386.

Jurors, not appearing according to Summons, are puniſhable for Loſs of Iſſues, the uſual Part of Eſtreats.

The Juſtices of the Peace, if Need require, may keep a ſpecial Seſſions by Virtue of their Commiſſion, or by the Statute 1 *H.* 5. *chap.* 4. *Lamb.* 623. All Matters within the Commiſſion or Statute, may at a ſpecial Seſſions of the Peace be given in Charge, yet they are at Liberty to give in Charge, either all, or any of them. *Lamb.* 623, 624.

If two Juſtices of the Peace, one being of the *Quorum*, make a Precept to the Sheriff for the holding a Seſſions at ſuch a Place and Day, and to return a Jury before them, other Juſtices cannot by their *Superſedeas* inhibit it. *Crompt.* 126. *B.* But the King by his Writ of *Superſedeas* may diſcharge it. *ibid.*

All that come to the Seſſions for publick Service, or upon Compulſion, upon Complaint, and Examination of the Matter upon Oath, ſhall be freed from any Arreſt upon Original Proceſs, *Lamb.* *Cro.* 190. *B. Lamb.* 402.

Indictments

Indictments are many Times tried the ſame Seſſions wherein the Perſons were indicted, yea, the ſame Day before Juſtices of Goal Delivery, or Juſtices of Oyer, &c. But in Caſe of Felony it ſeems very reaſonable to be deferred to the next Seſſions, upon Cauſe ſhewn; it being ſo in an Indictment of Nuiſance generally, and Life is more to be valued and favoured, &c. *Dalt.* 655.

Many Things of great Import cannot be done but at the Seſſions, and ſome but at ſuch particular Seſſions. *Dalt.* 656. *See further under the Title, Juſtices of the Peace.*

Of Mittimuſſes and Recognizances, what they are, and how to be taken.

A *Mittimus* muſt contain the Name of the Party or Parties, his or their Offences, and the Time of Impriſonment, that it may appear whether the Priſoner be Bailable, or not. *Lamb.* 297. *Dalt.* 522.

If one be committed without Bail or Mainpriſe, and the Cauſe be expreſſed in the Mittimus, and yet is Bailable, other Juſtices may Bail him; yet *Quære*, ſeeing their Authority is equal. *Dalt.* 522. But if no Cauſe be expreſſed, other Juſtices ſhall not Bail him without the Privity of the Firſt Juſtice or Juſtices, becauſe the Cauſe of Commitment probably may not be Bailable. *Dalt.* 522.

If the Mittimus be general, the other Juſtices that Bail muſt take Notice at Peril, *ibid.* There is a Writ called a Mittimus, for removing Records of Outlawry, Judgment in the King's Bench, &c. unto the common Pleas, or by an Act of Parliament unto the King's Bench, &c. A *Recognizance* is a Bond of Record, teſtifying the Recognizor to owe a certain Sum of Money to ſome other, and that Acknowledgment of the Sum is to remain of Record, and none can lawfully take it but a Judge or Officer of Record. *Dalt.* 457.

Every Recognizance taken by a Juſtice of the Peace muſt be made in the Name of the King, and great Care to be had in ſo doing; for it is Impriſonment for any Perſon to take it otherwiſe.

Sureties in Recognizance ought to be Subſidy Men, and they muſt be two beſides the Party himſelf.

It is in the Diſcretion of the Juſtice of the Peace, if he takes a Recognizance, *Ex Officio*, to appoint the Number of Sureties, their Sufficiency in their Goods and Lands, and the Sum of Money, and how long the Party ſhall be bound.

A Recognizance for the Peace, unleſs the Words be expreſſed for keeping of the Peace, ſeemeth void. So it is if a Recognizance be that the Recognizor ſhall not beat or main *B.* without the expreſſing the keeping of the Peace. *ibid.*

A Recognizance expreſſing no Time of Appearance, but generally to keep the Peace, is good. And ſo theſe few may ſerve to give a Light into others; for they are many; and in the main they tend to one and the ſame Thing, tho' in Circumſtances they differ.

Of

Of Seſſions and Matters properly to be done by Juſtices therein.

THE Seſſions is an Aſſembly of any two or more Juſtices of the Peace, *(Quorum unus)* at a certain Time and Place within the Limits of their Commiſſion, appointed to enquire by a Jury, or otherwiſe to take Knowledge, and thereupon to hear and determine according to their Power, of Cauſes within their Commiſſion, and Statutes referred to their Charge, *Lamb.* 378.

A Seſſions held without Summons is good, but in ſuch Caſe none ſhall loſe any Thing for Default of appearing. *Lamb.* 380. 381.

Summons of the Seſſions is uſually by Precept written to the Sheriff, and by him to be returned, at Seſſions. *Lamb.* 381.

Precepts for ſummoning the Seſſions, may be made by any two Juſtices of the Peace, *(Quorum unus)* but not the *Cuſtos Rotulorum* alone; and Summons cannot be diſcharged by *Superſedeas* of all other Juſtices, but by *Superſedeas* out of Chancery, *Lamb.* 382. 383.

Of Warrants, &c.

AS for Warrants grantable by Juſtices of the Peace, they may be ſtiled and made after ſeveral Manners, *viz.*

1ſt. In the Name of the King, and yet the *Teſte* may be under the Name of the Juſtice, or Juſtices of the Peace who grant them.

2dly. Or they may be ſtiled and made only in the Name of the Juſtices ſo granting.

3dly. Or elſe be made without any ſuch Stile, and only under the *Teſt* of the Juſtice of the Peace, or only ſubſcribed by the Juſtice, as the Cauſe requires.

Of the Peace.

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

Yet Peace (in our Law) is taken for an Abſtinence from actual and injurious Force; 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 the Perſon of another, his Goods, Lands, or other Poſſeſſions, whether it be by threatning Words, or by furious Geſture, or Force of the Body, or any other Force uſed *in terrorem.*

The Office of the Juſtice 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 I ſee not why the Juſtices of Peace ſhould be

reſtrained

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 *Libellings*, *Cozenages*, and ſuch other Offences. *Dalt.* 10.

But it is no Part of the Office of the Juſtice of Peace to forbid lawful Suits; allbeit 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.

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 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.

" After the Death of a King of *England*, his Succeſſor by Pro-
" clamation 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.* 1. *c.* 1.

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 Goal-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 unſeparable from the ſame.

Coroners alſo do remain Confervators 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

the Freeholders, and are returned of Record into Chancery; and therefore being judicially made, muſt be judicially diſcharged. *Dalt.* 13.

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 here ſet down the Form of the Commiſſion itſelf.

The Form of the Commiſſion of the Peace.

GEORGE the Second, by the Grace of God, King of *Great-Britain*, *France* and *Ireland*, *&c.* To *A. B.* of *&c. C. D. E. F. &c.* in the County of *Orange*, Eſqrs. Greeting. Know ye, That we have authoriz'd and aſſign'd you, and every one of you, jointly and ſeverally, our Juſtices, to keep our Peace in the County of *Orange* aforeſaid, and to keep and cauſe to be kept all Ordinances and Statutes made for the Good of the Peace; and for the Conſervation of the ſame, and for the quiet Rule and Government of our People in all and every of 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 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 our People in their Perſons, 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 procure the ſame. We have alſo aſſigned you, and every two or more of you, our Juſtices to enquire by the Oath of good and lawful Men of our County aforeſaid, by whom the Truth may be better known, of all and all Manner of Felonies, Treſpaſſes, Foreſtallings, Ingroſſings, and Extortions whatſoever, and of all and ſingular other Offences and Miſdemeanours, of which Juſtices of the Peace may or ought lawfully to enquire, by whomſoever or howſoever done or perpetrated, which hereafter ſhall happen to be done or attempted in the County aforeſaid; and particularly of all thoſe who in the County aforeſaid 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, o hereafter ſhall preſume to lie in wait: And alſo of Innholders; 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

thereof, in the County aforeſaid; And alſo to enquire of all Sheriffs, Bailiffs, Stewards, Conſtables, Goalers, and other Officers whatſoever, who, in the Execution of their Office about the Premiſes, or any of them, have unlawfully demean'd 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 to be howſoever done or attempted in any Wiſe, concerning the Truth of the Premiſes, or any of them; and to inſpect all Indictments whatſoever 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 determin'd; and to make and continue the Proceſs thereupon againſt all and ſingular the Perſons ſo indicted, or which hereafter ſhall happen to be indicted before you, until they be apprehended, render themſelves, or be out-lawed. And to hear and determine all and ſingular the Felonies, Treſpaſſes, Foreſtallings, Regratings, Ingroſſings, Extortions, unlawful Aſſemblies, and Indictments aforeſaid, and all and ſingular other the Premiſes, according to the Laws and Statutes of *England*, as in like Caſes hath been us'd, or ought to be done: and to chaſtiſe and puniſh the ſaid Perſons offending, and every of them, for their Offences, by Fines, Forfeitures, Amerciaments, or otherwiſe, as ought and hath been likewiſe us'd to be done, according to the Laws and Cuſtoms of *England*, and the Form of the Ordinances and Statutes aforeſaid. *Provided always*, That if a Caſe of Difficulty, upon the Determination of any of the Premiſſes, ſhall happen to ariſe before you, or any two or more of you; then you, or any two or more of you, do not proceed to give Judgment therein, except it be in the Preſence of one of the Juſtices of one or other Bench, or Juſtices of Aſſize in the County aforeſaid. *And therefore*, we command you, and every of you, that you diligently attend 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 aforeſaid, ſhall in that Behalf appoint, to make Enquiry, and hear and determine all and ſingular the Premiſes, and fulfil and perform the ſame in Form aforeſaid, doing therein that which to Juſtice appertains, according to the Laws and Cuſtom of *England*, ſaving to us the Amerciaments and other Things to us thereof belonging. *And we command*, by Virtue of theſe Preſents, the Sheriff of the ſaid County of *Orange* for the Time being, that at certain Days and Places which you, or any 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

known and enquir'd of. *Laſtly*, We have aſſign'd you the ſaid *A. B.* Keeper of the Rolls in the ſaid County; *And therefore* you ſhall cauſe to be brought before you and your ſaid Fellows, at the ſaid Days and Places, the Writs, Precepts, Proceſſes, and Indictments aforeſaid, that the ſame may be inſpected, and by a due Proceeding determin'd as aforeſaid. Given at, *&c.* this Day, *&c.*

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 Gouernment of the People: As namely, the Statutes made for *Hue-and-Cry after Felons*; and the Statutes made againſt *Murtherers*, *Robbers*, *Felons*, *Night-Walkers*, and *Affrayers*, *Armour wore 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 the firſt Clauſe in the Commiſſion, the Juſtices of Peace have as well all the ancient 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.

ſſ. To prevent the Breach of the Peace, he may ſend his *Warrant* for the Party, and 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 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-Juſtice) to hear and determine thereof as Law requireth.

And here note, That whereas before the Making the *Statute* 1 *Ed.* 3. *cap.* 11. there were no *Juſtices*, but only *Conſervators of the Peace*, (as is before ſhewed:) And whereas 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 be enabled by the ſaid Commiſſion, although there ſhall no ſuch expreſs Power be given to him ſo to do, by the Words or Letter of the ſame *Statute*.

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 enquire (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 Proceſs 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. *Dalt.* 21

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 expreſly 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 Abridgment.

But here it may not be amiſs ſhortly to put our Juſtices of Peace in Mind, how Juſtice may be perverted many Ways, (if they ſhould 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

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 Gods*, who is Chief Juſtice of Heaven and Earth, and they are his Lieutenants.

2. *Favour*; when they ſeek to pleaſe their Friend, Neighbour, or others, *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.*

5. *Perturbation of Mind*; as Anger, or ſuch like Paſſion. *Jam.* 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. *Ignorance is the Mother of Error.*

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. 51. And the Philoſopher could ſay, *Qui aliquid ſtatuerit, parte inaudita altera, Æquum licit 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 certaque fiunt, 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.

All theſe, King *James* hath ſhortly, yet fully obſerved in his Charge given to the Judges, *&c.* 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* jus dicere, *and not* jus dare.

According to this laſt alſo is the Rule given in the Book of *Judges*, *&c. 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.

Yea,

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.

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, and 17. *For they bear not the Sword in vain*, Rom. 13. 4.

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.

Great Cauſe therefore have the Juſtices of 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.

24 JU 58

ALE-

OF

ALE-HOUSES, &c.

ALE-HOUSES and Inns, were allowed for the Benefit of Travellers, who have certain Privileges whilſt they are in their Journies, and are in a more peculiar Manner protected by Law; 'tis for this Reaſon that the Inn-keeper ſhall anſwer for thoſe Things which are ſtolen *Infra Hoſpitium*, though not delivered to him to keep, and though he was not acquainted that the Gueſt brought the Goods to the Inn; for it ſhall be intended to be through his Negligence, or occaſioned by the Fault of him or his Servants. So if he puts a Horſe to Paſture without the Direction of his Gueſt, and the Horſe is ſtolen, he muſt make Satisfaction.

But if a Neighbour who is not a Traveller, lodges in an Inn, and looſeth his Goods, or if the Gueſt is robbed by his own Servant in the Inn, or by any one who came thither with him, or by leaving his Goods in one Room when the Inn-keeper deſired to leave them in another, in ſuch Caſes he ſhall not be anſwerable.

The true Uſe of Ale-Houſes and Inns was for the Relief and lodging of Travellers, and to ſupply the Wants of thoſe who are not able to provide great Quantities of Drink and Proviſion; and if any Ale-Houſe-keeper or Inn-keeper refuſe to lodge a Traveller, the Juſtice of Peace may compel him to do it, or the Conſtable may preſent it as an Offence next Seſſions, in Order to ſuppreſs it; or the Party may have an Action in the Caſe; but they cannot be compelled to ſell Victuals, unleſs the Traveller tender Money, if required.

At Common Law any Perſon might build an Inn for the Reception of Travellers, and without Licence from Juſtices; but if he ſold Ale to any Perſon beſides Travellers, without Licence, he was puniſhable. *Hutt.* 99.

But for the better Direction of thoſe who keep Ale-Houſes, King *James*, *Anno* 16--publiſhed theſe Articles by his Proclamation, the Subſtance whereof are, *viz.*

1. That the Juſtices meet once in a Year, either in *April* or *May*, and call before any two of them (*Quorum unus*) ſuch Perſons who ſell Ale, and inform themſelves by Men of Credit, what Perſons are fit to keep Ale-Houſes, and them licence them.

2. That in Licenſing they take [illegible] Recognizance, with a Condition annexed, (*ut poſtea*) [illegible]

3. That the Perſon licenced do give ſuch a Recognizance with Sureties, *&c.* for the Peformance of the Condition, to continue but for one Year; and whenever taken, to expire in *April* or *May* following, then to be renewed if Juſtices think fit.

4. Juſtices may call the Clerks of the Peace, Town-Clerks or Deputies, to attend them at their Meetings, to take Recognizances, *&c.* and enter them at Seſſions, that the King may be entitled to the Forfeitures, and engroſs the Recognizance and Condition in Parchment, which is to be the Original; and give a Copy examined to the Ale-Houſe-keeper.

5. They ſhould keep a Book in which the Names of all Ale-Houſe-keepers ſhould be kept, and they ſhould attend the Juſtices with that Book.

6. That they take *Eighteen Pence* for every Recognizance, and the Juſtices Clerk, *One Shilling.*

7. If not licenſed at the Meeting, he may have a Licence afterward.

8. That none be licenſed who have not a convenient Lodging for a Traveller.

9. That the Juſtice ſuffer none to ſell, *&c.* without Licence, and that they proceed againſt Brewers at Quarter-Seſſions, for ſelling Ale or Beer to unlicenſed Perſons.

10. That the Clerks of the Peace in *Trinity* Term every Year, carry a Brief of all Recognizances into the Office of the Patentees, that there be no Concealment.

11. Juſtices in Seſſions to enquire of the due Execution of theſe Articles.

If an Inn-keeper, or Ale-Houſe-keeper, ſells in a Veſſel not ſtamped, or refuſes in bringing in the Reckoning to give the particular Number of Quarts or Pints, he ſhall not detain any Goods, if the Gueſt refuſes to pay the Reckoning, but he ſhall be left to his Action at Law.

A Licence to keep an Ale-Houſe.

Pennſylvania, ſs. WE whoſe Names are hereunto ſubſcribed, two of his Majeſty's Juſtices of the Peace for the ſaid Province, do according to the Statute made and provided, licence, admit and allow *A. B.* of *&c.* Victualler, to keep a common Ale-Houſe, in the Houſe wherein he now dwelleth, for and during the Space of one whole Year next enſuing the Date hereof, ſo as the ſaid *A. B.* do not ſuffer any unlawful Games to be uſed in his ſaid Houſe, and ſo as he keep good Order and Rule therein ſo long as it ſhall continue a common Ale-Houſe, as aforeſaid. Given under our Hands and Seals, *&c.*

A

A Recognizance thereupon.

BE it Remembred, That on the firſt Day of *May*, in the fourth Year of the Reign of our Sovereign Lord *GEORGE* the Second, by the Grace of God, King of *Great-Britain*, *France* and *Ireland*, &c. appeared before us *A. B.* and *C. D.* Eſqrs; two of His Majeſty's Juſtices of the Peace for the County of, *&c.* in the Province of, *&c. Samuel Jones* of the Town of *Darby*, in the ſaid County, Inholder, and *John James* of the ſame Place, Cordwainer, and acknowledged themſelves to be indebted unto our ſaid Lord the King, in the Sum of *Twenty* Pounds, lawful Money of *America*, to be levied upon their and each and every of their Lands and Tenements, Goods and Chattels, to the Uſe of our ſaid Lord the King, his Heirs and Succeſſors, if Failure be made in the under-written Condition.

THE Condition of this Recognizance is ſuch, That whereas the above abounden *A. B.* is by the Juſtices within named, licenſed, admitted, and allowed to keep a common Ale-Houſe, in the Houſe where he now dwelleth, in C. If therefore the ſaid *A. B.* ſhall not during the Continuance of the ſaid Licence, ſuffer any unlawful Games to be uſed in his ſaid Houſe; but ſhall during the ſaid Time maintain good Order and Rule therein, That then this Recognizance to be void, or otherwiſe to remain in full Force.

The Recognizance is to be certified at the next Quarter-Seſſions of the Peace. 5 & 6 *E.* 6. *c.* 25.

A Warrant againſt one for keeping an Ale-Houſe, *without* Licence.

To the Conſtable of, &c.

New-York, ſs. WHereas we whoſe Names are hereunto ſubſcribed, two of his Majeſty's Juſtices of the Peace for the ſaid County, have been credibly informed, upon Oath, that *A. B.* of *&c.* doth keep a common Ale-Houſe without Licence, contrary to the Statute in that Caſe made and provided: Theſe are therefore to will and require you to bring the ſaid *A B.* before us, or one of us, or ſome other of his Majeſty's Juſtices of the Peace for the ſaid County, to be dealt with according to Law: And hereof fail not. Given under our Hands and Seals, *&c.*

A Warrant for two Witneſſes againſt an unlicenſed Ale-Houſe-keeper.

To the Conſtable of, &c.

New-York, ſs. WHereas Complaint upon Oath hath been made unto me, That *A. B.* of *&c.* doth of his own Authority, and without any lawful Licence, keep a common Ale-Houſe, and doth ſell Ale, Beer, *&c.* in the Pariſh aforeſaid: And

whereas I am credibly informed, that *C. D.* and *E. F.* of *&c.* can juſtify the ſame; theſe are therefore to require you to give Notice unto the ſaid *C. D.* and *E. F.* that they appear before me at, *&c.* upon Monday next at eight o'Clock in the Fore-noon, then and there to teſtify what they know concerning the Premiſes: Whereof they are not to fail at their Perils. Given under my Hand and Seal, *&c.*

A Warrant for an unlicenſed Ale-Houſe-keeper on the firſt Conviction.

To the Conſtable, &c.

WHereas *A. B.* of the Pariſh of *C.* Victualler, was this preſent Day lawfully convicted upon Oath before me, for keeping a common Ale-Houſe in the ſaid County of, *&c.* not being lawfully licenſed according to the Form of the Statute in that Caſe made and provided; by Reaſon whereof he hath forfeited to the Poor of the ſaid County, the Sum of *Twenty Shillings*, of lawful Britiſh Money: Theſe are therefore to require you, or one of you, to levy the ſaid Forfeiture, by diſtraining the Goods and Chattels of the ſaid *A. B.* and that you detain the ſame for the Uſe aforeſaid: And in Default of Payment of the ſaid *Twenty Shillings*, within three Days after ſuch Diſtreſs taken, that then you appraiſe and ſell the ſame, to ſatisfy the ſaid Forfeiture: And if the ſaid *A. B.* ſhall not have ſufficient Goods upon which the ſaid *Twenty Shillings* may be levied as aforeſaid, or ſhall not pay the ſame within ſix Days after the Date hereof; that then you the ſaid Conſtable do openly whip, or cauſe the ſaid *A. B.* to be whipped in the County of *C.* for the ſaid Offence: And hereof fail not, *&c.*

A Warrant to levy Ten Shillings *on an Ale-Houſe-keeper*, &c. *for ſuffering to Tipple.*

To the Conſtable, &c.

WHereas it hath been duly proved before me this preſent Day upon Oath, that *A. B.* of *C.* aforeſaid, Victualler, did upon the firſt Day of *A.* ſuffer *D. E. &c.* of *&c.* to remain and continue drinking and tippling in the Houſe of the ſaid *A. B.* in *C.* aforeſaid, contrary to the Form of the Statutes in that Caſe made and provided: Theſe are therefore to require you the ſaid Conſtable to levy, by Diſtreſs of the Goods and Chattels of the ſaid *A. B.* the Sum of *Ten Shillings*, for the ſaid Offence, for the Uſe of the Poor of the ſaid Pariſh, and to detain the ſaid Goods for the Space of Six Days next after ſuch Diſtreſs taken, if the ſaid Forfeiture of *Ten Shillings* ſhall not be paid to you within that Time; and that afterward you appraiſe and ſell the ſaid Goods to ſatisfy the ſaid Forfeiture, rendring the Overplus to the Owner. And hereof fail not, *&c.*

A

A Warrant to ſuppreſs an Ale-Houſe for Diſorder.

To the Conſtable, &c.

WHereas we are credibly informed, that *A. B.* of *C.* &c. doth ſuffer rude and diſorderly Perſons to frequent his Houſe in the Town of *B.* now being a common Ale-Houſe, wherein they uſually commit great Diſorders, to the Diſturbance of thoſe who live near the ſaid Place: For which Reaſon we *D. E.* and *F. G.* Eſqrs; two of his Majeſty's Juſtices of the Peace, (*Quorum unus*) do think it convenient to diſcharge and put away the common ſelling of Ale and Beer, or other Liquors in the ſaid Houſe. Theſe are therefore to require you forthwith to go to the ſaid *A. B.* and charge him, from henceforth not to ſell, or ſuffer to be ſold, any Beer, Ale, or other Liquors in the ſaid Houſe; and that you alſo cauſe the Sign of the ſaid Houſe to be pulled down.

Two Juſtices (Quorum unus) *may prohibit and remove common Ale-ſelling*, 5 & 6 Ed. 6. *c.* 25. Crompt. 197. 198. *on* Contempt, Bond for good Behaviour, Impriſonment and Fine. 1 *Bulſtr.* 109.

A Warrant and Commitment upon the Statute of 5 and 6 Ed. VI. for ſelling Ale againſt the Command of the Juſtices.

To the Conſtable of, &c. *And to the Keeper*, &c.

WHereas *O. X.* of *K.* hath been duly diſcharged from ſelling Ale or Beer in a common Ale-Houſe within the ſaid Town of *K.* in the ſaid County, notwithſtanding which Diſcharge he hath ſince, contrary to the Command of the Juſtices of the Peace of the ſaid County, uſed to ſell Ale and Beer therein: Theſe are therefore in his Majeſty's Name, to command you the ſaid Conſtable, that you take the ſaid *O. X.* and him ſafely convey to the Common Goal at *K.* aforeſaid, and to deliver him to the Keeper thereof, together with this Precept, commanding you the ſaid Keeper to receive the Body of the ſaid *O. X.* in your Cuſtody, and him ſafely to keep by the Space of three Days, without Bail or Mainprize, and not diſcharge him afterwards, until he enter into a Recognizance with two Sureties, according to the Form of the Statute in that Caſe made, That he will not keep a common Ale-Houſe or Tippling-Houſe, or uſe commonly the ſelling of Ale or Beer: And hereof fail not. Given under our Hands and Seals, &c.

The Form of the Recognizance.

BE it *Remembered*, That, &c, (*as before in Page* 3.)

THE Condition of this Recognizance is such, That whereas the above-bounden *O. X.* hath been lawfully convicted before us *C. D.* and *F. E.* two of his Majesty's Justices of the Peace for the said County; for keeping a common Ale-House in, *&c.* without being allowed thereunto in the open Sessions, or by two Justices of the Peace for the said County; for which said Offence the said *O. X.* was by us committed to the common Goal of the said County, there to remain for the Space of three Days, pursuant to the Statute in that Case made and provided. If therefore the said *O. X.* shall not keep any common Ale-House, Tippling-House, or commonly sell Ale or Beer, from henceforth, without such Allowance as aforesaid, Then this Recognizance to be void, or else, *&c.*

Note, This Recognizance must be certified at the next Quarter Sessions, which Certificate is by this Statute made to be a Conviction of the Party offending, and an Authority to the Justices in Sessions to assess *Twenty Shillings*, as a Fine upon the Offender.

But this Law did not work the Reformation intended, because the Fine was seldom levied by Reason of the Poverty of the Offenders; or if it was levied, the Person would sometimes run away and leave a Charge upon the Parish, which was a Discouragment to the Prosecution.

Therefore by *Stat.* 3 *Car.* if they were not of Ability, a corporal Punishment was added, and an easy Way of Conviction, *viz.* by one Justice out of Sessions, and a more speedy Remedy for a Fine.

No new Licence to keep Inns or Ale-Houses is to be granted, but at a general Meeting of the Justices of the Division where the Party resides. Black. 9. Stat. 2. Geo. 2. c. 28. Sect. 10.

A Certificate for continuing an Ale-House-keeper.

To the Right Worshipful His Majesty's Justices of the Peace within the lower Division of L. &c.

WE whose Names are hereunto subscribed, Inhabitants of the Parish of *H.* within the Division and County aforesaid, do humbly certify, that the now Dwelling-House of *E. L.* Victualler, is conveniently situated there for a Victualling-House, and that he is of good Name and Fame; and the said House is well accommodated for Entertainment of Travellers, and that he keepeth good Rule therein: And therefore we humbly desire your Worships, that his Licence for keeping the said Victualling-House may be continued.

B. A. and *D. G.*

ACCESSARIES.

Who are Principals, and in what Caſes: And who are no Acceſſaries.

IN High Treaſon, the Procurers before the Fact, or the Receiver of a Traitor afterward, knowing him to be ſo, is a Principal.

In all other Felonies, and in forcible Entries, Riots and all Treſpaſſes, the Aiders, Conſenters or Abettors, if they are preſent at the Time when the Fact is committed, tho' 'tis perſonal and done by one, yet theſe are all Principals; but if not preſent they are Acceſſaries before; So likewiſe if they be in the ſame Houſe, tho' not in the View of the Felony. *Dalt.* 527. *H. P. C.* 215. 3 *Inſt.* 59.

But in Murder there may be a Principal, tho' not preſent when the Fact is done; as where one knoweth Drink to be poiſoned, and perſuadeth another to drink, who drinketh and dieth in the Abſence of him who perſuaded it, yet it is Murder in him. *H. P. C. ib. Dalt.* 527. 4 *Co.* 44.

The Procurers and Abettors in ſtealing of a Woman, and thoſe who receive her, knowing her to be ſtolen, are all Principal Felons. 3. *Hen.* VII. c. 2.

So upon the Statute of 5 *Eliz.* of Forgery of Writings, all are Principals. The Preſence or Abſence of the Party makes the Difference between the Principal and the Acceſſary before the Fact; if preſent, then he is Principal, if he encourage, adviſe, or abet; if abſent when the Thing is done, then he is Acceſſary before the Fact, *Moor* 666. *Dalt.* 528.

If a Felony of another Nature than what was adviſed, doth proceed from the Abetting or Encouragement given by an ill Man, he is likewiſe an Acceſſary to it; as if he adviſeth one Man to rob another, and inſtead thereof he killeth him in making Reſiſtance: In this Caſe the Abettor is Acceſſary to the Murder, becauſe his Advice was purſued to do an ill Act, which maketh him Acceſſary to all the Conſequences thereof. *Dalt.* 528.

So 'tis, if the Advice or Command was executed in another Manner, at another Time, or in any Place than where commanded.

As if the Command is to rob in the Highway, and inſtead thereof the Perſon is robbed in his Houſe; or to poiſon a Man, and he ſtabs him; or to rob him one Day, and he doth it another Time. In all theſe Caſes he is Acceſſary before the Fact.

If a Man is in Confederacy with another to ſteal his own Goods, who ſtealeth them accordingly from his Servant, with Intent to charge his Servant, this maketh him an Acceſſary. *Goldſ.* 186.

And in all Felonies which are made ſo by Statutes, and which were not ſo at Common Law, there are Acceſſaries both before and after the Fact. The Abettors, Aiders, Concealers and Receivers, are not named in the Statute, excepting only in Felony, for carrying away a Woman againſt her Will, upon the *Stat.* 3. *H.* VII. in which Caſe all are Principals. 3 *Inſt.* 61, 62. 2 *Inſt.* 1683.

When the Felony commanded is executed upon another Perſon.

If *A.* adviſed a Man to kill another by Poiſon, who knoweth thereof delivereth it to another to eat it, who eateth and dieth, this is Murder; but the firſt Adviſer to Poiſon is not Acceſſary to it.

So where there is a Variance in the Nature of the Offence; as if I commanded a Man to rob another in the High-Way, and he commits Burglary. *H. P. C.* 217. *Lamb.* 285. *H. P. C. ib. Lamb.* 285.

Alſo, if one doth more than is commanded; as if I command a Man to apprehend another, and inſtead thereof he robs him; for there muſt be an evil Purpoſe of Mind continuing till the Act commanded be compleated to make a Man an Acceſſary before the Fact.

There can be no Acceſſaries before the Fact in Caſe of Manſlaughter, for it is an Offence which follows upon a ſudden Affray. 4 *Rep.* 44.

The Principal muſt always be named in the Indictment againſt an Acceſſary, and ought to be firſt attainted, otherwiſe the other Acceſſary cannot be tried; for by the Acquital of the one, the other is diſcharged. *Dalt.* 533.

If an erroneous Judgment be given againſt the Principal, yet the Acceſſary muſt be tried; but if the Principal die before Attainder, or is acquitted by Verdict; or if after Conviction he hath the Benefit of the Clergy, or is pardoned; or 'tis found by Verdict that he killed another *ſe defendendo, or per infortunium*; in all which Caſes the Acceſſary is diſcharged. *Dalt.* 533.

So 'tis if the Principal is burnt in the Hand, the Acceſſary is thereby acquitted. *Dalt.* 533. *Cro. Car.* 567.

By the Common Law there could be no Acceſſary in one County to a Felony done in another, becauſe thoſe of a ſtrange County could not, upon the Trial, have any Cognizance of the Principal Offence; But this is now remedied. By the Statute 2 and 3 *E.* VI. *cap.* 24. if a Felony is done in one County, and there are Acceſſaries in another, they may be indicted as Acceſſaries.

The Law ſeemed defective in this Matter, *viz.* That no Acceſſary could be convicted or ſuffer Puniſhment where the Principal was not attainted, or had his Clergy; and by this Means the Contrivers of Felonies, and the Receivers of ſtolen Goods, often went unpuniſhed. Therefore

An Act was made 1 *Annæ*, That if a Man is convicted of Felony, or ſtands mute, or challenges above Twenty of the Jury, it ſhall be lawful to proceed againſt the Acceſſary, notwithſtanding the Principal had

had his Clergy, was pardoned, or otherwiſe delivered before Attainder; and ſuch Acceſſary ſhall ſuffer the ſame Puniſhment, if convicted, ſtands mute, or challengeth above Twenty, as he ſhould have ſuffered if the Principal had been attainted.

By this Act, he that buys or receives ſtolen Goods, knowing them to be ſtole, ſhall be proſecuted for a Miſdemeanour, and fined and impriſoned, though the Principal is not convicted; and if he happen to be convicted afterwards, that Puniſhment ſhall exempt the Receiver, *&c.* from being again puniſhed as an Acceſſary.

It was formerly held, that he was an Acceſſary after the Fact, who received or aided a Felon, though he did not know any Felony was done: But then the Receiver muſt dwell in the ſame County where the Felon was out-lawed; and the Reaſon was, becauſe upon the Out-lawry he is a Felon upon Record; and the Proceedings being in the County-Court, all the Inhabitants of the County ought to take Notice of it: But this was thought too ſevere, and therefore now a more particular Knowledge of the Fact is required.

Thoſe who willingly receive Felons, or relieve, aſſiſt, comfort or aid them, knowing they have committed Felony, are Acceſſaries after the Fact.

The Fact to which the Party is an Acceſſary, muſt be Felony at the very Time in which he became an Acceſſary; and therefore the Receiver of one who gave a mortal Wound to another, before the Death of the Party ſtruck, is not an Acceſſary to the Murder, becauſe it would not be Felony in the Receiver at the Time of the Stroke given, for the Man was then living.

He who buyeth ſtolen Goods for leſs Value than they are really worth, ſeems to conſent to the ſtealing; for by an Under-value, it appeareth that the Seller did not come by ſuch Goods honeſtly.

But Mr. *Dalton* makes a Difference in this Cauſe, between a Buyer, who is a Stranger, and one who is an Acquaintance of the Thief: For if a Stranger buy ſtolen Goods for near the Value, he is not puniſhable; but if a Companion of the Felon buy the Goods which he ſtole, for leſs Value, this he ſays, is by Covin, and makes him an Acceſſary after the Fact.

Formerly to receive Goods ſtolen, knowing them to be ſtolen, did not make an Acceſſary, unleſs he did likewiſe receive the Thief. But now

Who are Acceſſaries after the Fact.

By the *Stat.* 3 and 4 *W.* and *M. c.* 9. buying or receiving ſtolen Goods, knowing them to be ſtolen, makes an Acceſſary to the Felony after the Fact.

If the Owner hath complained to a Juſtice of Peace, or to a Conſtable, or if the Felon be taken upon Hue-and-Cry, or otherwiſe, and then the Owner takes his Goods, or compounds with the Felon, or conſents to his Eſcape, this makes him an Acceſſary after the Fact, becauſe he did once act againſt the Offender *criminaliter*.

But

But if in Purſuit he retaketh his Goods, and ſuffereth the Felon to eſcape before any Complaint made to the Juſtice, or without being charged, &c. this is a Miſdemeanour for which he may be fined, but it doth not make him an Acceſſary; becauſe *in initio* he has Liberty *agere civiliter vel Criminaliter*.

A Servant is ſo by relieving his Maſter, being a Felon, or by aſſiſting him to eſcape; for he is bound to accuſe him, or to depart his Service; and ſo is the Maſter by relieving his Servant.

Huſband receiving a Wife, knowing her to have done a Felony, *ſed non e Converſo*.

Thoſe who receive a Man bailed for Felony.

Relieving a Felon in Priſon.

To ſend Letters or Meſſengers in his Favour; to teach him to read, or to adviſe him, that he endeavour to perſuade the Witneſſes not to appear againſt him at his Tryal.

Not to reveal a Felony, which I know is intended to be done, or ſuffering a Felon to eſcape, but giving him no Aſſiſtance.

Ex vi Termini, the Principal is to be tried before the Acceſſary, and therefore one *Cholmley*, Recorder of *Lincoln*, was turned out of his Office for trying the Acceſſary firſt. 1 *Vent.* 146.

If the Principal is acquitted or convicted of Manſlaughter, or in his own Defence, or is admitted to Clergy before Attainder, or is pardoneth or dieth, the Acceſſary is acquitted: But this muſt be before Attainder, for if afterwards, the Acceſſary ſhall be arraigned. *Raym.* 477.

If the Principal doth not appear, the Acceſſary cannot be tried: If he is not attainted, the Acceſſary ſhall not be out-lawed. If a Man is indicted as Acceſſary to two Principals, one of which happens to be convicted, and the other doth not appear, yet the Acceſſary ſhall be tried, and may be condemned, if found Acceſſary to the Party convicted, and may again be arraigned as Acceſſary to the other when he appeareth.

If both Principal and Acceſſary plead to the ſame Felony, they may be tried by the ſame Jury; but Judgment muſt firſt be had againſt the Principal, and the Jury muſt be charged to acquit the Acceſſary, if they find the Principal not guilty.

The Acceſſary ſhall not take Advantage of any Error in the Attainder of the Principal. 9 *Rep.* 119 *B.*

Where now a Felony is made by Statute, which was not ſo at Common Law, there may be Acceſſaries, tho' not named in the Statute.

In an Indictment againſt an Acceſſary, you muſt ſet forth the Manner of the Felony, and that the Defendant knowing him to have done ſuch a Felony, *Felonice recepit*, &c. *Dalt.*

If a Criminal is indicted as Principal, and *acquitted*, he cannot afterwards be indicted as Acceſſary *before that Fact*; becauſe he who adviſes

adviſes the Thing to be done, is in a Manner guilty of the Fact itſelf; and being acquitted of that, he is diſcharged of all Guilt before the Principal Fact committed.

But notwithſtanding ſuch Acquittal, he may be indicted *as Acceſſary after the Fact*, becauſe ſuch an Acceſſary cannot be guilty of committing the Fact itſelf, for that was before he knew any Thing of it. *Keeling* 26.

AFFRAYS.

IS a Fighting between two or more, and differs from an Aſſault; for the one is a common Wrong, the other is an Injury done to a particular Perſon.

There muſt be a Stroke given or offered, or a Weapon drawn, or otherwiſe it is not an Affray. *H. P. C.* 125.

But yet a Challenge to fight by Word or Meſſage, has been held an Affray; and *Anno* 16 *Car.* II. one *Collins* was indicted for carrying a Challenge, knowing the Contents, and was found Guilty, and fined 100 *l.* and committed for a Month without Bail, *&c. Sid.* 186.

What may be done on this Head, (1.) *by the Conſtable.*

He may command the Affrayers to depart, and upon Refuſal, may commit them; if they reſiſt, he may call others to his Aſſiſtance, and may juſtify the Wounding in ſuch Caſe.

If it is a great and dangerous Affray, he may commit them till they find Sureties for the Peace.

If any Perſon is wounded, he may commit the Offender, or if he will, he may carry him before a Juſtice of the Peace, who may commit him, if he will not give Security to appear at the next Seſſions.

He may take them out of Franchiſe in the ſame County: He may purſue them into another County, but then when taken he muſt carry them before a Juſtice of the Peace, for he cannot commit out of the County.

If he is aſſaulted doing his Duty, or if the Affray be in his Preſence, he may put them into the Stocks till he can get Aſſiſtance to convey them to Goal; or he may ſecure them, according to the Quality of the Offenders, till he can bring them before a Juſtice, or to Priſon; but not in his own Houſe. *Dalt.* 39. *Lamb.* 133.

If he is hurt in the Affray, he may have an Action of Treſpaſs.

If there is threatning to kill, to beat, or hurt, tho' this is no Affray, yet he may apprehend the Perſons, and carry them before a Juſtice: But where an Affray is over, he cannot apprehend any one without a Warrant from a Juſtice, unleſs ſome Perſon is dangerouſly wounded.

If he neglect his Duty in not endeavouring to ſuppreſs an Affray, *&c.* 'tis preſentable at Seſſions, and he ought to be fined. *H. P. C.* [illegible]

(2.)

(2.) *What may be done by the Justices.*

If the Affray is in his Presence, he may commit till they find Sureties.

If any Person is dangerously hurt, he may within a Year and a Day after the Hurting commit; and 'tis not Discretion to bail the Offender, tho' he may do it by the Law.

He may, *ex officio*, require those who strike or threaten in his Presence, to find Sureties for their good Behaviour.

(3.) *What may be done by a private Person.*

Any Man may stay the Affrayers, who are about to assemble to break the Peace, till the Heat is over, and deliver them to the Constable.

Likewise any Man may apprehend an Offender who hath dangerously wounded another, and carry him before a Justice, or to Goal. *H. P. C.* 135. *Dalt.* 38.

APPRENTICES.

THE Children of such Parents who are not able to maintain them, may be put out Apprentices; and the Parents refusing to suffer them, may be bound over to the Sessions. *Dalt.* 184.

But this must be by the Assent of two Justices; and the Overseers of the Poor, or the greater Part of them, are to place out such Children, and the Law hath made them Judges of the Disability of the Parents: And one Justice may compel any Person meet to be bound. *Dalt.*

There is no Necessity of giving Money with them; 'tis Discretionary in the Church-Wardens whether they will give any or not. *Dalt.*

Every Man of good Estate or Ability may be compelled to take Apprentices, of every Man who by his Profession or Manner of living must keep such Servants; for the Power given to Church-Wardens to place them out, doth necessarily imply, that such who are fit to be Masters must take them.

Poor Children when bound must be above Seven, and under Fifteen; for, if above that Age, they cannot be compelled: But they must work, or go to Service, or be sent to the House of Correction, or bound over to the Sessions, or to the good Behaviour. 7 *Jac. c.* 3.

The Man Child shall be bound till he comes to the Age of Twenty Four Years.

Above the Age of Ten Years, any Person may be bound by his own Agreement by Indenture, &c. and if above Twelve he may be compelled by Justices. 43 *Eliz. Cap.* 4.

If

If an Apprentice do not his Duty, the Maſter may complain to one Juſtice, who may reconcile them, if he can; and if the Fault ſhall by him be judged in the Apprentice, then the ſaid Juſtice may ſend him to the Houſe of Correction.

'Tis true, there is no expreſs Authority given to the Juſtice to ſend a diſorderly Apprentice thither; but it ſeems to be warranted upon the Preamble of the Statute 7. *Jac. Cap.* 4. made for erecting ſuch Houſes to puniſh idle and diſorderly Perſons: But the ſafeſt Way is to bind him over to the Seſſions, and from thence he may be ſent to the Houſe of Correction.

Neither have the Juſtices any expreſs Power to diſcharge an Apprentice, if the Fault is in him, as they have if the Fault is in the Maſter; but it hath been held, and ſo is the Law now, that the Clauſe in the Act, which gives the Juſtices in their Seſſions Power to inflict a Corporal Puniſhment on a bad Apprentice, is rather an Enlargement than a Reſtraint of their Authority, for they cannot puniſh a bad Maſter, but may diſcharge the Apprentice; but they may either puniſh or diſcharge a bad Apprentice, as they ſhall think fit. *Dalt.* 190.

If the Fault be found in the Maſter, then the Juſtice may bind him over to the Seſſions, and four Juſtices there may diſcharge the Apprentice, which Diſcharge is to be enrolled by the Clerk of the Peace.

But the Maſter and Apprentice may agree to leave each other; and in ſuch Caſe the Maſter may give Leave under his Hand to depart, and then one Juſtice out of Seſſions may diſcharge him, by allowing the Cauſe of putting him away. 5. *Eliz. cap.* 4.

But becauſe he cannot be made an Apprentice without a Writing, therefore he cannot be diſcharged but by a Writing under the Hand of his Maſter.

It ſhall be a Cauſe of Departure on the Maſters Side.

Not allowing Meat, Drink, or Wages agreed on; this is a good Cauſe to be allowed by the Juſtice, *&c. F. N. B.* 168. *l.* ſo is beating him unreaſonably. *F. N. B.* 168. *Let.* Q.

On the Apprentices Side. Any departing from his Service whatſoever, refuſing to do any reaſonable Service, is a Departure in Law; but as to that Part of the Act which ſays, an Apprentice departing without a Teſtimonial, ſhall be whipped as a Vagabond; it muſt be an Apprentice in Huſbandry, and one of full Age, for otherwiſe an Infant, who is the Son of a Gentleman, may be puniſhed as a Rogue. *Winch* 25.

If an Apprentice ſteal any Thing from his Maſter above the Value of 12 *d. not deliver'd to him to keep*, upon due Proof thereof made before one Juſtice, he may commit him to Goal, together with those who perſuaded him to commit the Felony, and thoſe who receive the Goods, knowing them to be ſtole; but if under that Value, they may be all ſent to the Houſe of Correction by one Juſtice according to Mr. *Dalton*, rather by the Seſſions.

An Indenture for putting out an Apprentice by the Parish:

THIS Indenture made the---Day of---in the---Year of the Reign of our Sovereign Lord GEORGE *the Second, by the Grace of God of* Great-Britain, France *and* Ireland, *King, Defender of the Faith,* &c. Anno Domini 1749. Witneſseth, *That* A. B. *and* C. D. *Church Wardens of the Pariſh of,* &c. *and* E. F. *and* G. H. *Overſeers of the Poor of the ſaid Pariſh, by and with the Conſent of his Majeſty's Juſtices of the Peace of the ſaid County, whoſe Names are hereunto ſubſcribed; Have put and placed, and by theſe Preſents do put and place* J. K. *a poor Child of the ſaid Pariſh, Apprentice to* L. M. *of the ſame, Baker, with him to dwell and to ſerve from the Day of the Date of theſe Preſents, until the ſaid Apprentice ſhall accompliſh his full Age of* Twenty Four *Years, according to the Statute in that Caſe made and provided: During all which Term the ſaid Apprentice his ſaid Maſter faithfully ſhall ſerve in all lawful Buſineſſes, according to his Power, Wit and Ability; honeſtly, orderly and obediently, in all Things demean and behave himſelf towards his ſaid Maſter, and all his during the ſaid Term. And the ſaid* L. M. *doth for himſelf, his Executors and Adminiſtrators, covenant and grant, to and with the ſaid Church Wardens and Overſeers, and every of them, their and every of their Executors and Adminiſtrators, and their and every of their Succeſſors for the Time being, by theſe Preſents, That the ſaid* L. M. *the ſaid Apprentice, in the Art and Myſtery of a Baker, which he now uſeth, ſhall and will teach and inſtruct, or cauſe to be taught and inſtructed, in the beſt Way and Manner that he can: And ſhall and will, during all the Term aforeſaid, find, provide and allow unto the ſaid Apprentice, competent and ſufficient Meat, Drink and Apparel, Lodging, Waſhing and all other Things neceſſary, and fit for an Apprentice. And alſo ſhall and will provide for the ſaid Apprentice, that he be not any Way a Charge to the Pariſh, or Pariſhoners of the ſame; but of and from all Charge, ſhall and will ſave the ſaid Pariſh and Pariſhioners harmleſs, and indemnified, during the ſaid Term: And at the End thereof, ſhall and will make, provide, allow and deliver unto the ſaid Apprentice, double Apparel of all Sorts, good and new;* that is to ſay, *A good new Suit for the Holy-Days, and another for the Working-Days.* In Witneſs *whereof, the Parties aboveſaid to theſe preſent Indentures, interchangeably have put their Hands and Seals the Day and Year firſt above-written.*

Sealed and Delivered in
the Preſence of

We whoſe Names are ſubſcribed, Juſtices of the Peace of the County aforeſaid, (*Quorum unus*) do, as much as in us lies, conſent to the putting forth the aboveſaid *J. K.* Apprentice, according to the Intent and Meaning of the above-ſaid Indenture.

A

A Warrant to put out poor Children Apprentices.

To the Church-Wardens, and Overſeers of the Poor of the Pariſh of A. in the ſaid County, and to every of them.

THESE are in his Majeſty's Name to command you, That on Tueſday the Third Day of *June* next, at Nine of the Clock in the Forenoon of the ſame Day, you bring unto us in Writing, at the Houſe of *A. B.* in *&c.* the Names of all ſuch poor Children of your Pariſh, whoſe Parents you ſhall not think able to maintain them, and the ſeveral Ages of ſuch Children: which ſaid Children, or ſuch as you ſhall think fit to be put forth Apprentices, you are to bring before us at the Time and Place aforeſaid: And likewiſe, that you do then and there preſent unto us in Writing, the Names of ſuch Inhabitants of your Pariſh, eſpecially ſuch who have not already taken ſuch poor Children Apprentices, to whom you ſhall think fit ſuch Children may be placed: and that you give them Notice, that they are then required to appear before us, to ſhew Cauſe why ſuch Children may not be bound to them; and that you be then and there alſo preſent, and bring this Precept with you. Hereof fail not. Given, *&c.*

A Warrant againſt a Maſter for abuſing his Apprentice.

To the Conſtable, &c.

WHereas Complaint upon Oath hath been made unto me, by *A. B.* Apprentice to *C. D.* of the Pariſh of *E.* in the ſaid County, Baker, That the ſaid *C. D.* doth not allow unto his ſaid Apprentice ſufficient Meat, Drink and Apparel; but hath often corrected him immoderately, without any juſt Cauſe: Theſe are therefore to require you to bring both the ſaid Maſter and his Apprentice before me, or ſome other of His Majeſty's Juſtices of the Peace for the ſaid County, to be examined touching the Premiſes; and further, That ſuch Order and Direction may be taken between them as to Juſtice doth appertain. Given under my Hand and Seal, *&c.*

A Warrant againſt a diſorderly Apprentice.

To the Conſtable, &c.

WHereas Complaint upon Oath hath been made unto me by *A. B.* Joyner, That *C. D.* now being an Apprentice unto him, is a ſtubborn and diſorderly Servant, and doth very much miſbehave himſelf towards his ſaid Maſter: Theſe are therefore to command you to bring both the ſaid Maſter and his Apprentice before me, or ſome other of his Majeſty's Juſtices of the Peace for the ſaid County, to be examined concerning the Premiſes; and further, That ſuch Order and Direction may be taken between them, as to Juſtice doth appertain. Given under my Hand and Seal, *&c.*

An Indenture for putting out an Apprentice by the Pariſh:

THIS Indenture made the---Day of---in the---Year of the Reign of our Sovereign Lord GEORGE *the Second, by the Grace of God of* Great-Britain, France *and* Ireland, *King, Defender of the Faith,* &c. Anno Domini 1749. Witneſſeth, *That* A. B. *and* C. D. *Church Wardens of the Pariſh of,* &c. *and* E. F. *and* G. H. *Overſeers of the Poor of the ſaid Pariſh, by and with the Conſent of his Majeſty's Juſtices of the Peace of the ſaid County, whoſe Names are hereunto ſubſcribed; Have put and placed, and by theſe Preſents do put and place* J. K. *a poor Child of the ſaid Pariſh, Apprentice to* L. M. *of the ſame, Baker, with him to dwell and to ſerve from the Day of the Date of theſe Preſents, until the ſaid Apprentice ſhall accompliſh his full Age of* Twenty Four *Years, according to the Statute in that Caſe made and provided: During all which Term the ſaid Apprentice his ſaid Maſter faithfully ſhall ſerve in all lawful Buſineſſes, according to his Power, Wit and Ability; honeſtly, orderly and obediently, in all Things demean and behave himſelf towards his ſaid Maſter, and all his during the ſaid Term. And the ſaid* L. M. *doth for himſelf, his Executors and Adminiſtrators, covenant and grant, to and with the ſaid Church Wardens and Overſeers, and every of them, their and every of their Executors and Adminiſtrators, and their and every of their Succeſſors for the Time being, by theſe Preſents, That the ſaid* L. M. *the ſaid Apprentice, in the Art and Myſtery of a Baker, which he now uſeth, ſhall and will teach and inſtruct, or cauſe to be taught and inſtructed, in the beſt Way and Manner that he can: And ſhall and will, during all the Term aforeſaid, find, provide and allow unto the ſaid Apprentice, competent and ſufficient Meat, Drink and Apparel, Lodging, Waſhing and all other Things neceſſary, and fit for an Apprentice. And alſo ſhall and will provide for the ſaid Apprentice, that he be not any Way a Charge to the Pariſh, or Pariſhoners of the ſame; but of and from all Charge, ſhall and will ſave the ſaid Pariſh and Pariſhioners harmleſs, and indemnified, during the ſaid Term: And at the End thereof, ſhall and will make, provide, allow and deliver unto the ſaid Apprentice, double Apparel of all Sorts, good and new;* that is to ſay, *A good new Suit for the Holy-Days, and another for the Working-Days. In Witneſs whereof, the Parties aboveſaid to theſe preſent Indentures, interchangeably have put their Hands and Seals the Day and Year firſt above-written.*

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To the Church-Wardens, and Overſeers of the Poor of the Pariſh of A. in the ſaid County, and to every of them.

THESE are in his Majeſty's Name to command you, That on Tueſday the Third Day of *June* next, at Nine of the Clock in the Forenoon of the ſame Day, you bring unto us in Writing, at the Houſe of *A. B.* in *&c.* the Names of all ſuch poor Children of your Pariſh, whoſe Parents you ſhall not think able to maintain them, and the ſeveral Ages of ſuch Children: which ſaid Children, or ſuch as you ſhall think fit to be put forth Apprentices, you are to bring before us at the Time and Place aforeſaid: And likewiſe, that you do then and there preſent unto us in Writing, the Names of ſuch Inhabitants of your Pariſh, eſpecially ſuch who have not already taken ſuch poor Children Apprentices, to whom you ſhall think fit ſuch Children may be placed: and that you give them Notice, that they are then required to appear before us, to ſhew Cauſe why ſuch Children may not be bound to them; and that you be then and there alſo preſent, and bring this Precept with you. Hereof fail not. Given, *&c.*

A Warrant againſt a Maſter for abuſing his Apprentice.

To the Conſtable, &c.

WHereas Complaint upon Oath hath been made unto me, by *A. B.* Apprentice to *C. D.* of the Pariſh of *E.* in the ſaid County, Baker, That the ſaid *C. D.* doth not allow unto his ſaid Apprentice ſufficient Meat, Drink and Apparel; but hath often corrected him immoderately, without any juſt Cauſe: Theſe are therefore to require you to bring both the ſaid Maſter and his Apprentice before me, or ſome other of His Majeſty's Juſtices of the Peace for the ſaid County, to be examined touching the Premiſes; and further, That ſuch Order and Direction may be taken between them as to Juſtice doth appertain. Given under my Hand and Seal, *&c.*

A Warrant againſt a diſorderly Apprentice.

To the Conſtable, &c.

WHereas Complaint upon Oath hath been made unto me by *A. B.* Joyner, That *C. D.* now being an Apprentice unto him, is a ſtubborn and diſorderly Servant, and doth very much miſbehave himſelf towards his ſaid Maſter: Theſe are therefore to command you to bring both the ſaid Maſter and his Apprentice before me, or ſome other of his Majeſty's Juſtices of the Peace for the ſaid County, to be examined concerning the Premiſes; and further, That ſuch Order and Direction may be taken between them, as to Juſtice doth appertain. Given under my Hand and Seal, *&c.*

A Warrant againſt an Apprentice for Departing from his Maſter.

To the Conſtable, &c.

WHereas Complaint upon Oath hath been made unto me by *A. B.* of &c. That *C. D.* his Apprentice hath lately departed from him contrary to Law: Theſe are therefore in his Majeſty's Name, to command you to take and bring the ſaid *C. D.* before me, or ſome other of his Majeſty's Juſtices of the Peace for this County, to anſwer the Premiſes. Given, &c.

The Juſtice may grant this Warrant upon Complaint of the Maſter, and he may reconcile the Matter: But I do not ſee how he can puniſh an Apprentice by Indenture; the Seſſions may.

An Action on the Caſe lies againſt him who receives an Apprentice by Indenture; and an Action of Covenant againſt the Apprentice himſelf.

The Diſcharge of an Apprentice.

WWereas *R. K. H. R. D. E.* and *G. H.* four of his Majeſty's Juſtices of the Peace (whereof one is of the *Quorum*) for the County aforeſaid, having heard and examined the Matter in Difference between *E. W.* an Apprentice, and *N. L.* of &c. And it appearing to us upon Oath, that the ſaid *N. L.* hath not allowed his ſaid Apprentice ſufficient Meat, &c. and hath ſeveral Times beaten him very immoderately without any juſt Occaſion. We do therefore, for the Cauſe aforeſaid, diſcharge the ſaid *E. W.* from his ſaid Apprenticeſhip; and do hereby under our reſpective Hands and Seals, pronounce and declare, That the ſaid *E. W.* is diſcharged from being any longer an Apprentice to his ſaid Maſter. Witneſs our Hands and Seals, &c.

This Diſcharge ſhould be enrolled by the Clerk of the Peace, or Town Clerk, which ſhall be good againſt the Maſter, his Executors and Adminiſtrators.

A Warrant for Servants Wages.

To all Conſtables, &c.

WHereas Complaint upon Oath hath been made unto me by *W. W.* late Servant of *W. B.* of &c. That he the ſaid *W. W.* being lawfully hired by his ſaid Maſter, did ſerve him for the Space of, &c. and that the ſaid *W. B.* doth now refuſe to pay the Wages which are juſtly due to his ſaid Servant for the Time he hath ſerved him: Theſe are therefore to require you to bring the ſaid *W. B.* before me, or ſome other of his Majeſty's Juſtices of the Peace for the ſaid County, to anſwer the Premiſes; and that you give Notice to the ſaid *W. W.* to be then and there preſent to make good his Complaint. Given under my Hand and Seal, &c.

By

By a late Act, *Anno.* 12, *Annæ Reginæ*, any Servant that purloins, embezzels, or makes away his Maſter's Goods, *&c.* to the Value of 40 s. it is made Felony without Benefit of Clergy. *Vide Felonies.*

Every Houſe-keeper in any City or Town-Corporate, of the Age of 24 Years, and uſing Art or Myſtery there, may take an Apprentice, whoſe Terms ought not to expire till he is 4 Years old.

Artificers in Market-Towns, not Corporate, and who are Houſholders, and of the Age of 24 Years, may take other Artificers Children Apprentices.

Huſbandmen being Houſholders, *&c.* may take Apprentice any Perſon above 10, and under 18, to ſerve till his Age of 21 or 24, as the Parties can agree. 5. *El.* c. 4.

Every Tradeſman, being a Houſholder in any City or Town Corporate, and uſing any Trade or Myſtery there, may retain the Son of a Freeman, *&c.* for ſeven Years at leaſt, ſo as the Apprentiſhip do not determine after ſuch Apprentice ſhall be 21. *Shaw's* Juſtice, *Vol.* 1. *Pag.* 58.

Arreſt by Juſtices Warrant.

ALL Perſons under the Degree of a Baron may be arreſted by a Warrant from a Juſtice of Peace, for any Miſdemeanour, or any Thing done againſt the Peace. *Dalt.* 580.

A Peer may be arreſted by a Writ out of *B. R.* for a Contempt or Breach of the Peace.

A Clergy-Man, but not in Divine Service.

A *Feme Covert* for a Riot.

An Infant, if he cannot find Sureties for the Peace; but not for the Breach of any Statute, unleſs he is therein charged.

'Tis no Arreſt for a Conſtable having a Warrant to command the Party to appear before a Juſtice of Peace, but he muſt lay hold on his Perſon. *Dalt.* 580.

Where an Affray is made, and the Offenders fly into another County, the Conſtable may purſue them.

He may break open a Door to take an Offender; but then ſome Felony muſt be committed. *H. P. C.* 93.

Seſſions may award a *Capias* againſt a Perſon indicted, and by Virtue thereof the Officer may break open Doors.

Commitment by a Juſtice muſt be to the Common Goal, by *Mittimus* under his Hand and Seal, containing the Cauſe; and it ought to conclude, *viz.* "There to remain till he be delivered by due Courſe of Law"; otherwiſe 'tis void. *H. P. C.* 94.

A Sworn Officer need not ſhow his Warrant.

In all Criminal Caſes where any one is in Danger of Life or Member, any private Man may arreſt another without Preſentment, Froceſs or Warrant; ſo likewiſe where a Felony is committed, every Perſon preſent muſt endeavour to take the Offender, or may be fined and committed; and in ſuch Caſe any ſuſpected Perſon, tho' upon common Fame only, may be taken; and if he make Reſiſtance, you may juſtify the beating of him.

All theſe may be arreſted by any private Perſon; but then they muſt be brought to the Conſtable, and if he is not to be found, then to the Juſtice in order to their Commitment. *Dalt.* 582.

A Juſtice of Peace may, at his Diſcretion, grant a Warrant to take ſuch whom he ſhall ſuſpect to be inclined to break the Peace. *Dalt.* 583.

So upon his own View he may commit thoſe who offend againſt Penal Laws.

Herein any Perſon aiding him, may break open a Houſe to apprehend a Felon, having a lawful Warrant; ſo likewiſe to apprehend one who hath dangerouſly wounded another; So where an Affray is in a Houſe, and the Door ſhut, the Conſtable may break it open; ſo upon a forcible Entry or Detainer, either upon View of Juſtices or upon an Inquiſition taken before them; ſo may the Sheriff upon an Outlawry in a perſonal Action; ſo he may upon a Warrant for the Peace or good Behaviour, and generally in all Caſes where the King is Party. *Dalt.* 264. *Moor* 606.

But he ought firſt to acquaint the Perſon of the Cauſe, and to deſire the Doors may be opened.

If Complaint be made to a Conſtable of a Felony done, or Blow given, tho' the wounded Perſon is not dead, if an Aſſault be made on himſelf, or where there is any Breach of the Peace done in his View, he may put the Offenders in the Stocks, or ſecure them in his own Houſe till he can bring them before a Juſtice. *H. P. C.* 92.

When brought before a Juſtice, if he hath Power by any Statute to bind him over, or to cauſe him to do any Thing, and he refuſes, he may commit him till he is conformable.

If he fly into another County, and is taken there, he ſhall be committed to Goal, not where the Felony was done, but where taken.

Conſtable may put him in the Stocks for a reaſonable Time, till he can get help to convey him to Goal.

Goaler may make his own Houſe a Goal; but a Juſtice muſt not ſend him thither, but to a common Goal, and the Goaler cannot make his own Houſe a Goal above a Day and a Night.

At Common Law, the Goaler could not put Irons upon a Priſoner; but by the Statute of *W.* 2. *cap.* 11. 'tis enacted, That *Carceri mancipetur in ferris.*

By a late Statute, the Priſoner muſt not be carried to a Victualling-Houſe without his Conſent, ſo as to charge him with any Sum of Money

Money for Meat or Drink, nor more taken for the Arreſt than by Law required; nor any Reward expected for keeping him out of Goal till he can find Bail, or agree; nor more taken for a Night's Lodging, or other Expences, than what ſhall be allowed by the next Juſtice or Seſſions.

This muſt be at his own Expence, (if able) otherwiſe at the Charge of the Town where taken, who may be diſtrained if they refuſe.

If the Priſoner refuſe to be at the Charge, the Juſtice may direct a Warrant to the High Conſtable, or Petty Conſtable, to the Town where he hath any Goods, to ſell as much as will ſatisfy the Charges.

If the Goaler will not receive him, the Conſtable muſt bring him to the Town where taken, who muſt keep him till next Aſſizes, and there the Goaler ſhall be puniſh'd. *Dalt.* 586.

Where Impriſonment is directed by any Statute, and no Time limitted when the Offender ſhall be committed, it muſt be preſently; ſo where 'tis not limitted how long he ſhall continue in Cuſtody, there 'tis in the Diſcretion of the Court.

He muſt be kept *in ſalva & arcta Cuſtodia*, and if the Goaler himſelf ſuffer him to go a broad at any Time, though he return to the Priſon, 'tis an Eſcape, and the Goaler may be fined; for Impriſonment is a Puniſhment of the Offender, as well as the keeping of him to anſwer his Fault.

ASSAULT.

ASSAULT is derived from the old Latin Word *Aſſultus*; which ſignifies a *Leaping on another*, ſo that *ex vi termini*, it cannot be performed without the Offering ſome Hurt to the *Perſon*, as by ſtriking, *&c.* And Battery is the wrongful beating another.

1. *Where Men have a Natural Power over others it is Juſtifiable.*

As Parents have over their Children till they come of Age, for till then they may chaſtiſe them for Offences without Breach of the Peace.

2. *It is alſo juſtifiable, where Men have a Civil Power over others.*

As the Maſter hath over his Servant, the School-Maſter over his Scholars, a Goaler over his Priſoners, and any Man over his Kinſman who is mad; or who, being at Liberty, attempteth to do any Miſchief.

He may ſtrike another to defend his Perſon from being wounded or beaten.

If a Soldier hurt another by Misfortune or Negligence, and not wilfully; ſo if two agree to play at any Game, and one is hurt, is no Breach of the Peace, becauſe it was by Conſent.

I may juſtify the beating of another, who would do Miſchief to Wife, Father or Mother; for I am bound by Law to protect the one, and I owe Obedience to the other.

So may the Wife juſtify the beating one who would beat or aſſault her Huſband; ſo may the Father or Mother any Perſon who would beat their Children.

A Servant may likewiſe juſtifie the beating another, in Defence of his Maſter, *(&c. converſo)* but not of his Maſter's Father or Mother, *&c.* becauſe he owes no Obedience to them.

So where the Life of any one is in Danger by beating, or otherwiſe, any Perſon may endeavour to reſiſt, and that by beating him who offereth the Violence. *Dalt.*

So if any one would by Force wrongfully take away my Goods, whether I have a Property in them, or a bare Poſſeſſion only, 'tis juſtifiable to reſiſt; but the Offender muſt not be wounded; and if killed, 'tis Felony.

So 'tis if another endeavour to put me out of Poſſeſſion of Land, or to turn a High-way, or to direct a Water-Courſe, *&c.*

I ſhall conclude this Title with a remarkable Caſe, which was thus: One courted the Siſter of Mr. *G.* a Barriſter of *Grays-Inn*, and a Juſtice of Peace for *S.* and he not conſenting to the Match, was ſent for to an Ale-Houſe by Mr. *M.* and one *T.* When he came thither, *T.* went out of the Room to prevent any Perſon from aſſiſting Mr. *G.* whom *M.* beat ſo much, that he broke his Arm: And for this Battery, he and *T.* were indicted and found guilty; and *M.* was fined 1000 *l.* and *T.* 500 *l.* and both committed for a Month without Bail, and to find Sureties for their good Behaviour for Seven Years.

Attaint. See *Jury.*

Attainder and Conviction.

THESE Words are uſed promiſcuouſly, and ſometimes one is ſignified by the other, as by the Stat. of 3 *H.* VII. *cap.* 1. 'tis enacted, That if any Man be acquitted of Murder upon an Indictment, or *attainted*, an Appeal may be brought if the Benefit of Clergy is not had; here the Word *Attainted* muſt ſignify *convicted*, becauſe after Attainder 'tis too late to have the Benefit of Clergy.

But in Propriety of Speech, a Man is ſaid to be attainted, when after Conviction Judgment is paſſed by the Court; and he is ſaid to be convicted when he confeſſeth the Fault, or is found guilty by a Jury, and before Judgment given.

Yet a Man may be attainted upon an Outlawry, and convicted in many Caſes by his own Confeſſion, and without a Verdict; as generally upon Penal Laws, *viz.* a Recuſant indicted at Seſſions, and

Proclamation

Proclamation made for him to ſurrender himſelf to the Sheriff. If he neglects to appear at the next Seſſions, the Record of his Default is a Conviction, and ſo in many other Caſes.

The Puniſhment of a Perſon attainted, viz.

Loſs of Life, Corruption of Blood, Forfeiture of Fee ſimple Eſtate from the Time of the Offence, ſo that the King ſhall have *Ann. diem & vaſtum* therein, and then it goes to the Lord of the Fee by Eſcheat, but the Lord may compound with the King, and have it preſently.

Forfeiture of Goods from the Time of the Attainder only.

Before Conviction he may ſell his Goods for his Maintenance in Priſon.

Before Conviction, if he is attainted of Felony and pardoned, tho' he cannot be indicted for any Felony committed before the Attainder, yet an Appeal of Robbery lies againſt him for a Robbery committed before, becauſe the Party may have Reſtitution upon an Appeal.

'Tis true, he may be indicted for a Treaſon done before the Attainder of Felony, becauſe 'tis not only an Offence of a higher Nature, but the King upon the Conviction will be entitled to the Forfeiture of his Lands; however, if ſuch Land was firſt veſted in the Lord by the Attainder in Felony, it ſhall not be diveſted by any Conviction for a Treaſon committed by ſuch Attainder, ſo as to give the King a Title.

If the Huſband makes a Feoffment in Fee, then commits Treaſon, is pardoned, and dies, his Widow ſhall not have Dower againſt the Feoffee, becauſe ſhe is barred before the Attainder, ſo long as it remains unreverſed. *Leon.* 3

After Attainder, a Grant of Goods or Lands ſhall bind all Perſons but the King and the Lord of the Fee.

After Attainder, his Body is his own till Execution, and if he is killed before that Time, his Wife may have an Appeal.

After Attainder, he may be taken in Execution at the Suit of any Subject for Debt, but may be executed notwithſtanding; he may alſo purchaſe Lands in Fee.

At Common Law, if a Felon was found guilty before the Coroner, or that he did fly, the Sheriff or Coroner might ſeize his Goods before Trial for the Uſe of the King, which ought to be appraiſed and left in the Cuſtody of the Neighbours where the Offender lived.

The Law was the ſame if he did not fly, but was indicted; but then after the Appraiſement they ought not to be removed out of his Houſe before Attainder, if the Offender could give Security that they ſhould not be imbezzel'd; if not, then they were to be deliver'd to the Neighbours, who ought to keep them during his Impriſonment, and he was to have reaſonable Maintenance out of them till Conviction. *Dalt.* 537

By

By the Statute of 1 *R.* 3. cap. 3. The Common Law is in this Particular confirmed, and the Party impriſoned ſhall recover double the Value of his Goods ſeized by any Officer, or taken out of his Houſe before Conviction. *Dalt.* 537

After Conviction, or *fugum fecit* returned by the Coroner, all the Goods, the Corn growing, the Profits of the Fee-ſimple Eſtate for a Year and a Day, and the Iſſues of intailed Lands during Life, and all Debts due upon any Securities, are forfeited to the King; and the Party to whom the King ſhall give the ſame, may bring an Action in his own Name to recover them.

If 'tis erroneous, the Party may appear at any Time, and reverſe it by Writ of Error.

At Common Law, it was an Error in Fact for the Party out-lawed to be beyond Sea at the Time of the Judgment pronounced upon the Exigent; for which the Out-lawry might be reverſed in all Caſes.

The Advantage of this Error is taken away in Treaſon, by the Statute of 6. *Ed.* 6. but not wholly; for there is a Proviſo, That if the Perſon ſhall yield himſelf to the Chief Juſtice within a Year and a Day after the Outlawry pronounced, he ſhall be admitted to traverſe the Indictment.

Sir *John Hawles* tells us, That no Judgment was ever yet given upon Conſtruction of this Statute, before that of Sir *Thoms Armſtrong*, in the late Reign, becauſe a Trial was never before that Time denied to a Perſon outlawed, if he came within the Time limited.

'Tis true, Sir *Thomas Armſtrong* did not yield himſelf, but was taken in *Holland*, but ſtill within the Year; ſo that it ſeemed a great Hardſhip to deny him a Trial upon the Nicety of a Word.

BAIL.

AT Common Law, Bail was allowed for any Offences except Murder; but now by the Statute *W.* 1. *Cap.* 15. 'tis directed where it ſhall be taken, and where not, which ſeems to be a Rule to this Day; becauſe the Statute 1 & 2 *Phil. & Mar. Cap.* 13. which gives a Juſtice of Peace Power to bail, hath Relation to this very Statute. 2 *Inſt.* 190.

Theſe Writs were directed to the Sheriff, under whoſe Cuſtody the Perſon was detained; and he was uſually replevied, that is, Pledges were taken for him in the County-Court, in all Cauſes, except for the Death of a Man, and except a Perſon committed by the perſonal Command of the King, tho' the Commitment ſhould be unlawful: A Perſon committed by the Judge, for any Cauſes proper to his Judicature, or for the Foreſt; in theſe Cauſes the Sheriff was not to intermeddle in his Court, but the proper Remedy was by a *Habeas Corpus*, and Juſtice was done to the Party in the Great Courts at *Weſtminſter*.

Now,

Now, the Reaſon why Bail was taken in all other Cauſes, was, becauſe *Stabat indifferenter*, upon a bare Accuſation, whether the Party was guilty or not; and therefore by that Statute, a Perſon outlawed was not to be bailed, becauſe he is attainted in Law; but if upon the *Capias Utlegatum*, he pleads a *Miſnoſmer*, or alledge any Error in the Proceedings, he might be bail'd.

A Perſon abjuring, is attainted by his own Confeſſion; Approvers confeſs the Felony to be actually done by themſelves; a Perſon taken with the Thing ſtolen: In all theſe Cauſes, *non Stat' indifferenter*, nor for breaking a Priſon; for it may be preſum'd that an innocent Man will not do it. Notorious Felons; he that is accuſed by an Approver; one who ſets an Houſe on Fire; counterfeiting Money; both which were Offences at Common Law; and ſo was counterfeiting the great Seal; One guilty of an open and manifeſt Offence, and for Treaſon. All theſe were exempted from Bail by this Statute, but might be bailed in *B. R.*

Likewiſe, if a dangerous Blow is given, the Perſon may be bailed till the other is dead.

Bail refuſed, where the Perſon is bailable by Law, is a Miſdemeanour, and finable. *H. P. C.* 97. *Styles* 182.

Bail is allowed to Acceſſaries to Felony, before and after the Offence, until the Principal is convict. *Dalt.* 556.

Bail is allowed to Perſons aiding Felons, ſuſpected to be done, and not if it be actually done; but it muſt be by two Juſtices, *Quorum unus*, and they muſt be both preſent when they bail him, and they muſt take the Examination in Writing; which, together with the Recognizance entered into by the Witneſſes to proſecute, muſt be certified at next Aſſizes, attainted thereof by Outlawry: If he bring a Writ of Error, *B. R.* may bail him. *H. P. C.* 101.

Bail is allowed in Larceny, to Perſons indicted thereof, before the Sheriff, under the Value of 12*d.*

In Manſlaughter, Bail is allowed by the Statute, 1 and 2 *Phil. & Mar. Cap.* 13. by two Juſtices, *Quorum unus*, who muſt be preſent when they take the Bail, and it muſt be after Examination: But Manſlaughter is not bailable if the Fact is confeſſed, or 'tis certainly known that he killed the Perſon, for it muſt ſtand *indifferenter*, if Bail is allowed; and therefore if it be found Manſlaughter upon the Coronor's Inqueſt, tho' no Indictment is preferr'd, *King's-Bench* would not bail; for the Statute ſaith, That Bail ſhall be allowed in Manſlaughter where the Party is bailable by Law; which implies, that 'tis not to be allowed in all Caſes. 1 *Roll. Rep.* 263. *Poin's* Caſe.

But of late ſome Doubts have been made, whether a Man can be lawfully bailed for Manſlaughter? Tho' my Lord *Hales* tells us, if it be a *Non liquit*, whether the Party accuſed did the Fact, two Juſtices may bail him.

In

In Seſſions Proceſs. Commitment thereon, upon an Indictment upon any Penal Statute, by which Bail is not prohibited, may be bailed by two Juſtices, *Quorum unus.*

In Seſſions Proceſs, againſt the Party to appear upon an Indictment for a Treſpaſs, one Juſtice may bail. *Dalt.* 557. *Cap.* 166.

In Treſpaſſes, where Life or Limb is not in Danger, after an Indictment and Proceſs thereon, the Party may be bailed by two Juſtices, *Quorum unus*, *H. P. C.* 100.

Bail taken away by Statutes, viz.

Acceſſaries in Treaſon, *per Stat. W.* 1 *Cap.* 15.

Abjuring the Realm, becauſe they are guilty by their own Confeſſion, *W.* 1.

Accomptants, found in Arrears before Auditors, till Satisfaction made.

Ale-Houſe-Keepers without Licence, the ſecond Offence being Commitment to the Houſe of Correction for a Month; ſuffering Tippling contrary to 1 *Jac. Cap.* 9.

Appeals of Death, not bailable. *H. P. C.* 103.

Approver; theſe are Men who have committed Felony, and confeſs it; but this doth not concern Juſtices of Peace, any otherwiſe than to take his Confeſſion and commit him, and ſend his Warrant for thoſe accuſed. *W.* 1. *Cap.* 15.

Armour; Perſons riding armed contrary to the Statute of *Northampton*, committed by Juſtices, are not bailable; concealed by a Recuſant Convict, or diſturbing the Delivery of it, one Juſtice may commit for three Months, without Bail.

Breakers of Priſons, *W.* 1. *Cap.* 15.

Surveyors and Collectors of Money for repairing Bridges, refuſing to account, 22 *H.* 8. *Cap* 5.

Burning Houſes, *W.* 1. *Cap.* 15.

Coining falſe Money, *W.* 1. *Cap.* 15.

Commiſſion of Rebellion out of Chancery; Perſon taken thereon, *Dalt.* 557.

Counterfeiting great Seal, *&c. W.* 1. *Cap.* 15.

Felons, Notorious, *viz.* Thoſe who are taken with ſtoſen Goods. *Will.* 1. *cap.* 15.

Thoſe who are taken freſhly by Hue-and-Cry. *H. P. C.* 101.

Felony actually done, tho' it doth not appear that the Accuſed is guilty. *H. P. C.* 98. Attainted or convicted thereof by Confeſſion or Indictment. Acquitted within a Year. Not to be bailed but at Diſcretion. That an Appeal may be had againſt him, 3 *H.* 7. *cap.* 1. *H. P. C.* 103. *W.* 1. *cap* 15.

Forgers of Deeds, Wills, or Writings ſealed, or Court-Rolls, and thoſe who aſſent to it; thoſe who publiſh it knowingly, *viz.* Impriſonment after Conviction for Life, where any Man's Eſtate of Inheritance might have been defeated.

Fraudulent

Fraudulent Conveyances. The Parties who put them in Suit. Thoſe who aſſign Lands or Goods ſo to them convey'd, knowing thereof. Commitment for half a Year after Conviction.

Gaming; thoſe who keep ſuch Houſes.

Thoſe who play at unlawful Games, Commitment, till they find Sureties not to offend again.

Inn-keepers; who ſhall not ſell Hay, Oats, Beans, Provender, or other Victuals for Man or Beaſt, for reaſonable Gain; convicted the ſecond Time, Commitment for one Month. 21 *Jac. cap.* 21.

Labourers; Going from Work before finiſhed, Commitment for a Month.

In Man-ſlaughter: After the Confeſſion of the Offender, 2 *Inſt.* 187. *Se defendendo*, not bailable by Juſtices of Peace, but *B. R.* may bail him. *H. P. C.* 99. 161.

In Murder 'tis *Corpus pro Corpore*: Not bailable at Common Law, yet it hath been allowed by *B. R.* and adjudged, That the Statute of *W.* 1. *cap.* 15. ſhould receive a favourable Conſtruction, according to the Diſcretion of the Judges, and as the Circumſtances of the Caſe require. *Latch.* 12.

And therefore one *Andrews* being out-law'd for Murder, did Fourteen Years afterwards bring a Writ of Error, and was bailed. *Stiles* 94.

So two were committed upon Suſpicion of Murder, and when thoſe who actually had done it, confeſſed at their Execution, the others who were impriſoned were bailed. *Stiles* 96.

Acquitted thereof upon an Indictment, not to be bailed till after a Year and a Day, that the Party may bring his Appeal. 3 *H.* 7. *c.* 1.

Perjury, in any Court of Record, or Court Baron; Commitment for 6 Months.

Poor; Things relating to them, as refuſing to pay Rates for them, and no Diſtreſs to be taken: Commitment till paid and Charges.

Overſeers refuſing to make their Account, or to pay over to new Overſeers what remains in their Hands; Commitment till perform'd.

Negligent in their Office, forfeits *Twenty Shillings*, and having no Diſtreſs to be taken, Commitment till Forfeiture paid.

Parents refuſing to relieve Children, as the Juſtice ſhall aſſeſs in Seſſions, Forfeiture *Twenty Shillings* per Month, and having no Diſtreſs to be taken, Commitment till paid.

Rogues, Incorrigable, being committed, muſt continue in Cuſtody till next Seſſions.

At Common Law, the Sheriff or Conſtable might have bailed one ſuſpected of Felony; but now that Power is given to Juſtices of Peace by particular Statutes, *viz.* by 1 *R.* 2. *Cap.* 3. 3 *H.* 7. *Cap.* 3. 1 and 2 *Phil. & Mar. Cap.* 13.

The Sureties and Sum are left to the Diſcretion of the Juſtices, where no Sum certain is appointed by Law: But if the Crime be Suſpicion

Suſpicion of Felony, they muſt take very ſufficient Perſons for the Appearance of the Party, and bind them in a good Sum.

And if the Juſtices, at any Time before Appearance, ſhall think the Sureties taken not ſufficient, they may compel the Party to give better, or commit him.

The Sureties likewiſe may bring the Offender before the Juſtices of Peace, and deſire to be diſcharged upon his Commitment, if they are of Opinion that he will run away.

The Juſtices may examine the Sureties upon Oath. *Dalt.* 550. *Cap.* 166.

And if they bail any Perſon who is not bailable by Law, they ought to be fined. See *Stat. W.* 1. *Cap.* 15.

A Condition of a Recognizance to prefer a Bill and give Evidence.

THE *Condition of this Recognizance is ſuch,* That if the within bound *A. B.* do perſonally appear before his Majeſty's Juſtices of Goal-Delivery, at the next General Goal-Delivery to be holden for the within County of *Kent*, and do then and there prefer a Bill, or cauſe to be preferred a Bill of Indictment againſt *W. T.* for the Matters wherewith the ſaid *W. T.* is charged before [*The Juſtices within named, or the within named Juſtices*] and do alſo then and there give ſuch Evidence as he knoweth concerning the ſame, as well to the Jurors that ſhall enquire thereof on the behalf of our Sovereign Lord the King, as alſo to the Jurors that ſhall paſs upon the Trial of the ſaid *W. T.* for the ſame; That then this Recognizance ſhall be void, or elſe it ſhall ſtand in full Force.

If at the Seſſions, ſay,

Do perſonally appear before his Majeſty's Juſtices aſſigned to keep the Peace in the within named County of *Kent*, at the next General Seſſions of the Peace to be holden for the ſaid County, at *M.* in the County aforeſaid; and do then and there prefer, *&c. as in the foregoing Condition.*

A Condition to give Evidence.

THE *Condition of this Recognizance is ſuch,* That if the within bound *A. B.* do perſonally appear before his Majeſty's Juſtices of Goal-Delivery, at the next General Goal-Delivery to be holden for the within named County of *Kent*, and do then and there give ſuch Evidence as he knoweth againſt *J. K.* concerning the Matters wherewith he is charged, as well to the Jurors who ſhall enquire thereof on the behalf of our Sovereign Lord the King, as alſo to the Jurors that ſhall paſs upon the Trial of the ſaid *J. K.* for the ſame; That then this Recognizance ſhall be void, or elſe it ſhall ſtand in full Force.

If

If it be to appear at the Seſſions, ſay,

Do perſonally appear before his Majeſty's Juſtices aſſigned to keep the Peace in the within named County of *Kent*, at the next General Seſſions of the Peace to be holden for the County, at *T.* in the County aforeſaid; and do then and there give ſuch Evidence, &c. as aforeſaid.

A Condition for Felony or Suſpicion of Felony.

THE *Condition of this Recognizance is ſuch*, That if the within bound *A. B.* do perſonally appear before his Majeſty's Juſtices of Goal-Delivery, at the next General Goal-Delivery to be holden for the within named County of *Kent*, then and there to anſwer our Sovereign Lord the King, for and concerning the *Felonious taking and ſtealing of* &c. wherewith he ſtandeth charged before, &c. and to do and receive, &c. and do not depart the ſaid Court without Licence for the ſame; That then this Recognizance to be void, or elſe it ſhall ſtand in full Force.

2. *If it be to appear at the Seſſions, ſay,*

Do perſonally appear before his Majeſty's Juſtices aſſigned to keep the Peace in the within named County of *Kent*, at the next General Seſſions of the Peace, to be holden for the ſaid County at *T.* in the County aforeſaid, then and there to anſwer, &c. *as before.*

3. *If the Felon be in Priſon, ſay,*

THESE are to charge and require you, That immediately you bring before me the Body of *A. B.* now in your Cuſtody, to be bailed, as Law requireth. *Whereof* fail not. Given under, &c.

To acknowledge a Recognizance or Bail in the Name of a Perſon not conſenting thereto, Felony, 21 *Jac.* 1. *Cap.* 26. *Cro. Eliz.* 531. 4 and 5 *W. & M. Cap.* 4.

BASTARDS.

BASTARDY is an Offence puniſhable as well in the Spiritual Courts, as at the Common Law.

By the Common Law, if the Huſband be within four Seas, that is within the Juriſdiction of the King of *England*, if the Wife hath Iſſue, no Proof is to be admitted to prove the Child a Baſtard, (for in that Caſe *filiatio non probat' probari*) unleſs the Huſband hath an apparent Improbability of a Creation; as if the Huſband be but eight Years old, or under the Age of Procreation, ſuch Iſſue is Baſtard, albeit he be born within Marriage. *Coke Lit.* 244, 373. 1 *H.* 6. 3. 7. *H.* 4. 9.

So if the Huſband be gelt.

An Infant born nine Months and nine Days after the Death of its Father, no Baſtard. *Baron and Feme, cap.* 3.

If

If the two next Juſtices make not Proviſion for a Baſtard, the Seſſions muſt ſettle it, as two Juſtices ought to have done. *Rol.* l. 1. 358. *Noy.* 142. *Jones* 330.

Maintenance of Baſtards by Mother and reputed Father, is by theſe modern Laws of 18 *Eliz. cap.* 3. and 7 *Jac. cap.* 6. the former Laws were only for Puniſhment. *Jenkins* 47. *pl.* 90.

A Woman was not queſtioned for having her firſt Baſtard, on the 18 *Eliz. c.* 3. Then ſhe had another: She cannot be proceeded againſt by 7 *Jac.* (as for a ſecond Offence) *c.* 4. 2. *Bluſtr.* 348.

Neither Seſſions nor Aſſizes can meddle touching Baſtardy, but upon Appeal; otherwiſe the two Juſtices muſt order.

If two Juſtices make an Order, if Party refuſe to perform, or enter into Recognizance to appear at the next Seſſions, they may commit him without Bail.

If (by Practice and Deſign) a Child be born in a Pariſh, the Pariſh where Practice was ſhall keep the Child.

Bond to pay 20 *d. per* Week for keeping a Baſtard, Defendant cannot plead that there was no Order made.

If a Harlot will take the Child whereof ſhe is newly delivered, and covereth it with Leaves, and let it lie Abroad, whereby Vermin deſtroy it, this is Murther. 21. *Jac. c.* 27. *Cromp.* 24. *B.*

Indictment lies for conſpiring to charge one with a Baſtard Child, and thereby alſo bring him to diſgrace.

An Indictment was preferred againſt one for conſpiring to accuſe another with being the Father of a Baſtard Child.

To make an Order for a Baſtard Child, there muſt be two Juſtices, whereof one to be of the *Quorum*.

An Order made by two Juſtices, for the Maintenance of a Baſtard Child, by 12 *d per* Week, as long as the Child ſhall continue chargeable to the Pariſh, is good.

The Juſtices of Peace's Order muſt be paid Weekly, and not Monthly.

A Baſtard Child of a Perſon able to keep it, and not like to be chargeable to the Pariſh, is not within the Statue of 18 *Eliz.*

If the Father of a Baſtard Child dies poor, the Mother muſt provide for the Baſtard, if able; but if not, the Town where laſt ſettled.

Neither Seſſions nor Aſſizes can meddle touching Baſtardy, but upon Appeal.

The Seſſions cannot make an Order for keeping of a Baſtard, except upon an Appeal from the two Juſtices, which are firſt to make an Order.

If Notice ſhould not be given to the Putative Father till the Seſſions is paſt, after the Order made, ſo that the Party is deprived of the Benefit of his Appeal; yet *B. R.* would not quaſh the Order, but referred it to the Juſtices in Seſſions, to diſcharge or confirm it. *Stile* 326.

This

This Order being a Judgment upon the Parties, is not to be reſpited without paying what is ordered, if it be a Sum in Groſs, as 'tis uſual, beſides weekly Payments.

And none but the Juſtices have Authority to declare who is the reputed Father; but if they are unreaſonable in the Sum allowed for the Relief of the Pariſh, *B. R.* may reform it; as if they order *2d. per* Week for the Maintenance of a Child.

And regularly theſe Things are required to make a good Order.

1. It muſt be made by two Juſtices, *Quorum unus*.

2. They muſt be next the Place where the Pariſh is, which is to be relieved.

3. It muſt be made at a private Meeting, and not at Seſſions.

4. It muſt be concerning a Baſtard Child, and ſo expreſſed, *and likely to be chargeable*, &c. It muſt appear how long the Father ſhall maintain it. *Stiles* 154. 1 *Vent.* 37.

5. The Place of Birth muſt be alledged, for otherwiſe the Child may be born where the two Juſtices have no Juriſdiction; and it muſt likewiſe appear, that it was born in the Pariſh to which Relief is ordered. *Stiles* 14. 368.

6. It muſt be made purſuant to the Act, *viz.* to relieve the Pariſh in Part or in all, and for the Relief of the Child by a weekly Maintenance. In ſome Orders, the Word *Education* is inſerted, but that hath been excepted againſt.

7. It muſt directly affirm who is the reputed Father. *Sid.* 363.

But an Order is ill, if it doth not appear that one of the Juſtices is of the *Quorum*; if 'tis ordered to be paid till the Child is fourteen Years old, when it ought to be ſo long as it ſhall be chargeable to the Pariſh; if the reputed Father is ordered to give ſuch Security as the Church-wardens ſhall think fit. *Syd.* 222.

So if the Order is, that one ſhall contribute half the Charges, becauſe he ſuffered a Soldier to get his Servant with Child. *Styles* 207.

As to the Third Rule above-mentioned, the Statute of 3 *Car.* c. 4. (by which divers Acts are continued, repealed, and ſome made perpetual) gave the Seſſions Power to examine all Things concerning Baſtardy, which the two Juſtices had before; but what was enacted by that Law, was to continue only (in this Cauſe) to the next Seſſions of Parliament, which being long ſince expired, the two Juſtices have now the Original Juriſdiction again, and their Order ſhall ſtand till avoided by Appeal. 1 *Vent.* 175. 1 *Mod.* 287.

Now upon the Appeal, the Seſſions muſt either affirm or quaſh the Order made by the two Juſtices: They cannot make a new One; neither, after 'tis reverſed, can any other Seſſions make another Order, becauſe upon ſuch Reverſal the Statute of 18 *Eliz.* is ſatisfied, and no other Juſtices can intermeddle with it; and therefore where an Order is diſcharged upon an Appeal, the Party who was charged is abſolutely acquitted. *Vent.* 59.

An

An order was made, to pay such Charges as the Parish had been at; and did not say that the Child was likely to be chargeable, &c. yet it was held good. 1 *Vent.* 37.

'Tis true, no time is limitted by the Statute, and therefore Exceptions have been taken to Orders to pay so much a Week for a certain Number of Years; but this Exception hath been disallowed, especially when tis also expressed in the Order for so long a Time as the Child is a Charge, &c.

If the Child dies after the Order is made, and before the next Sessions, and no Security be given to perform the Order; then when the Party appears at Sessions, they may order him to pay the Charges, upon Proof of serving the Order.

But if Security hath been given, then the Sessions have no further Power; but the Bond must be put in Suit, if the Condition is not performed.

The Woman's Examination before the Birth of the Child.

THE Examination of *T. W.* single Woman, taken before me *P. L.* Esq; this first Day of *July*, *Anno Domini* 1749. Who upon her Oath saith, That she is a hired Servant to one *G. F.* of &c. at the Wages of 6 *l.* 10. *s.* per Annum, and has continued in her said Service from the second Day of *November* last: And further saith, That in the Month of *December* last, as she this Examinant was making one of her said Master's Beds in a back Room, one Mr. *J. W.* living next Door to her said Master's House, came into the said back Room to her, (no Person being present) and promising great Kindnesses to her, prevailed with her, and then had the carnal Knowledge of her Body on the said Bed she was making, and has had three several Times since on the same Bed; and at one of the said Times he the said *J. W.* begot her with the Bastard-Child of which she is now pregnant, and near the Time of her Delivery. And this Examinant further deposeth, That he the said *J. W.* and no other Person whatsoever, is the only true Father of the said Bastard Child, of which she is now pregnant as aforesaid.

A Warrant against the reputed Father thereon.

To all Constables, &c.

THESE are in his Majesty's Name to will and require you upon Sight hereof, to take and bring before me the Body of *A. B.* of whom you shall have Notice to answer such Matters of Misdemeanours as on his Majesty's behalf shall be objected against him by the Church-wardens and Overseers of the Poor of the Parish of &c. touching a Bastard Child by him begotten on the Body of *C. D.* single Woman, of which she is now pregnant, (as she hath made Oath) in Breach of his Good Behaviour, which when born is likely to become chargeable to the said Parish; And that he find sufficient

Sureties

Sureties to indemnify the ſaid Pariſh from the ſaid Baſtard Child when born: Hereof fail not at your Perils. Given under my Hand and Seal, &c.

Note, When the Perſon appeareth before the Juſtice, he muſt enter into a Recognizance with Sureties to appear at the next Seſſions, and be continued thereon until the Child is born: Or he may be bound to appear at the next Seſſions after the Child is born.

A Recognizance to appear at the next Seſſions.

THE Condition of this Recognizance is ſuch, That whereas the above-bounden *C. D.* is charged by *A. B.* of &c. ſingle Woman, That he had carnal Knowledge of her Body ſeveral Times, and the ſaid *A. B.* is now with Child by him the ſaid *C. D.* which when born will be a Baſtard, If therefore the ſaid *C. D.* ſhall perſonally appear before his Majeſty's Juſtices of the Peace at their next Quarter Seſſions of the Peace to be holden for the ſaid County at *M.* then and there to receive and abide what ſhall be enjoined by the ſaid Court concerning the Premiſes; and in the mean Time to be of the good Behaviour, That then, &c.

Another Recognizance to appear at the Seſſions next after the Birth.

A. B of, &c.——40 l.

THE Condition, &c. That *A. B.* ſhall perſonally appear at the next Seſſions of the Peace to be holden for the ſaid County of *S. R.* ſingle Woman ſhall be delivered of the Baſtard Child of which ſhe is now pregnant, and upon her Oath charges the ſaid *A. B.* to be the Father, Which when born is likely to become chargeable to the Pariſh of, &c. as the Church-Wardens and Overſeers of the Poor thereof have complained; And in the mean Time to be of his good Behaviour: That then, &c.

A Superſedeas in Baſtardy.

WHEREAS *M. K.* of, &c. hath before me found ſufficient Sureties for his good Behaviour, and perſonal Appearance at the next Seſſions of the Peace to be holden for the ſaid County, after *M. H.* ſingle Woman, ſhall be delivered of the Baſtard Child (or Children) of which ſhe is now pregnant, and upon her Oath charges the ſaid *M. K.* to be the Father, which, when born, is likely to become chargeable to the ſaid Pariſh, as the Church-Wardens and Overſeers thereof, have complained.

Theſe are therefore to require you, upon Sight hereof, not to arreſt, attach, or otherwiſe impriſon him the ſaid *M. K.* if for the Cauſe aforeſaid, and no other, as you will anſwer the contrary; and for your ſo doing, this ſhall be your ſufficient Warrant. Given, &c.

If he do not find Sureties, then he is to be committed.

The Mittimus *before the Birth.*

To the Keeper, &c.

I HEREWITH ſend you the Body of *C. D.* brought before me this preſent Day, and charged upon the Oath of *A. B. &c.* to have begotten her with Child; which Child, when born, will be a Baſtard; he the ſaid *C. D.* having refuſed before me to find ſufficient Sureties for his good Behaviour, and perſonal Appearance, at the next general Quarter Seſſions of the Peace, to be holden for the ſaid County, to anſwer the ſaid Charge: Theſe are therefore to require you, to receive the ſaid *C. D.* into your Cuſtody, and him ſafely to keep, until he ſhall be thence delivered by due Courſe of Law; hereof fail not. Given *&c.*

If he gives Sureties, as before, nothing further to be done till the Child be born; and then two Juſtices (one of the *Quorum*) are again to examine the Mother of the Baſtard Child.

Here follows the Proceedings after the Birth.

The Examination of S. S. *of, &c. taken before us* J. M. *and* P. L. *Eſqrs, two of his Majeſty's Juſtices of the Peace of the ſaid County, this Day of*--------Anno Dom. 1749.

WHO upon her Oath ſaith, That the Female Baſtard-Child, of which ſhe was delivered the 15th Day of *April* laſt was Twelve-month, about Ten of the Clock in the Evening, in the Pariſh of, *&c.* was begotten by *G. S.* late Commander of his Majeſty's Ship *C.* who cruiſing off the Coaſts of *L.* and coming aſhore there, frequented this Examinant's Houſe (ſhe keeping a Victualling-Houſe) and there became acquainted with her, and had the carnal Knowledge of her Body. And this Examinant further upon Oath ſaith, That he the ſaid *G. S.* and no other Perſon whatſoever, is the only true Father of her ſaid Child of which ſhe was delivered as aforeſaid.

Jur' Die & Anno ſupra dicto coram. *S. S.*

J. M. P. L.

Then the Juſtices are to order, 1ſt, The Puniſhment of the Father and Mother; 2d, The Relief of the Pariſh; and, 3d, They may charge the Parents with the Payment of Money for the Relief of the Child.

If the two Juſtices cannot agree in making their Order, it may be referred to the Seſſions to be examined; but it muſt be again heard before the two Juſtices, with the Direction of the Court, becauſe the Seſſions cannot make an original Order in Baſtardy.

'Tis uſual for the Juſtices, before they make their Order, to convene before them the Mother, and the reputed Father, and ſuch Witneſſes as they think fit.

A War-

A Warrant to convene the reputed Father, &c.

To all Conſtables, &c.

WHEREAS we are informed, That *A. B.* of, *&c.* hath been lately delivered of a Baſtard Child now living, and likely to be chargeable to the ſaid Pariſh: And whereas the ſaid *A. B.* upon her Examination taken upon Oath, hath charged *C. D.* to have begotten the ſaid Baſtard Child on her Body: Theſe are therefore in his Majeſty's Name, to command you to bring the ſaid *C. D.* before us on *Monday* the 10th Day of *July* next, at Nine of the Clock in the Forenoon of the ſaid Day, at the Houſe of, *&c.* to be examined touching the Premiſes; and that you give Notice to the ſaid *A. B.* to be there alſo preſent; and that you alſo give Notice to *E. F.* of, *&c.* and *G. H.* of, *&c.* that they are required of us to appear at the Time and Place aforeſaid, to teſtifie what they know concerning the Premiſes, to the End ſuch Order may be made therein as to Juſtice doth appertain; and that you then and there certifie unto us what you have done in Execution of this Precept. Given under our Hands and Seals, *&c.*

An Order to the Mother, and reputed Father of a Baſtard Child.

WHEREAS due Proof hath been made before us *P. L.* and *H. S.* Eſqrs, two of his Majeſty's Juſtices of the Peace for the City and Liberty of *Weſtminſter* (Quorum unus) inhabiting in or near the Pariſh of, *&c.* upon the Oath of *D. D.* ſingle Woman, Mother of a Female Baſtard Child, born the 24th Day of *April* laſt paſt, in the ſaid Pariſh, and there chriſtened S. That one *G. C.* did beget on the Body of the ſaid *D. D.* the ſaid Female Baſtard Child, which ſaid Child is become chargeable to the ſaid Pariſh, of which the Church-Wardens and Overſeers of the Poor thereof, have complained.

We the ſaid Juſtices, upon the Examination of the ſaid *D. D.* the Mother, upon her Oath touching the Father of the ſaid Baſtard Child, and the Cauſe and Circumſtance thereof, do hereby adjudge and declare the ſaid *G. C.* to be the reputed Father of the ſaid Female Baſtard Child, born of the Body of the ſaid *D. D.* in the Pariſh of, *&c.* aforeſaid: And thereupon we do order, as well for the Relief, and to ſave harmleſs, and keep indemnified the ſaid Pariſh, as for the maintaining and keeping the ſaid Female Baſtard Child; That the ſaid *G. C.* ſhall forthwith, upon Sight of this our Order (a true Copy hereof being firſt delivered unto him) pay or cauſe to be paid unto the Church-Wardens or Overſeers of the Poor of the ſaid Pariſh, or to ſome or one of them, for and towards the Months Lying in, and laying of the ſaid *D. D.* the Sum of *Eleven Shillings and Six Pence*, for the firſt four Weeks from the Birth of the ſaid Child; and after

the Expiration of the ſaid firſt four Weeks, the ſaid *G. C.* ſhall likewiſe pay, or cauſe to be paid Weekly, and every Week, the Sum of *Two Shillings and Six Pence*, of lawful Money of *Great-Britain*, for and towards the Relief and Maintainance of the ſaid Female Baſtard Child, for ſo long Time as the ſaid Child ſhall be chargeable to the ſaid Pariſh.

And laſtly, we do order, That the ſaid *G. C.* ſhall forthwith give ſufficient Security to the Church-Wardens and Overſeers of the Poor of the ſaid Pariſh, for the true Performance of this our Order; otherwiſe to find Securities for his perſonal Appearance at the next General Quarter-Seſſions of the Peace, to be holden for the ſaid City and Liberty; there to abide ſuch Order as the Juſtices, or the major Part of them then and there preſent, ſhall think fit to make in that Behalf. Given under our Hands and Seals, *&c.*

A Warrant upon the foregoing Order.

To all Conſtables, &c.

THESE are in his Majeſty's Name, to will and require you and every of you, on Sight hereof, to take and bring before us, or either of us, or any other of his Majeſty's Juſtices of the Peace for the ſaid County, the Body of *G. C.* of, *&c.* of whom you ſhall have Notice, to give ſufficient Security to the Church-Wardens and Overſeers of the Poor of the Pariſh of, *&c.* for the true Performance of an Order by us made, for the indemnifying of the ſaid Pariſh from a Female Baſtard-Child, born of the Body of *S. E.* ſingle Woman; which Child is become chargeable to the ſaid Pariſh: And the ſaid *G. C.* upon the Oath and Examination of the ſaid *S. E.* is by us adjudged to be the reputed Father of the Child aforeſaid; otherwiſe to find ſufficient Sureties for his perſonal Appearance at the next Seſſions of the Peace to be holden for the ſaid County, to anſwer his Contempt of our ſaid Order, and to abide ſuch further Order as that Court ſhall think fit to make therein. Hereof fail not at your Perils. Given under our Hands and Seals, *&c.*

A Releaſe from the Overſeers of the Poor, to one that paid Seven Pounds Ten Shillings, *to be freed from keeping a Baſtard-Child.*

KNOW all Men by theſe Preſents, That we *A. B. C. D.* and *E. F.* Overſeers of the Poor of the Pariſh of St. *Martin in the Fields*, in the County of *Middleſex*, do hereby acknowledge to have had and received of and from *G. H.* of the Pariſh of, *&c.* the Sum of, *&c.* of lawful Money of *Great-Britain*, to and for the Uſe of the Poor of, *&c.* in full for the Education, nouriſhing, bringing-up, and providing for *M. R.* a Female Baſtard-Child, born on the Body of *M. R.* ſingle Woman. And we the ſaid Overſeers of the Poor,

in

in Conſideration of the Sum of Money aforeſaid, have remiſed, releaſed, and for ever quit-claimed; and by theſe Preſents do, for us and our Partners, and the Reſt of the preſent Overſeers of the Poor of the ſaid Pariſh, and their and our Succeſſors, remiſe, releaſe, and for ever quit-claim unto the ſaid *G. H.* all, and all Manner of Coſts, Charges, Sum and Sums of Money, Claims and Demands whatſoever, which we, our Partners, and the Reſt of the preſent Overſeers of the Poor, and their and our Succeſſors, or any of them, ſhall or may at any Time or Times hereafter have, claim, challenge or demand, of or from the ſaid *G. H.* for, or by Reaſon or Means of the Education, nurſing, bringing-up, or providing for *M. R.* aged about, *&c.* born of the Body of *M. R.* aforeſaid. In Witneſs, *&c.*

A Commitment for refuſing to obey an Order.

To the Keeper, &c.

WHEREAS *A. B.* ſtands charged before us *D. D.* and *E. F.* Eſqrs, two of his Majeſty's Juſtices of the Peace for the ſaid County, upon the Oath of *G. H.* ſingle Woman, for being the reputed Father of a Female Baſtard-Child, lately born of her Body, in the Pariſh of, *&c.* where it is now chargeable; of which ſaid Baſtard-Child the ſaid *A. B.* is by Order, duly executed, adjudged the reputed Father.

And whereas the ſaid *A. B.* being duly ſerved with a Copy of the ſaid Order, doth refuſe to obey the ſame, or to find ſufficient Sureties for his perſonal Appearance at the next Quarter Seſſions of the Peace holden for the ſaid County, to abide ſuch Order, or any other Order as the Juſtices there preſent ſhall in that Behalf make: Theſe are therefore to require you, to keep the Body of the ſaid *A. B.* in your ſafe Cuſtody, until he ſhall find ſufficient Sureties as aforeſaid, or be diſcharged by due Courſe of Law. Given under our Hands and Seals, *&c.*

A Bond to the Church-Wardens and Overſeers, before the Birth.

KNOW all Men by theſe Preſents, That we *D. E.* and *F. G.* of *Amboy*, in the County of *Middleſex*, in the Province of *N. J.* Merchants, and *H. I.* of the ſame Place, Carpenter, are held and firmly bound unto *K. L.* and *M. N.* Church-Wardens of *Amboy* aforeſaid, for the Time being, and *O. P.* and *Q. R.* Overſeers of the Poor for the Time being, in the juſt and full Sum of *Fifty Pounds*, good and lawful Money of the Province of *N. J.* aforeſaid; to be paid to the ſaid Church-Wardens and Overſeers of the Poor, or to either of them, or to either of their certain Attornies, Succeſſors and Aſſigns. For the which Payment well and truly to be made or done, we do bind our ſelves, our Heirs, Executors and Adminiſtrators, jointly and ſeverally, for and in the whole, firmly by theſe Preſents,

Preſents. Sealed with our Seals. Dated this 20th Day of *July*, in the 22d Year of the Reign of our Sovereign Lord GEORGE the Second, by the Grace of GOD, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, &c. *Annoq; Domini* 1749.

THE Condition of this Obligation is ſuch, That if the above bounden *D. E. F. G.* and *H. I.* or any of them, their or any of their Executors or Adminiſtrators do, or ſhall from Time to Time, and at all Times hereafter, well and ſufficiently ſave, defend, keep harmleſs and indemnify the above-named *K. L.* and *M. N.* Church-wardens for the Time being, and *L. M.* and *N. O.* Overſeers of the Poor for the Time being, of the Pariſh, *&c.* aboveſaid; and alſo all and every other the Pariſhioners and Inhabitants which now are, or hereafter ſhall be of the ſame Pariſh, and every of them reſpectively of and from the finding, keeping, educating, inſtructing, bringing up and providing for ſuch Child or Children, as *S. H.* Single Woman late of the ſaid Pariſh, now goeth withal, whereof the ſaid *D. E.* is the reputed Father, and of and from the Charges of Lying-in of the ſaid *S. H.* of ſuch Child or Children; and of and from all Actions, Suits, Coſts, Charges, Troubles, Expences, Damages and Demands whatſoever, which they or any of them ſhall or may happen to incur, ſuſtain, or be put unto, for or in Reſpect of ſuch Child or Children, or the Lying-in of the ſaid *S. H.* as aforeſaid: That then this Obligation to be void, or elſe to remain in full Force and Virtue.

By the Statute of 7 *Jac.* the Juſtices of Peace may commit lewd Women to the Houſe of Correction, who have Baſtards that may be chargeable to the Pariſh; there to be puniſhed, and ſet to Work for a Year; and if they offend a ſecond Time, not to be enlarged without giving Security to offend no more.

But if the Woman will diſcharge the Pariſh, ſhe cannot be puniſhed by this Act; yet by Virtue of 18 *Eliz.* ſhe may be puniſhed by Whipping, as the reputed Father may be.

The Conſtable having a Warrant to apprehend the Father, and willingly or negligently ſuffering him to eſcape, one Juſtice may bind him over to the Seſſions; and there he may be ordered to contribute towards the Maintainance of the Child, or may be fined.

A Warrant for apprehending a Woman on Suſpicion of having murthered her Baſtard Child.

To the Conſtable, &c.

WHEREAS Complaint upon Oath hath been made unto me, by *C. D.* That *A. B.* hath had a Child born alive of her Body, and is ſuſpected to have murthered, or elſe made-away the ſaid Child, ſince the Birth thereof: Theſe are therefore, in his Majeſty's Name, to charge and command you, that immediately upon Sight hereof, you apprehend and bring the Body of the ſaid *A. B.* before

before me, or ſome other of his Majeſty's Juſtices of the Peace of the ſaid County, to anſwer ſuch Matters and Things, as on his Majeſty's Behalf ſhall be objected againſt her, touching the Premiſes; and alſo to make diligent Search, by all lawful Means, for the finding out the Child aforeſaid; and to bring before me, or ſome other Juſtice of the Peace for the ſaid County, all ſuch Perſons as can give any Information on the Behalf of his ſaid Majeſty touching the ſame. And hereof fail not, as you will anſwer the contrary. Given, *&c.*

BIGAMY.

THIS was prohibited by the Statute of 1 *Jac.* by which 'tis made Felony to marry a ſecond Huſband or Wife, the firſt being living.

My Lord *Coke*, in his Expoſition upon this Statute, hath made ſeveral Exceptions out of it: 3 *Inſt. c.* 27.

That 1ſt, This Law doth not extend to a Perſon whoſe Huſband or Wife is beyond Sea, or to ſuch who ſhall abſent from one another in *England*, for the Space of Seven Years: With this Difference, that if the Abode be beyond Sea, then, though either of them have Notice that the other is living, ſuch Notice is not material: But if in *England*, 'tis otherwiſe. For, in ſuch Caſe the Party is not exempted from the Penalty of the Statute. *Vide Baſtardy, p.* 27.

2d, That it doth not extend to Perſons divorced, *a Menſa & Toro.*

3d, Nor to ſuch whoſe former Marriage is by any Sentence in the Eccleſiaſtical Court, declared void.

And therefore, where a Man was divorced *Cauſa Adulterii*, and married another Wife, the firſt being then alive, this was held to be within the Proviſo of that Statute; for the firſt Marriage is ſevered by this Divorce: But if it had been *Cauſa Sevitiæ*, then he could not have married again; becauſe that is only a temporal Separation until the Anger is paſt.

4th, Nor to thoſe who have been married within the Age of Conſent, *viz.* The Man under Fourteen, and the Wife under Twelve, who afterwards diſagree to that Marriage.

It has likewiſe been held, That if a Man marries a Woman beyond Sea, and is living, and his Wife marries another in *England*, this is not within the Statute; becauſe the firſt Marriage cannot be tried here.

The Offenders have Clergy.

BLASPHEMY.

BLASPHEMOUS Words are not only an Offence to God and Religion, but a Crime againſt the Laws, State and Government of this Kingdom. Any

Any Perſon bred in, or profeſſing the Chriſtian Religion, and who ſhall by writing, printing, teaching, or adviſed ſpeaking, deny any one of the Perſons in the Trinity, or aſſert, That there are more Gods than One, or deny the Chriſtian Religion to be true, or the Holy Scripture to be of divine Authority, and be convicted thereof by Indictment or Information at *Weſtminſter*, or at the Aſſizes; he ſhall be diſabled to have any Office, and ſhall not enjoy that Office which he hath; but the ſame is made void. 9 & 10 *W.* 3.

If convicted a ſecond Time, he ſhall be diſabled to ſue in any Court, or to be a Guardian, or Executor, or Adminiſtrator, and be incapable of any Legacy or Gift, or of any Office; and ſhall be committed for three Years, without Bail.

Conviction muſt be by Oath of two credible Witneſſes: The Information for Words ſpoken, muſt be by Oath before a Juſtice of Peace, within four Days after ſpoken: And the Proſecution of ſuch Offence, muſt be within three Months after the Information. But if the convicted Perſon, for the firſt Offence, ſhall, within four Months after his Conviction, acknowledge and renounce the ſame in that Court where he was convicted, he ſhall be diſcharged from the ſaid Penalties.

BUGGERY.

THIS is an Offence againſt the Order of Nature, committed by Mankind with Mankind or Beaſts, or by Women with Beaſts.

The Words of the Statute which makes this Offence Felony, are, *viz. If any Perſon ſhall commit the deteſtable Sin of Buggery, with Mankind or Beaſt*, &c. which Word [Perſon] extends as well to a Woman as to a Man; and as my Lord *Coke* tells us, that Word might be uſed by the Law-makers; becauſe, a little before that Act was made, a great Lady had committed Buggery with a Baboon, and conceiv'd by it. 25. *H.* 8. *c.* 6. 3 *Inſt.* 59.

There muſt be *Penetratio & Emiſſio Seminis*; for the one without the other, will not make the Sin; and therefore the Indictment muſt be, *Quod carnaliter cognovit*, &c.

In my Lord *Audley*'s Caſe, which happened *Anno* 6 *Car.* 1. and who was tried by his Peers, the Fact was *Pollution, and uſing a Man upon his Belly Sodomitically*, without Penetration; and the Lords demanded of the Judges, whether this was Buggery by the Statute 25 *H.* 8? The Lord Chief Juſtice *Hide* told them, it was; but *Richardſon*, the Chief Juſtice of the *Common-Pleas*, was of another Opinion: And this might create different Opinions amongſt the Peers at that Trial, who were Twenty ſeven in Number; whereof Twelve acquitted him of Buggery, and Fifteen found him guilty.

It

It was anciently puniſhed by Death: But the old Writers differ in the Manner; for ſome ſay, the Offender muſt be burnt; others, that he ſhall be buried alive; and ſome ſay, the Man was to be hanged, and the Woman drowned. But now by the Statute of 25 *H.* 8. *cap.* 6. 'tis made Felony without Benefit of Clergy.

'Tis true, this Statute was repealed 1 *Mar.* but 'tis revived by 5 *Eliz. cap.* 17.

Agens & conſentiens pari Pœna plectantur, viz. By hanging till they are dead, unleſs the Party conſenting is within the Age of Diſcretion, and then 'tis not Felony.

And this may be the Reaſon why the Age of the Party is expreſſed in the Indictment; though I find it omitted in my Lord *Audley*'s Caſe, for this very Offence; and probably his Indictment was drawn by that of Mr. *Stafford*, for they vary only in this Particular; and the Word *Motus* is left out of one, but 'tis *Motus & ſeductus*, in the other. *Hutt.* 115.

In Eaſter-Term, 5 *Jac.* one Mr. *Stafford* was indicted, and found guilty of this Offence, for which he was executed.

BURGLARY.

IS Breaking and Entring a Manſion-Houſe in the Night-Time, with an Intent to commit Felony, whether ſuch felonious Intent be executed or not. *Moor* 660.

But an Infant under Fourteen, a natural Fool, or a very poor Perſon, who ſhall enter a Houſe, being compelled by Hunger, are not Burglars.

Upon this Definition, theſe Things may be obſerved:

1ſt, What is a Breaking, *&c.* and where Burglary may be committed without an actual Breaking.

2d, What is an Entry, and where Burglary may be done without an actual Entry by the Perſon himſelf.

3d, What ſhall be eſteemed a Manſion-Houſe, and what Place make the Offence Burglary, and what not.

4th, The Intention of the Perſon is to be conſidered.

5th, Clergy, *&c.*

1ſt, As to the firſt, The Entring of a Houſe with the Doors open, is a Breaking in Law; yet 'tis not Burglary unleſs the Door, Window or Wall, are broken, or the Latch drawn, or the Door unlock'd.

If a Man comes into an Houſe, and enters into a Chamber, and there breaks open a Trunk, and ſteals Money or other Goods; this is no Burglary; becauſe the Trunk was no Part of the Dwelling-Houſe: But in ſuch Caſe, if he breaks open the Chamber Door, or any Door of a Cupboard which is fixed to the Freehold, this is an actual breaking the Houſe. *Keeling* 58, 59.

2d,

2d, But Burglary may be committed without an actual Breaking; as by those who watch to prevent a Discovery, whilst their Companions break the House.

By coming down a Chimney.

By entring with the Help of a Key.

By entring, the Door being open, and the Owner of the House retiring to a Chamber, which the Offender breaks open.

By breaking Glass in a Window, and hooking out Goods. *Anderson* 114. *Moor* 660. *Poph.* 42, *H. P. C.* 81.

By pretending themselves to be robbed, and raising the Hue-and-Cry, and with a Constable demanding Entry, the Owner opens his Doors; then they bind the Constable, and rob the House; for this is in *Fraudem Legis*.

By the Help of a Servant within, opening the Door or Window, & the Thief entering, 'tis Burglary in him, and Robbery in the Servant.

The Master lies in one Part of the House, and the Servant in another Part, who in the Night draws a Latch, and enters the Chamber of his Master, with an Intent to murder him, 'tis Burglary. *Hutt.* 26.

Anno 17. *Car.* 2. one *Far*, a Solicitor, had obtained Judgment against the casual Ejector, and the Sheriff delivered Possession of the House, which he entered, and sent the Defendant to *Newgate*, for want of Bail, and carried away Goods to a considerable Value; but having no Colour of any Title to the House, he was found guilty of Felony; and tho' a Solicitor, he could not read, and was hang'd. 2 *Syd.* 294.

By putting the Hand or a Hook in the Window, and taking out Goods.

By turning the Key when the Door is lock'd on the Inside.

3. *The Church is a Mansion House*, within the Meaning of the Law. And therefore an Indictment against the Offender, for that he, *Burglariter fregit* (without saying, *intravit*) *Ecclesiam in nocte ad spoliand' & depredand' bona Parochianorum in eadem existen*, but took nothing: This was held good. *Dyer* 99.

Where a Man hath two Dwelling Houses, and dwells in each by Turns, and one is broken, though no Person in it, 'tis Burglary.

A Man had a Lease of a Shop, which was in the Dwelling-House of another, and the Lessee worked there in the Day-Time, but lay in another House: The Shop was broke open in the Night, and the Goods stole: This is not Burglary, because it was not a Mansion or Dwelling-House; for it was severed from the House by the Lease. *Hutt.* 33.

A Chamber in a College or Inns-of-Court, though no Body therein, or the Chamber of a Guest, broken by the Inn-keeper, with an Intent to rob,

Now, the Reason why 'tis Burglary to break open a Chamber in the Inns-of-Court, is, because every Gentleman hath a several Property,

perty in his Chamber: But *Somerſet* Houſe, or *Whitehall*, or *Domus Manſionales* of the Queen; and if a Chamber is broken open there, it muſt be ſo alledged in the Indictment, and not *Domus Manſionales* of the Perſon who lodged in it. *Keeling* 27.

A Barn or Stable contiguous to a Dwelling-Houſe: But a Shop, diſtinct from the Houſe, is not.

Nor a Booth; but yet, by a particular Statute 'tis made Burglary to break it open.

And by a late Statute, to break open a Shop or Ware-Houſe belonging, or uſed with the Dwelling-Houſe, in the Day-Time, and taking Money or Goods to the Value of *Five Shillings*, though no Perſon is therein, is Burglary. Which ſee *Poſtea*.

4th, The Intent muſt be to commit Felony; if it be to do a Treſpaſs, 'tis not Burglary for breaking and entering: But going away may be Felony; but 'tis not Burglary.

If Thieves in the Night come to a Dwelling-Houſe, and a Perſon within opens the Door to reſiſt them, and one of the Rogues ſhoots into the Houſe, the Door being open, and miſſing the Perſon, breaks the Wall on the other Side with the Bullet; this is not Burglary; becauſe the Breaking the Wall with the Bullet was not a breaking the Houſe with Intent to commit Felony. *Savile* 59.

But yet, where one intended to commit Murder, and for that Purpoſe broke a Hole in the Wall in the Night, and perceiving where the Perſon was, ſhot at him thro' the Hole, but miſſed him; this was held Burglary. 1 *And.* 114. 115.

And ſo are all the late Authorities, *&c.* That breaking a Dwelling-Houſe in the Night-Time, with an Intent to kill or rob, tho' there is not any Perſon in the Houſe, yet 'tis Burglary. *Moor* 660. *Poph.* 52.

'Tis true, all the ancient Precedents were only, that the Criminal *Noctanter & felonice fregit*; but in the latter Indictments 'tis uſually inſerted, that ſome Body is in the Houſe, and put in Fear, becauſe by the Statute 23 *H.* 8. Clergy is taken away from thoſe who rob a Houſe, the Owner or Dweller, his Wife, Children or Servants, then being within, and put in Fear. *Moor* 660. 661. *Poph.* 43.

Entering in the Day-time, and lying privately till Night, then robs and departs, 'tis not Burglary; but if he breaks open any Door to get out, 'tis Burglary.

5, CLERGY. If an Houſe was broke open, with an *Intent* to commit *Felony*, and no Body therein, in former Times the Offender had his Clergy; but if the Dweller had been within, and put in Fear, then by the Statute of 23 *H.* 8. *cap.* 1. Clergy was taken away, as 'tis now, for this was eſteemed an Aggravation of the Offence, and therefore the Precedents in thoſe Days were, *viz. Quod domum Manſionalem noctanter Felonice & Burglariter fregit & intravit*, ſome Perſon being therein, *&c.*

Afterwards, 18 *Eliz. cap.* 6. Clergy was taken away in all Caſes of

of Burglary; and *Anno* 39 *Eliz.* a Law was made, That if a Houſe was broke open in the Day-time, and Money and Goods to the Value of *Four Shillings*, taken away out of the Houſe, or Out-houſe thereunto belonging, tho' no Perſon therein, yet 'tis Felony without Benefit of Clergy.

But becauſe Goods were often ſtolen in a Dwelling-Houſe, without an actual Breaking, a Law was made, That if any Perſon feloniouſly take away Goods, being in 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 acceſſary to the ſame; or ſhall break any Dwelling-Houſe, Shop, or Ware-Houſe thereunto belonging, in the Day-time, and feloniouſly take away Goods to the Value of *Five Shillings*, tho' no Perſon therein; or ſhall counſel, hire, or command another to commit Burglary, ſhall not have Clergy. 3 *and* 4 *Will.*

If two are indicted for Burglary, and one is found guilty of Felony, and the other of Burglary, 'tis not a good Verdict as to the Felony, becauſe the Jury might have found both guilty of Felony; but they cannot find one guilty of Burglary, and the other of Felony, upon the ſame Indictment and Evidence. *Syd.* 171.

This was the Caſe of a Father and his Son; the Father, being found guilty of Burglary, was hang'd; and the Son, though found guilty of Felony, was diſcharg'd.

If two are indicted for the ſame Burglary, and one convicted, and the other acquitted, he who was acquitted ſhall never again be tried for that Fact; but if he took any Goods out of the Houſe which were not mentioned in the Indictment, as Money of any Servant, &c. he may be indicted for that Felony, becauſe the Facts are ſeveral Felonies. *Keeling* 30.

A Warrant.

To all Conſtables, and others his Majeſty's Officers of the Peace, whom theſe may concern.

WHEREAS *Complaint upon Oath hath been made before me by* A. B. *That laſt Night her Houſe was broken open by Thieves, who feloniouſly ſtole and carried away thereout, a Silver Bowl,* &c. *and hath in Suſpicion one* C. D. *and others, to have committed the ſaid Burglary:* Theſe *are in his Majeſty's Name to require you to bring the ſaid* C. D. *(of whom you ſhall have Notice) before me, or ſome other of his Majeſty's Juſtices of the Peace, to be examined and dealt with according to Law: Hereof you are not to fail. Given under my Hand and Seal the Day of* Anno 1749.

If any Perſon commits Burglary, Houſe-breaking, Felony in ſtealing Horſes, Money, Wares or Goods, from whom the Benefit of Clergy is taken away by the Act of 11 *Will.* and being out of Priſon, ſhall diſcover two more Offenders and convict them, he ſhall have a Pardon, which ſhall be a good Bar to an Appeal. 11 *Will. cap.*

Burning

Burning of Houſes. See *Fire.*

'TIS Felony at Common Law, maliciouſly and voluntarily to burn the Houſe of another.

Wherein { 1. There muſt be an actual Burning, and what that is.
2. It muſt be maliciouſly and voluntarily.
3. It muſt be the Houſe of another.

1. 'Tis not neceſſary that the whole Houſe ſhould be burnt, for 'tis Felony to ſet on Fire and burn Part of it.

2. It muſt be done maliciouſly and voluntarily, and ſo is the Indictment, *Quod voluntarie & ex malitia ſua præcogitata, &c.* for if 'tis done by Miſchance, or by Negligence, 'tis not Felony.

Sometimes the Law implies Malice, as if the Offender intends to burn the Houſe of *A.* only, and by this Means the Houſe of *B.* is ſet on Fire; this is Felony, for the Event ſhall be coupled to the Cauſe, which was malicious.

3. The Houſe of another: Formerly it was Felony to burn the Frame of an Houſe, or the bare attempting to ſet on Fire a Stack of Corn; and 'tis ſtill Felony to ſet on fire a Stack of Corn in *Northumberland, Cumberland, Weſtmoreland,* or *Durham.* 43 *Eliz. cap.* 31. 22. and 23. *Car.* 2. *cap.* 7.

And even now, 'tis Felony in the Night-time to burn Barns, Stables, Ricks of Corn, Hay, &c. or any of the Out-Houſes which are contagious to the Dwelling-Houſe, and the Offender is not to to have Clergy.

But if a Barn ſtand remote, and is not a Parcel of the Manſion-Houſe, then 'tis not Felony, unleſs it hath Hay or Corn in it.

He who is in Poſſeſſion of a Houſe by Leaſe, ſets it on Fire, with an Intention to burn his Neighbour's Houſe; this was held to be no Felony by the Opinion of three Judges, becauſe the Offender being in Poſſeſſion, it cannot be ſaid to be done *vi & armis:* But Juſtice *Crook* was of a contrary Opinion, becauſe the Offence falls under the Definition of Felony, which is a capital Crime, committed *felleo animo,* and here the Fact (though in his own Houſe) was done maliciouſly, and ſo found by the Jury, and the Intention ſhall be coupled to it, which was *Nequiter factum & mala conſcientia. Cro. Car.* 376. *Holmes's Caſe, Jones* 351.

A Captain, Maſter, or Mariner, or other Officer belonging to a Ship, and burning or deſtroying it, or procuring the ſame to be done, to the Prejudice of the Owner or Merchant, muſt ſuffer Death as a Felon; and if committed where the Admiralty hath Juriſdiction, it ſhall be tried by Virtue of a Commiſſion under the great Seal, in ſuch Places in the Realm as ſhall be therein limitted; and ſuch Offender ſtanding mute, or challenging above the Number of Twenty Perſons, ſhall ſuffer Death without Benefit of Clergy.

CER-

CERTIORARI.

THIS is a Writ directed to the Juſtices of the Peace, iſſuing out of the Chancery, and then tis returnable in *Cancellaria Noſtra*; or out of the Kings Bench, and then 'tis *coram Juſticiarus noſtris de Banco*; and the Juſtices muſt make a Return accordingly.

It was formerly held, That if delivered after the Return-Day, yet the Juſtices ought not to proceed, becauſe the Words of the Writ are *coram nobis*, &c. *& non alibi*. And 'tis ſtill held, That 'tis a *Superſedeas* by Reaſon of thoſe Words, *non alibi*. *Yelv.* 32.

This Writ may be either to remove an Indictment, or the Tenure thereof, or a Recognizance, *&c.* And it removes the whole Record; and therefore no *alias Certiorari* is to be allowed. *Stiles* 359.

But 'tis not to be allowed, unleſs the Party indicted will be bound with Sureties (ſuch as the Juſtices ſhall approve) to pay the Proſecutor ſuch Coſts and Damages as the Juſtices ſhall aſſeſs within a Month after Conviction. 21 *Jac. c.* 18.

And by a later Statute, 'tis not to be granted in Term-time, but upon Motion in Court; and the Party who deſires it, muſt find Bail. *viz.*

Two Manucaptors before one or more Juſtices of the Peace in *Twenty Pound*, to plead to the Indictment, and at his own Charge to procure the Iſſue to be joined, and to be tried at the next Aſſizes in that County where the Indictment was found after the Return of the *Certiorari*, if not in *London*, *Weſtminſter* or *Middleſex*, and if in either of thoſe Places, then the next Term after the *Certiorari* granted, and if ſuch Recognizance is not given before the *Certiorari* is allowed, they may proceed, tho' delivered. 5 and 6 *W. & M. c.* 5.

If the Party deſiring the *Certiorari* be convicted, then *B. R.* may give Coſts; and if not paid within ten Days after Demand, then upon Affidavit made of the Refuſal, an Attachment goes, *&c.* and the Recognizance not to be diſcharged till Coſts paid.

In Vacation, any Judge of *B. R.* may grant it. He muſt endorſe his Name, and the Name of the Party deſiring it, and before the Allowance the Party muſt find ſuch Sureties as aforeſaid.

And by a ſubſequent Statute a Recognizance taken before a Judge of *B. R.* with like Condition, as in the former Act, which the Judge muſt mention on the Back of the Writ, and ſubſcribe his Name, ſhall be as good as if taken before a Juſtice of Peace in the proper County. 8 and 9 *W. cap.* 33.

The

The Condition of the Recognizance where the *Certiorari* is brought to a Juſtice of the Peace, and not to a Judge of *B. R.*

THE Condition *of this Recognizance is ſuch, That whereas the above-bounden* R. O. *hath proſecuted a* Certiorari *returnable,* &c. *to remove into the King's Bench, an Indictment found againſt him at,* &c. *for* &c. *If therefore the ſaid* R. O. *ſhall plead to the ſaid Indictment ſo removed as aforeſaid, ſo as Iſſue may be joined upon the ſame; and ſhall likewiſe at his own Charge procure the ſaid Iſſue to be tried at the next Aſſizes after the Return of the ſaid* Certiorari, *to be held for the ſaid County,* &c. *where the ſaid Indictment was found; Then this Recognizance to be void,* &c.

CHAMPERTY.

'TIS an Offence, *viz.* where any Perſon expecting Part of the Thing in Variance, doth by himſelf, or any other, move or proſecute the Suit at his own Coſts and Charges: The Puniſhment is a Fine, and Impriſonment for Three Years.

My Lord *Cooke* tells us, that *Champerty* is *Maintenance*, but not *e converſo*; ſo that the Difference between theſe Offences ſeems to be thus: *Champerty* is where the Party proſecuting is to have Part of the Lands or Goods, *&c.* 2 *Inſt.* 208. 1 *Inſt.* 368 *B.*

Maintenance, is where the Proſecuter is to have no Part in the Thing in Variance. *Chance-Medley.* See *Homicide.*

Church, Divine-Service, Diſſenters, &c.

BEFORE I mention any Thing under this Title, relating to the Office of a Juſtice of Peace, I think it may not be improper to give a ſhort Account of the Riſe and Continuance of the Diviſions amongſt us, *&c.*

Some certain Ceremonies which had been uſed in time of Popery, were thought fit to be continued by our Reformers, as uſeful to beget ſome Reverence in holy Exerciſes, but chiefly in hopes to bring thoſe of the *Roman* Communion more eaſily to comply with that Reformation.

There were ſome Divines in the Beginning of the Reign of Queen *Elizabeth*, who fled from Perſecution in the Reign of Queen *Mary*, and had by that Means ſeen the Methods and Uſe of Foreign Churches, particularly that of *Geneva*, complained of this as a Compliance

pliance with Popery; and therefore ſince we had reformed from the Errors of that Church, would have none of their Ceremonies continued in ours.

The Queen was perſuaded by ſome Perſons of Power then at Court, to take the Revenues of the Biſhopricks and Cathedrals into her own Hands, which would not only enrich the Crown, but it would likewiſe be an Expedient to unite all the reformed Churches, and to bring the Engliſh Church to the Model of that of *Geneva*.

This was oppoſed by ſome wiſe Miniſters at that Time; who told the Queen, That if Matters of Religion came to be thus regulated here by popular Perſons, they would quickly ſet up a Power diſtinct from hers, in Church-Matters, which by Conſequence would entrench upon her Prerogative.

This ſeemed ſo reaſonable to her, that ſhe reſolved to maintain the ancient Government of the Church, and continued their Ceremonies; which the other Party did not diſlike as unlawful, but for the Reaſons aforeſaid.

And now theſe Differences which were ſmall in the Beginning, became fixed and ſettled into Factions, and thoſe who were againſt the Ceremonies, reproached the Church-Men with *Non-Reſidence*, *Pluralities*, and many Abuſes in the Spiritual Courts; and thus Matters ſtood for many Years in her Reign.

Afterwards, Lectures were ſet up in moſt Cities and Market-Towns: I will not examine whether this was done purely in Oppoſition to the Church, or whether it was upon any Diſlike of the mean Performances of thoſe Perſons who ſerved the Cure of thoſe Places; it may be the latter.

For in ancient Times the ſettled Allowance for the Secular Clergy in great Towns, *&c.* was very ſmall, becauſe the Perquiſites were conſiderable by Oblations and otherwiſe; and even in the latter Ages of Popery, the Churchmen of theſe Places lived plentifully, tho' their Stipends were ſmall, for the Superſtition of theſe Times provided Fees for them by *Obits*, *Exequies*, and *Maſſes*, and they were obliged to live ſingly.

But theſe Things being diſuſed after the Reformation, and the Allowances of the Clergy in great Cities and Towns, being ſtill very ſmall, might be the Occaſion for the richer Sort of People in theſe Places, to maintain Men of greater Abilities than the Incumbents, by a Voluntary Contribution.

Theſe Men, by their Zeal in Preaching, gained a Party to themſelves; who depending upon the Bounty of the People, were generally inclined to ſubmit to the Humours of the chief Contributors, and by this Means the Diviſions were ſtill increaſed.

In the ſucceeding Reigns, the People were not only ſettled into Parties, but were diſtinguiſhed by Names, *viz.* The *Court* and *Country* Parties.

The

The Clergy ſtood firm to the Intereſts of the Court; and thoſe who oppoſed that Intereſt in Civil Affairs, always cheriſhed the other Party, commending them for good Proteſtants, and that it was the Intereſt of all Parties to unite.

But inſtead of that, the Breach was made wider by the Civil Wars, and both then and afterwards ſome deſigning Men have, by ſly Inſinuations and other Methods, laboured to make both Parties Fools by Turns, to break in upon and cruſh one another, that they might make a Way for the Common Enemies to enter.

But the Nation being come to better Temper, a Law was made, *Anno* 1 *Guil. & Mary*, That neither the Statutes of 1 *Eliz. cap.* 2. 23. *Eliz. cap.* 1. 3 *Jac. cap.* 4. ſhall extend to Perſons diſſenting from the Church.

They muſt likewiſe ſubſcribe the Declaration mention'd in the Statute of 30 *Car.* 2. *cap.* 1.

Theſe Oaths and Subſcriptions the Juſtices in Seſſions have Power to adminiſter and take; and thoſe who do take the Oaths, muſt pay *Six Pence* for regiſtering, and *Six Pence* for a Certificate.

They ſhall not be liable to the Penalties in 35 *Eliz. & 22. Car.* 2. nor be proſecuted in any Eccleſiaſtical Court, for Nonconformity.

But they muſt not aſſemble in Places with Doors locked, barred or bolted, nor until the Place is certified to the Biſhop of the Dioceſe, or to the Archdeacon, or to the Juſtices at Quarter Seſſions, and regiſtered there, and they have a Certificate thereof.

If choſen to any Pariſh Office, they may execute it by Deputy.

Then, as to their Preachers, if they take the Oaths, and ſubſcribe the Declaration at the Quarter-Seſſions where they live, ſhall not be liable to the Penalties in the Statute of 17 *Car.* 2. *cap.* 2. which is, "Not to come within Five Miles of any Town that ſends Burgeſſes to Parliament, if he hath not declared his Aſſent and Conſent to the Book of *Common-Prayer*, &c. under the Penalty of *Forty Pounds*"; nor to the Penalties in 22 *Car.* 2. *cap.* 1. which in being convicted of preaching at a Conventicle, he forfeits *Twenty Pounds*; nor to the Penalty of *One Hundred Pounds*, mentioned in 13 and 14 *Car.* 2.

But then theſe Preachers muſt declare their Approbation, and ſubſcribe the Articles of Religion, except theſe Words in the 20th Article, *viz. The Church has Power to decree Rites and Ceremonies, and Authority in Matters of Faith:* And except the 34th Article, which is, *That the Church has Power to appoint Rites and Ceremonies which are not contrary to the Word of God, and that private Perſons are bound to conform to ſuch Ceremonies:* And except the 35th Article, which concerns the reading Homilies in Churches: And the 36th Article, which relates to the Conſecration of Biſhops, *&c.*

Preachers thus ſubſcribing, *&c.* ſhall not ſerve on Juries, and ſhall be exempt from Pariſh Offices.

And

And if any Perſon diſturb them in preaching, he ſhall find Sureties to be bound with himſelf in a Recognizance of *Fifty Pounds*, to appear at the Seſſions; and being convicted there, ſhall forfeit *Twenty Pounds* to the King.

If he will not find Sureties, he ſhall be committed to Priſon till next Seſſions.

The Proof muſt be by two Witneſſes on Oath, before one Juſtice.

There is a Clauſe in this Act which concerns the Preachers in Anabaptiſt's Congregations, *viz.* "That if they ſubſcribe the Articles of Religion, excepting in that Part of the 27th Article, which relates to Infant Baptiſm, and ſhall take the Oaths, and make and ſubſcribe the Declaration; that they ſhall enjoy the ſame Advantages which Diſſenting Miniſters have by that Law".

Any Juſtice of Peace may require a Diſſenter to make and ſubſcribe the ſaid Declaration, and to take the aforeſaid Oaths; but becauſe there are ſome Perſons [Quakers] who ſcruple to take any Oath, therefore Proviſion is made to exempt them from the Penalties aforeſaid, if they make and ſubſcribe the ſaid Declaration, and likewiſe the Declaration of Fidelity; (which ſee in Title *Oaths*.)

They muſt likewiſe ſubſcribe a Profeſſion of their Chriſtian Belief, in theſe Words:

I A. B. *profeſs Faith in* GOD *the Father*; *and in* JESUS CHRIST *his Eternal Son, the true God*; *and in the* HOLY SPIRIT, *One God, bleſſed for evermore: And do acknowledge the Holy Scriptures of the* Old *and* New Teſtament, *to be given by Divine Inſpiration.*

Theſe Declarations and Subſcriptions muſt be recorded at the Quarter Seſſions.

And if any Perſon refuſe the Oaths when tendered, he ſhall not be admitted to make and ſubſcribe the Declarations, tho' required by a Juſtice of Peace at the Seſſions; if he cannot, within Thirty-one Days after ſuch Tender, produce two Proteſtant Witneſſes to teſtify on Oath, That they believe him to be a Proteſtant Diſſenter, or produce a Certificate under the Hands of four Proteſtants conformable to the Church, or who have taken the Oaths, *&c.* And he muſt likewiſe have a Certificate under the Hands and Seals of Six or more of the Congregation to which he belongs, owning him to be one of them.

And until ſuch Witneſſes and Certificate are produced, the Juſtice muſt take a Recognizance, with two Sureties of *Fifty Pounds*, for producing the ſame, or otherwiſe ſhall be committed all that Time.

But by this Act 'tis declared, *That all the Laws made for frequenting Divine Service on the Lord's-Day, are in Force againſt all Perſons except they come to ſome Religious Aſſembly allowed by Law.*

The Precedents upon the Statute of 1 *Will.* are as follow.

The Form of the Certificate by four Proteſtants conformable within Thirty-one Days after the Tender, &c.

WE whoſe Names are hereunto ſubſcribed, being all conformable to the Church of England, *do hereby certify whom it doth concern, That we do verily believe that* A. B. *of,* &c. *is a Proteſtant Diſſenter. Given under our Hands,* &c.

The Form of a Certificate by four Proteſtants not conformable, &c.

WE whoſe Names are hereunto ſubſcribed, having all taken the Oaths, and ſubſcribed the Declaration enjoyned by a Statute made in the firſt Year of the Reign of the late King William *and Queen* Mary, *intituled,* An *Act* for exempting their Majeſty's Proteſtant Subjects diſſenting from the Church of *England,* from the Penalties of certain Laws; *do hereby certify, That we do verily believe* A. B *of,* &c. *is a Proteſtant Diſſenter. Given under our Hands,* &c.

The Form of a Certificate from ſix of the Congregation.

WE whoſe Names are hereunto ſubſcribed, being Members of the Congregation of, &c. *do hereby certify whom it may concern, That we do own* A. B. *of,* &c. *to be one of our ſaid Congregation. Given under our Hands and Seals,* &c.

A Recognizance with two Sureties, &c.

Penſil. ſs. BE it Remembred, *That on the Eleventh Day of*------ &c. *came before me* P. L. *Eſq; one of the Juſtices of the Peace of our Lord the King, for the County aforeſaid,* A. B. *of* C. *in the ſaid County, Huſbandman,* E. F. *and* G. H. *of the ſame Place, in the County aforeſaid, Yeomen, and acknowledge themſelves indebted unto our ſaid Lord the King,* viz. *each of the Sureties aforeſaid, in* Forty Pound, *and the aforeſaid* A. B. *in* One Hundred Pound, *of good and lawful Money of* Great-Britain, *to be levied on their Goods and Chattels, Lands and Tenements, for the Uſe of our ſaid Lord the King, his Heirs and Succeſſors, if the aforeſaid* A. B. *ſhall fail in the Performance of the Condition hereunder-written.*

THE Condition of this Recognizance is ſuch, That whereas the Oaths enjoyned to be taken by an Act made in the Firſt Year of the Reign of the late King *William* and Queen *Mary,* entitled, *An Act,* &c. were on the firſt Day of *Auguſt* laſt paſt, tendered to the above-bounden *A. B.* by the aforeſaid *P. L.* which he the ſaid *A. B.* did then refuſe to take; and whereas alſo he was on the third Day of the ſaid Month of *Auguſt,* required by the ſaid *P. L.* to make and ſubſcribe the Declarations enjoined likewiſe by the ſaid Act: *Now* if the ſaid *A. B.* ſhall within Thirty one Days after ſuch Tender of

the ſaid Declarations as aforeſaid, produce a Certificate under the Hands of four Proteſtants who are conformable to the Church of *England*, or of four others who have taken the Oaths, and ſubſcribed the Declaration in the ſaid Act mentioned, atteſting him the ſaid *A. B.* to be a Proteſtant Diſſenter; and ſhall likewiſe produce within the Time aforeſaid, another Certificate under the Hands and Seals of Six or more ſufficient Men of the Congregation to which he the ſaid *A. B.* doth belong, owning him thereby to be one of them; That then this Recognizance ſhall be void, *&c.*

Benefit of Clergy. See *Felony.*

AS to the Benefit of Clergy, it was introduced here by the common Law, exempting their Perſons from any Temporal Juriſdiction. 'Tis a Privilege, on purpoſe to ſave the Life of a Criminal in certain Caſes, if he was a Man of Learning, as accounted in thoſe Days; for as ſuch he might be uſeful to the Publick. And as its Original was by the Law of the Church, ſo was for ſome Time only allowed to Clerks in Orders.

But lately the Law is ſuch, That if any Criminal within the Benefit of Clergy, ſhall demand his Clergy, it ſhall be granted to him without Reading, except in the Caſe of Man-ſlaughter, or a Man marrying two Wives, or a Woman two Huſbands.

I admit, that in the Reign of *Jac.* 2. it was reſolved in the Caſe of *Goring* and *Deering*, upon an Appeal, that the Court might delay to call a Criminal to Judgment after a Conviction for Man-ſlaughter, on purpoſe to make him liable to an Appeal.

But this was ſince denied to be Law in the Caſe of *Armſtrong* and *Liſle*, *Mich.* 8. *Will.* *viz.* That ſince ſeveral Statutes have been made to extend the Benefit of Clergy to Perſons in particular Caſes, that the Court ought, *ex Officio*, to call the Party to Judgment upon a Conviction of Man-ſlaughter, and to allow him the Benefit of Clergy, if he prays it.

That to ſuſpend or delay ſuch Allowance, is to deprive him of that Defence by which he might prevent a Conviction of Murder upon an Appeal, and that 'tis a manifeſt Injury to the publick Juſtice; unleſs there is ſome legal Reaſon appearing out of the Record itſelf to juſtify ſuch Delay; for ſince he may be found guilty either of Murder or Man-ſlaughter upon the ſame Indictment, it would be unjuſt to hang him upon one Verdict, and not to allow him that Benefit which the Law hath given him to ſave his Life upon the other, which will be not only to put it twice in Danger, but to ſubject it to the Opinion of a Court, though he might be ſaved by Law.

'Tis both for the Benefit of the King and the Party, not to have the Allowance of the Clergy till after a Tryal: Becauſe, if convicted, the King may be entitled to the Forfeitures, and if acquitted, then he ſtands not in Need of this Privilege.

Now if a Man cannot read where Clergy is allowable, and 'tis recorded by the Court, *Quod non legit*; if the Offender ſhould be reprieved till the next Aſſizes, the Book may be tendered to him again, becauſe 'tis *in favorem vitæ*, for which Reaſon he may have it under the Gallows. *Dyer*. 205. *b*.

Anno 4. *Eliz.* One *Stone* committed two Felonies in the ſame Day, and Clergy was allowable for one, but not for the other: He was firſt indicted for that Felony for which he might have Clergy, and was found guilty, but could not read, ſo the Court recorded *Quod non legit*; but he was reprieved till the next Aſſizes; then he was indicted for the other Felony, and found guilty; but before Judgment prayed that the Book might be tendered to him again for the firſt Offence, and had it, and could then read, and the Entry was then contrary to what it was before, *viz. Quod legit ut Clericus*, but there was an Omiſſion of theſe Words, *Quod crematur & tradatur Ordinario*; and the Queſtion was, whether he ſhould have Judgment of Death upon the laſt Indictment? And held he ſhould not, becauſe if the Entry had been *Quod legit*, &c. *& tradatur Ordinario*, he ought not to be arraigned on the laſt Indictment; for by the former Conviction and Clergy allowed, and the Party reading, he is diſcharged from all Felonies done before that Time, and is afterwards the Priſoner of the Ordinary, and 'tis the Fault of the Officer for not making the Entry as he ought. If they had a Mind to hang the Man, he ought to be indicted for that Offence firſt for which he could not have Clergy. *Dyer* 214. *b*.

But by a late Statute we are told, That the tendring the Book to read, is found by Experience to be of no Uſe; therefore the Offender is not required now to read, but he is to be puniſhed as a Clerk convict without Reading. 5 *Annæ*.

Clerk of the Peace. See Part 3.

HE is an Officer at the common Law; for he is Clerk to the Conſervators or Juſtices of the Peace, and 'tis very probable he was firſt inſtituted by them to make Entries, and to record their Proceedings.

In former Times, the *Cuſtos Rotulorum* had the Keeping of thoſe Records; but afterwards, when that became an Office of Honour and Dignity, then he appointed a Clerk of the Peace.

Thus it ſtood till 37 *H.* 8. and then a Law was made, reciting, That the Chancellor had taken upon him an Authority to make a

Cuſtos for Life, and he to appoint a Clerk of the Peace for Life, which was a Grievance; and therefore from henceforth the *Cuſtos* was to be appointed by the King during Pleaſure, and the Clerk of the Peace was to continue in his Office no longer than the *Cuſtos*.

Afterwards, by 4 *Ed.* 6. this Statute, as to the appointing of a *Cuſtos*, was repealed, and the Chancellor had Power again to appoint a *Cuſtos*; but the Office of the Clerk of the Peace remained as before.

And thus it continued till 1 *W & M.* and then the Appointment of a *Cuſtos* was enacted to be as by the Statute of 37 *H.* 8. and he is to appoint a Clerk of the Peace to enjoy the Office ſo long as he ſhall behave himſelf well.

This was introductive of a new Law, for before he was removeable with the *Cuſtos*; but now he hath an Eſtate for Life, determinable upon his Miſbehaviour.

So that by this Act, the Power of the *Cuſtos* is abridged; for before he might appoint any Perſon at large; but now the Perſon appointed muſt reſide in the County. Formerly the *Cuſtos* might remove the Clerk, *&c.* and the Seſſions could not; for they had only Power to ſuſpend him for any Miſbehaviour: But now the Juſtices may remove him upon a Complaint exhibited in Writing, and due Proof thereof, and the *Cuſtos* cannot; and if he appoint not another before the next Seſſions, the Juſtices may do it.

He is to be preſent at the Seſſions, and to draw up the Proceſs of the Court; he is to read Indictments, and to record the Proceedings of the Juſtices.

He muſt record the Rates of the Servants Wages, and inroll the Diſcharge of Apprentices. 5 *Eliz. cap.* 4.

He is to certify unto *B. R.* the Tranſcrips of Indictments, Outlawries and Convictions, before the Juſtices, within Forty Days next after the Conviction, *&c.* or within Twenty Days after the Beginning of the Term next enſuing, or forfeits *Forty Shillings* to the King and Proſecutor. 34 & 35 *H.* 8. *c.* 14.

In an Indictment for Murder, the Fact was laid to be committed, 31 *Junii*, and the Deputy, in the Preſence and Hearing of the Clerk of the Aſſize, did read the Indictment as it was: The Offender was tried, and then the Clerk of the Aſſize informed the Court of the Miſtake in the Indictment, *viz.* That there were not 31 Days in *June*; but becauſe he did inform them before the Trial, he was fined *Forty Pounds*, and committed. *Moor* 555.

He muſt take nothing of any Witneſs who ſhall give Evidence againſt a Felon, nor take more than *Two Shillings* for drawing any Bill of Indictment againſt a Felon; the Forfeiture is *Five Pounds*, with full Coſts. 10 & 11 *Will.*

And if he draw a defective Bill, he ſhall draw a new One without any Fee, under the Penalty of the like Forfeiture; to be recovered by him who ſhall ſue for the ſame in any Court of Record.

CON-

CONJURATION.

ANY Perſon convicted, to have uſed Invocation or Conjuration of any evil Spirit, or to have conſulted, *&c.* any ſuch Spirit, to kill, conſume, or lame any Perſon; they, with their Acceſſaries, are Felons without Benefit of Clergy.

So likewiſe any Perſon convicted to have, by Witchcraft, Charm, *&c.* undertaken to tell where Goods loſt or ſtolen, may be found, or where they are, ſhall be committed for a Year without Bail, and ſhall once in every Quarter of that Year, ſtand in the Pillory.

CONSPIRACY.

THIS is an Agreement between two or more, falſly and malicioufly to indict an innocent Man, who, after Acquittal by Verdict, hath two Remedies to puniſh the Offenders.

1ſt. By a Writ of Conſpiracy, which is a civil Action, in which Damages are to be recovered.

2d. By an Indictment at the Suit of the King.

The Action will not lie, unleſs the Party is *legitimo modo acquietatus. Noy* 116.

And as to this Matter, there is a very nice Caſe, *viz.* Conſpiracy, *&c.* for that they falſly procured him to be indicted, and to be impriſoned, *quouſque* before ſuch Judges, *legitimo modo fuit acquittatus*, and did not ſay, *inde acquittatus*: The Court was in ſome Doubt, becauſe that Word was omitted, but certainly it could not be material; for having ſet forth that they procured him falſely to be indicted, *&c. quouſque* he was acquitted. This could not be intended of any other Matter but that for which he was indicted.

There are four Incidents to this Action.

The Conſpiracy muſt be
- Malicious;
- Falſe;
- Declared by ſome Proſecution;
- Voluntary.

The ſecond Remedy againſt Offenders of this Nature, is by indictment at the Suit of the King; and upon Conviction the Judgment is,

That they ſhall loſe their Free-Law; that is, they ſhall never be of a Jury nor Witneſs in any Caſe; ſhall never appear but by Attorney; their Lands, Chattles and Goods, ſhall be ſeized into the King's Hand; their Trees cut down, and their Bodies impriſoned. *Stamf. placit. Corn.* 175. *b.* 3. *Inſt.* 143.

The

The Reaſon of this Judgment is, becauſe the Offenders have conſpired the ſhedding innocent Blood, and that under a Pretence of Juſtice, by a Courſe of Law, which is made for the Protection of the Innocent.

But there have been other Judgments given againſt theſe Offenders. As for Inſtance:

An Information was brought by one *Miller* of *Kent*, againſt an Attorney and another, for a Conſpiracy, maliciouſly to take away his Life; by accuſing him for breaking open a Trunk, and taking out Money and a Leaſe; for which they indicted Mr. *Miller* at the Aſſizes: It was found *Ignoramus*: The Conſpiracy was proved, and the Sentence was, *That the Attorney ſhould be degraded, and caſt over the Bar; that both ſhould loſe their Ears, and be marked in the Face with the Letter C. to ſtand on the Pillory with Papers of their Offences; to be whipped, and each fined* Five Hundred Pounds. This Sentence was executed on them, *Anno* 11 *Jac. Godb.* 205.

So where two conſpired to accuſe Sir *Anthony Aſhley*, for a Murder done Sixteen Years before. *Cantrell* was to be the Accuſer, and Sir *James Creighton* articled with him, That he ſhould have a Sixth Part of Sir *Anthony*'s Eſtate, and that he would beg the Whole of the King. *Cantrell* agreed, and procured one *Smith*, who was Servant to Sir *Anthony*, to accuſe both his Maſter and himſelf for putting Poiſon into Drink, which his Maſter commanded him to carry to one *Rice*; which he did, and ſo poiſoned him. For this Fact he cauſed his Maſter and himſelf to be indicted, but afterwards diſcovered the Conſpiracy, and *Creighton* was fined *One Thouſand Pounds*, and committed; another of the Defendants was fined *Three Hundred Pounds*, and to ſtand in the Pillory, and was burnt with a hot Iron on both Cheeks, with the Letters *F.* and *C.*

CONSTABLE.

THIS not material in this Place to enquire, whether the Word or the Office is of *Saxon* or *Norman* Original. 2 *Inſt.* 123.

Some are of Opinion, That upon the Increaſe of the People, the Sheriff alone could not take ſufficient Care of the Peace of the County, but that it was divided into Hundreds, and a High-Conſtable was appointed over each Hundred to preſerve the Peace; but 'tis uncertain when this Diviſion began; for Mr. *Selden* differs from the common Opinion of other Writers, who affirm it to be in the Reign of King *Alfred*, and he tells us it was before that Time.

But notwithſtanding this Diviſion (be it when it will) neither the Sheriff, together with the High Conſtables, could in After-Times take due Care of the Peace in the County and Hundreds over which they

they presided; and therefore Petty Constables were appointed for that Purpose, in each Town, Village and Parish of every Hundred, to be assisting to the High Constables.

'Tis also uncertain when this Division began: It seems to me to be very ancient, and that both High and Petty-Constable are Officers at Common Law; that the one was long before the Statute of *Winton*, and the other before the Beginning of the Reign of *Ed.* 3. so that such old Statutes which first mention this Officer, do only recite the Common Law.

How and where chosen. It may be at the Leet, either by the Steward himself, or by Presentment of the Grand Jury there; but this must be warranted by Custom, and where a Court-Leet is usually kept; and in such Case the Justices of the Peace cannot interpose.

But where Neglects and Miscarriages are, either in keeping of such Cours, or chusing them, the Justices at their Quarter Sessions, may appoint and swear a High-Constable; and this is the usual Course at this Time: But in Case of Refusal, Death or the Removal, one Justice of the Peace may chuse and swear another.

'Tis true, they may be sworn at any other Time by a Warrant from the Sessions; and they may also be chosen out of the Sessions by the greater Number of Justices of a Division: But this is not usual.

He who is chosen Constable, must be an honest, understanding, and able Man, both in Body and Estate, and not of the meaner Sort; and therefore it has been held, that he is not to be chosen by House or by Custom, if not fit to execute the Office.

He is likewise to be resident where chosen; and if he is not thus qualified, two Justices upon Complaint, may appoint another.

But now 'tis ruled, that a Custom for every Inhabitant to serve by Turns, is good; for if it happen on a Woman, she may hire one to serve. *Sid.* 355.

Attornies, Clergymen, Justices of the Peace, Infants, Lawyers, Madmen, Physicians, Poor, old and sick Persons, are exempted from being chosen Constables.

Formerly it has been doubted, whether he might make a Deputy, but now 'tis allowed; but *respondeat superior* for his Miscarriage, unless the Deputy is sworn and allowed by the Court. *Sid.* 355. *Moor* 1453. *Bulst.* 77. 1 *Roll. Rep.* 274.

Dissenters chosen Constables, may make a Deputy, *per* Statute 1 *Will. & Mar.* 7 *Jac. cap.* 5.

If any Person refuse to serve, the Justices may bind him over to the Assizes or Sessions, and there he may be indicted and fined; but you must alledge the Place where he was required to take the Oath, and before whom he refused to be sworn, and not *ad Sessiones* generally, otherwise it may be quashed. 1 *Keb.* 4. 8. 1 *Mod.* 24. 13. *Allen* 78. 2 *Sand.* 29. *Sid.* 272. *Stiles* 394.

If

If an Action be brought againſt a Conſtable, it muſt be laid in the proper County where the Fact is ſuppoſed to be done; if 'tis brought againſt him for any Thing in the Executing his Office, he may plead the general Iſſue, and give the ſpecial Matter in Evidence: And if the Plaintiff is Non-ſuited, or diſcontinue, or a Verdict for the Defendant, he ſhall have double Coſts. 7 *Jac. cap.* 5. 21. *Jac. cap.* 12.

If a Conſtable die, or remove out of the Pariſh, two Juſtices may chuſe and ſwear another, and he is to continue in the Office till next Seſſions; and then the Juſtice may either approve him, or appoint another, and ſwear him. This Office is to continue for one Year; and if longer, Juſtices in their Seſſions may diſcharge him.

His Duty is to be conſidered under theſe ſeveral Heads following, *viz.*

Affrays,	High-Ways,	Plague,
Ale-Houſes,	Horſe-ſtoned,	Priſoners,
Arms,	Hue-and-Cry,	Rent,
Bridges,	Juries,	Riots,
Cuſtoms,	Lord's-Day,	Rogues,
Eſcapes,	Meaſures,	Superſedeas,
Exciſe,	Militia,	Swearing,
Felons,	Miniſters diſturbed,	Vagabonds,
Forcible Entry,	Peace,	Warrants,
Gaming-Houſes,	Phyſicians,	Watches.

Affrays. And firſt his Duty concerning Affrays, and therein what is to be done to thoſe who fight in his Preſence.

Aſſaulting, threatning to kill or beat another in his Preſence, or whatever is a Breach of the Peace, he may carry the Offender before a Juſtice of Peace without a Warrant; but if the Fighting is over, he muſt have a Warrant; and this is to find Sureties for his good Behaviour.

If the Quarrelling or Fighting is not in his Sight, and he is informed of it, and refuſes to go and keep the Peace, he may be preſented by the Grand Jury at Seſſions, and fined.

He may command ſuch to depart; and if they refuſe or make any Reſiſtance, he may juſtifie the Beating of them, and call others to his Aſſiſtance; and if either he or they happen to be killed, 'tis Murder.

He may break open the Doors to ſee Peace kept.

If any Perſon ſhall be wounded in Fighting, he may carry the Offender before a Juſtice of Peace, who may bail or commit, *&c.*

Moſt of the Things above-mentioned, the Conſtable may do by Virtue of his Office; for before Juſtices of the Peace were made, he was *Conſervator Pacis*, but he could not take Security by Recognizance or Bail, becauſe he was not an Officer on Record: He might put a Man in the Stocks who broke the Peace in his [illegible], but he could

could not arreſt a Man to find ſureties of the Peace upon any Complaint made to him, unleſs he did actually ſee the Peace broken. *Owen* 105.

A Man brought a Child about two Months old to the Church, and left it there, deſigning it ſhould periſh: The Conſtable put him into the Stocks, and kept him there till he agreed to take the Child; and this was held juſtifiable, it being to prevent a Felony. *Moor* 284.

The Puniſhment of a Conſtable for neglecting to obey a Warrant from a Juſtice of Peace, conſiſts in the Forfeitures following, *viz.*

ALE-HOUSE UNLICENSED. If he doth not levy *Twenty Shillings* to the Uſe of the Poor, upon ſuch who keep unlicenſed Ale-Houſes; which he may ſell after three Days, and if no Diſtreſs, then if he doth not whip the Offender, one Juſtice may commit the Conſtable without Bail, until the Ale-Houſe-keeper is puniſhed; or until the Conſtable pay *Forty Shillings* to the Uſe of the Poor.

If an Ale-Houſe keeper ſells leſs than Meaſure, *viz.* full Quarts; then if the Conſtable doth not levy 20 *s.* he is to forfeit 40 *s.* to be levied by Warrant from one Juſtice; and if no Diſtreſs to be committed.

If an Ale-Houſe-keeper ſuffer Townſmen to be tippling, and the Conſtable having a Warrant, doth not levy *Ten Shillings*, ſhall forfeit *ut prius*, &c. if no Diſtreſs can be had, he muſt certifie that Default within Twenty Days, or forfeit *Forty Shillings*, *ut prius*.

Upon thoſe convicted of tippling, he muſt levy the Penalty of *Three Shillings and Four Pence*; or if he neglect, having a Warrant for ſo doing, forfeits *Ten Shillings*.

Upon thoſe convicted of Drunkenneſs, he muſt levy *Five Shillings* for the Poor; if the Party is not able to pay it, he muſt ſit in the Stocks ſix Hours, *&c.*

If a Traveller pay, or offer to pay ready Money for Lodging, and is refuſed; a Conſtable may cauſe the Ale-Houſe-keeper to be indicted next Seſſions, and there he may be fined and committed.

ARMS. He may take Arms from them that ride or go armed in Terror of the People, and may carry ſuch Perſons before a Juſtice of Peace to find Sureties.

They muſt aſſiſt ſuch Perſons who have a Warrant from the Lord Lieutenant or his Deputy to ſearch for Arms, *&c.* which muſt be in the Day-time, unleſs in Towns; and if reſiſted, may enter with Force.

BRIDGES. Where a common Bridge is in Decay, and it cannot be known who or what Lands are to repair it, the Conſtable and two of the moſt able Inhabitants in the Pariſh muſt aſſeſs, and four Juſtices muſt allow ſuch Aſſeſſment.

CUSTOM. A Conſtable muſt, upon Requeſt, aſſiſt ſuch Perſons who have a Warrant from the chief Magiſtrate to ſearch for Goods which have not paid Cuſtom; and he may (if within a Month after the Offe[illegible]ter into any Houſe in the Day-time, and, if reſiſted, break [illegible]

He

He must be assisting to all Persons appointed by the King to collect or manage his Customs.

Escapes. If he suffer a Felon to escape before he is actually in Custody, 'tis a Misdemeanour, for which he may be indicted and fined; but if he was actually taken, and then he voluntarily suffer him to escape, or to destroy himself, 'tis Felony in the Constable, but if the Escape is by Negligence, or involuntary, 'tis only finable; but the Place where the Party was taken, and where he escaped, must be alledged in the Indictment. *Cro. Eliz.* 752. *Cro. Eliz.* 200.

If he discharges any Person taken upon Suspicion of Felony, 'tis justifiable if no Felony was committed; but otherwise he must not discharge him, tho' he knoweth that the Party is innocent; but it must be done by due Course of Law.

He may put a Felon into the Stocks, and lock him in, or put Irons upon him, or pinion him to prevent Escapes when he is about to carry him before a Justice of Peace, or to Goal.

Excise. Officer of Excise must have a Constable when he enters into a Brew-house by Night to guage Fats or Vessels.

A Constable, by Warrant from Justices, is to levy the Penalties on the Offenders against any Law of Excise, by Distress, *&c.* and if none, *&c.* may carry him to Goal.

Maker or Retailer of Vinegar, Cyder, *&c.* for Sale. refusing a Gauger to enter in the Night-time with a Constable, forfeits 15 *l.*

Brewer so refusing forfeits 20 *l.*

Excisemen suspecting secret Conveyance of Worts, may upon Request, and in Presence of a Constable, break open a Door in the Day-time, and if opposed, forfeits 20 *l.* by the 7 & 8 *Will. cap.* 30.

Felons. A Constable is bound, *ex Officio*, to endeavour the taking of Felons, and may raise Men to assist him; he may likewise apprehend upon Suspicion; and upon Complaint or common Fame, may search suspicious Houses.

If a Felon fly, the Constable may seize, and make an Inventory of his Goods, and send Hue-and-Cry after him; that is, he may raise the Town at any Time, and give the next Constable Notice: The Neglect is fineable by the Justices.

If upon such Flight he is apprehended in another County, the Felon must be committed where taken, and not where the Fact was done.

Two Justices, *Quorum unus*, are to set a Tax upon every Parish in a Hundred, where Damages are recovered against any one or more Inhabitants of that Hundred, upon the Statute of *Winton*; and the Constables of every Parish are to set a Tax upon every Inhabitant of these Parishes where they refuse to contribute, and may levy the same by Distress, *&c.*

Forcible Entry. If he refuse to assist the Justice in removing the Force, or carrying the Offender to Goal, he may be committed himself, and fined.

GAMES. He must once a Month search Houses where unlawful Games are kept, as Tables, Tennis, Bowles, &c. and may commit the Master of the House, and the Gamesters, till they give Sureties not to do the like again; if the Constable neglects, he forfeits *Forty Shillings* for every Default.

He may, by Warrant from one Justice of Peace, enter and search the suspected Houses of any Person not qualified, and if he find any Game there, shall carry the Offender before a Justice of Peace. 4 and 5 *W. & M. cap.* 23.

HORSES-STONED. A Constable must assist such who call him to seize stoned Horses put into Commons where Mares are usually kept; which Horses are not (at the Age of two Years) fifteen Hands high, the Horses must be brought to the next Pound, and measured by a Constable in the Presence of three Men; if he refuse to measure, forfeits *Forty Shillings*.

In Fenn Grounds the Horses may be but thirteen Hands high.

HUE-AND-CRY. A Constable is to raise a Hue-and-Cry upon Notice, and describing the Felon, and telling him which Way he is gone; and for this Purpose he may call upon the Parishioners to assist him in the Pursuit of the Felon to the next Constable, and he to the next, &c. and in the mean Time to make an Inventory of his Goods in the Presence of his Neighbours: If he refuse to pursue the Offender, he may be indicted, &c. but the Place where he gave Notice must be set forth in the Indictment. 10 *Eliz.* 665.

He was indicted, for that a Burglary was committed by Persons unknown, and that *J. S.* gave him Notice thereof, and required him to make Hue-and-Cry, which he refused: Exception was taken to the Indictment, because the Prosecutor did not alledge where he gave him Notice; and this was held a material Exception. *Cro. Eliz.* 654.

JURIES. Constables, &c. must every Year at *Michaelmas* Sessions give in a List of their Names and Places of Habitation within their respective Limits, of all Persons qualified to serve on Juries between the Age of 21 and 70 Years; and if he neglects, forfeits *Five Pound* to the King.

The Qualifications are 80 *l. per Ann.* for a Grand Jury-Man, and 10 *l. per Ann.* for a Petty Jury-man. 7 and 8 *W. cap.* 32.

LABOURERS. A Constable, *ex Officio*, may in Hay or Corn-Harvest set any ordinary Tradesman on Work by the Day, being required by those who want Labourers, and put them into Stocks for two Days and a Night if they refuse; and the Constable neglecting his Duty herein, forfeits *Forty Shillings*.

MILITIA. They are to levy the Money charged upon any Person by the Lord Lieutenant or his Deputies, for the providing Arms for Horse and Foot Soldiers; and if no Distress is to be found, may by Warrant from the Lord Lieutenant, &c. commit the Offender until he make Satisfaction.

MINISTER-

Minister-disturbed. A Constable, *ex Officio*, may apprehend the Offender, and carry him before a Justice of Peace.

Plague. He may command any Person infected, to keep within his House; and if after such Command he wilfully go abroad, having a Sore upon him, 'tis Felony; and if no Sores, he may be punished as a Vagabond, and bound to his Good Behaviour for a Year.

If he neglects to levy the Money appointed by Justices to relieve poor People infected, forfeits *Ten Shillings* for every Offence.

Carrying Prisoners to Jail. He, by Warrant from a Justice of Peace, may sell the Offender's Goods to defray his Charges, and of those who carry him to Goal; but such Goods must be appraised by some Inhabitants of the Place.

If the Offender hath no Goods, then the Town where he was apprehended must be at this Charge; and the Constable, *&c.* and three Inhabitants, may impose a Tax on every Inhabitant; which being allowed by a Justice of Peace, the Constable by Warrant may levy it on those who refuse; and being appraised by four Inhabitants there, may sell it.

If a Constable be sued, he may plead the General Issue, and shall have treble Damages besides Costs, if he recover.

In conveying a Felon either before a Justice, or to Goal, he may lock him in the Stocks, if unruly, to prevent his Escape.

Before I treat of this, I shall mention his Oath, *viz.*

The Constable's Oath.

YOU shall swear, That you shall well and truly execute the Office of a Constable or Head-borough, for the Town, or for the Parish of H. *for the Year ensuing, and until another be sworn in your Room, or until you shall be legally discharged thereof.*

This Oath is now administred for the Shortness of it, but by the other Oath he was usually sworn to these Particulars, *viz.*

Affrays to suppress and present. Armed Men to arrest. Barretors to apprehend. Bloodshed to present. Drunkenness to present. Felons to apprehend. Gaming-Houses and Gamesters to present. Hue-and-Cry to see made. Idle Persons punished. Night-walkers to punish. Peace to keep, *&c.* Rescues to present. Riot to suppress and apprehend. Rogues to punish. Vagabonds to apprehend. Warrants to execute. Watch to keep. And all other Things relating to his Office, according to his Ability.

This he is bound to do, but few make true Presentments of these Offences within their Liberties; they make Returns formally, and bring them to a Justice to sign, and carry them to the High Constable, who makes Oath that he had them from the Petty Constable; And they are not altered when they signify nothing.

It

It hath been lately queſtion'd, Why a High Conſtable ſhould be ſworn by a Matter of Form, and not a Petty Conſtable, to the Subſtance of a Return? Which, as a late Author obſerv'd; ought to be carried to a Juſtice ſome Time before the Seſſions, to be examined to the Truth of every Article.

Few Pariſhes there are, but what have Inmates and unlawful Cottages; and this muſt unavoidably fall under their Obſervation.

RENT. A Conſtable muſt aſſiſt the Party diſtraining, and ſwear two Men to appraiſe the Goods, and the Over-plus, after Debts ſatisfied, may be left in his Hands.

RIOTS. He is, *ex Officio*, to ſuppreſs all Riots, and to commit the Offenders, and all ſuch who break the Peace.

LORD'S-DAY. He muſt levy the Penalty of *Three Shillings and Four Pence*, by Warrant from one Juſtice, of ſuch who uſe unlawful Games; and if he cannot deſtrain, muſt put the Offender in the Stocks for three Hours.

Thoſe who on that Day keep or reſort to Bowling, Dancing, Ringing, or any Sport or Paſtime whatſoever, forfeits *Five Shillings* if above Fourteen Years old; if under, *Twelve Pence*; which the Conſtable muſt levy by Warrant of one Juſtice by Diſtreſs; and if no Diſtreſs can be taken, then to be put three Hours into the Stocks.

He muſt likewiſe levy *Six Shillings and Eight Pence*, by Warrant on a Butcher, who ſhall kill or ſell Fleſh on that Day.

Every Servant, Day-Labourer, Common-Soldier and Common-Seaman, being convicted of *Swearing*, forfeits *One Shilling* to the Poor, and every other Perſon *Two Shillings*, and double for the ſecond Offence, and treble for the third, to be levied by Warrant of one Juſtice. 6 & 7 *W.* & *M. Cap.* 11.

If a Conſtable have a *Warrant* to execute for Sureties of the Peace, and afterwards has a *Superſedeas* from a Juſtice, *&c.* yet if he will perſiſt to have the Party find Sureties, and he refuſe and is detain'd, 'tis falſe Impriſonment, *&c.*

Conſtables muſt cauſe *Night-Watches* to be ſet from *Whitſuntide* till *Michælmas*, *viz.* from Sun-ſet to Sun-riſing, with four Men or more, who muſt be able and Inhabitants of the Place, and watch by Turns; if they refuſe, the Conſtable may complain to the Juſtice of Peace, who may bind the Party refuſing, to good Behaviour, *&c.*

A Conſtable appointed a Man to watch, and becauſe he refuſed, he put him into the Stocks: In an Action of falſe Impriſonment, the Defendant juſtified as Conſtable, but did not ſhew that the Plaintiff was an Inhabitant of the Town; for he might be a Stranger, and then he could not appoint him to watch, nor put him in the Stocks for refuſing, but muſt complain to a Juſtice of Peace. *Cro. Eliz.* 204.

He muſt not diſpute, but execute *Warrants*: and if the Juſtices exceed their Authority, the Conſtable is excuſed.

But

But if the Juſtice of Peace ſends a Warrant to execute where he hath no Authority, or where he is no proper Judge, a Conſtable may be puniſhed if he execute it.

So, if the Warrant is miſtaken in the Penalty, or if it command the Conſtable to do Things out of his Precinct.

He needs not ſhew his Warrant, but may acquaint the Party with the Contents of it.

If he apprehend a Perſon without a Warrant, and obtain one afterwards, 'tis falſe Impriſonment.

If he let the Perſon go, upon his Promiſe to return and appear before a Juſtice of Peace, he cannot retake him by Virtue of his firſt Warrant; but if the Party eſcaped, he may purſue him, tho' in another County, and bring him back to the Juſtice of Peace.

If there are two Perſons of one Name, and the ſame Addition, and the Conſtable takes a wrong Perſon, 'tis no falſe Impriſonment.

But if a Warrant is againſt a particular Perſon by Name, and he apprehends another who is really the Offender, ſuch taking is wrongful, and the Party may have his Action of falſe Impriſonment, but will recover but little Damages. *Dyer* 244.

A Man may be bound to his good Behaviour for any Abuſe or Contempt to the Juſtice's Warrant, and may be indicted and fined for it.

In Caſes of Treaſon, Felony, or Breach of the Peace, a Conſtable may by Warrant from a Juſtice of Peace, break open an Houſe to take the Criminal; but firſt he ought to require the Opening of the Doors, and to acquaint the Perſons for what Purpoſe he came thither.

If he is indicted for not executing of a Warrant, you ought to ſhew ſome particular Act of Diſobedience, and not generally, that he did not execute it. *Trin.* 20. *Car. B. R.*

He may juſtify the Detaining an Offender for a Day, by the Command of a Juſtice of Peace without a Warrant, not having an Opportunity then to examine him. *Moor* 408.

A Warrant to remove a Conſtable, continuing in his Office above a Year.

To *A. B.* of *C.* Yeoman.

P. ſs. *WHEREAS it appeareth upon Oath to us,* P. L. *and* J. M. *two of his Majeſty's Juſtices of the Peace for the County aforeſaid, That* A. B. *hath lately executed the Office of a Head-borough in and for the Pariſh of* C. *aforeſaid, during the Space of one whole Year, and doth ſtill continue to execute the ſaid Office after the Expiration of the ſaid Year, contrary to the Form of the Statute in that Caſe made and provided: Now, we do hereby, according to the Power and Authority given unto us concerning the Premiſes, diſcharge you the ſaid* A. B. *from the Office of Conſtable in and for the ſaid Pariſh of* C. *and require*

quiring you from henceforth to forbear the Execution thereof, in any Matter or Thing whatsoever, until further Order shall be taken therein. Given under our Hands and Seals, &c.

A Warrant for a new Constable to appear and be sworn.

To D. E. *of, &c. Yeoman.*

Kent. ss. WHEREAS *A. B.* hath lately been discharged by us *P. L.* and *J. M.* two of his Majesty's Justices, for that he continued to execute the Office of a Constable for the Parish of *C.* aforesaid, above the Space of one whole Year: [Or, whereas *A. B.* late Constable of the Parish of *C.* is departed this Life, or is removed with himself and Family out of the Parish of *C.* within the Year in which he should have served in the Office of a Constable; or is, by Reason of his Age and Inability, not capable to execute, *&c.* the said Office]: THESE are therefore to require you, and in his Majesty's Name to charge and command you, personally to come before us, or before some other of his Majesty's Justices of the Peace for the said County, to take the Oath of a Constable, to serve his Majesty within the Town and Parish of *C.* And hereof fail not. Given under our Hands and Seals, *&c.*

By the Statute of 3 *Jac. cap.* 10. an Offender who is to be carried to Goal, must bear his own Charges, and of those who convey him; if he refuse, then the Constable, by Warrant from one Justice, may sell his Goods, *&c.*

A Warrant to levy upon the Offender's Goods, the Charges of carrying him to Goal.

To the Constable of the Town of C.

Y. ss. WHEREAS it appeareth to me upon the Complaint of the Parishioners of, *&c.* in the County aforesaid, upon Oath, That the Charges of *S. P.* and of those that conveyed him to Goal, being sent thither by my Warrant upon Suspicion of Felony, did amount to *Eleven Shillings*; and that the said *S. P.* hath Goods and Chattles within your Township sufficient to defray the said Expence: THESE are therefore, in his Majesty's Name, to command you to levy the said Sum of *Eleven Shillings*, by Distress and Sale of the Goods of the said *S. P.* within your Parish, causing the same before the Sale thereof, to be appraised by some of the Neighbours there, and that you pay the said Sum unto the Parishioners of, *&c.* in your said County. And hereof fail not, *&c.*

If the Offender hath no Goods, *&c.* then the Constable and Church-Wardens, and three of the Inhabitants; and if there are no such Officers, then four of the principal Inhabitants, may tax all the rest; which Tax must be allowed by one Justice: And if they refuse, then by a Warrant from one Justice the Officer may levy it.

A War-

A Warrant to levy the Tax upon thoſe who refuſe to pay, &c.

To the Conſtable, &c.

Kent. ſs. WHEREAS the Perſons whoſe Names are underwritten, have been lawfully taxed in the ſeveral Sums herein after-mentioned, and which are added to their reſpective Names, in order to ſatisfy the Charges expended by *T. M.* and thoſe whom he called to his Aſſiſtance to carry *S. P.* to Goal; which ſaid Perſons, as Oath hath been made, have refuſed to pay the ſame, contrary to the Form of the Statute in that Caſe made and provided: THESE are therefore to require you, or either of you, to levy the ſaid Sums upon the ſeveral Goods and Chattles of the reſpective Perſons ſo taxed as aforeſaid, and refuſing to pay the ſame, returning the Overplus to them reſpectively. Given under our Hands and Seals, *&c.*

By this Statute, the Conſtables, and other Inhabitants of the Pariſh, may tax all Perſons chargeable, by the 43 *Eliz. cap.* 2. to reimburſe their Charges for conveying Vagabonds, *&c.* to the Houſe of Correction, and for other Pariſh-Charges.

Now the Perſons to be taxed by the Act are, every Inhabitant of the Pariſh, the Parſon or the Vicar, and every Occupier of Houſes, Lands, Tythes and Woods; but the Landlord is not to be taxed in Reſpect of his Rent.

The Tax upon Lands is to be made according to the yearly Rent; but no Man is to be taxed for the Stock he hath upon the Lands: But if a Clothier or Merchant, having a conſiderable Stock in Trade or Merchandize, and occupy Lands, they may be taxed for both.

The Taxation of perſonal Eſtates muſt be in the Pariſh to which 'tis taxed, and after the Rate of *Five Pounds* for every Hundred.

This Tax or Rate muſt be confirmed under the Hands and Seals of two Juſtices of the Peace; and then if the Perſons taxed refuſe to pay, the Conſtable, by Warrant from two Juſtices, may levy it.

Firſt, if the Inhabitants refuſe to make a Tax, two Juſtices may make a Warrant, requiring them to do it.

The Form of which Warrant may be thus.

A Warrant, enabling the Pariſhioners to make a Tax to reimburſe the Conſtable.

To A.B.D.E.G.H.K.L. *and other the Inhabitants of the Pariſh of* D. *in the County of* Kent.

Kent ſs. WHEREAS we are informed by *T. M.* Conſtable of your ſaid Pariſh, That he hath expended ſeveral Sums of Money in the neceſſary Execution of his Office, and that he hath not been reimburſed the ſame, but hath deſired our Direction and Aſſiſtance for that Purpoſe: THESE are therefore, in his Majeſty's Name,

Name, to require and command you, or the greater Number of you, who ſhall be met together upon Notice of this Precept, to examine the Accompts of the ſaid Conſtable relating to the Premiſes; and that if you ſhall find his ſaid Expences to be neceſſary in the Execution of the ſaid Office, that then you forthwith do tax every Inhabitant within your Pariſh, in ſeveral and proportionable Sums, amounting to ſo much as will reimburſe him. And we do likewiſe hereby give Authority to the ſaid Conſtable, to demand and collect the reſpective Sums ſo aſſeſſed; and that if any Perſon ſo taxed, ſhall refuſe to pay the ſame, that then the ſaid Conſtable do return unto us, or to ſome other Juſtice of this County, the Names of the Perſons refuſing. Given under our Hands, *&c.*

The Names of the Perſons refuſing to pay the Tax, being returned by the Conſtables to the Juſtices of the Peace, then they may iſſue forth this Warrant to appear, and ſhew Cauſe why they refuſe to pay, *&c.*

To the Conſtable, &c. *of the Pariſh of* D. *in the County of* Kent.

Kent. ſs. THESE are in his Majeſty's Name, to command you, That you, or ſome or one of you, do give Notice unto *J. K. L. M. &c.* to appear before us at the Houſe of, *&c.* called or known by the Sign of, *&c.* in *M.* in the ſaid County, on Thurſday the Eighth Day of this Inſtant *Auguſt*, at Ten of the Clock in the Morning of the ſame Day, to ſhew Cauſe why they ſeverally refuſe to pay the reſpectve Sums of Money aſſeſs'd upon them, for and towards the Reimburſement of the Charges which *T. M.* Conſtable of the Pariſh of *D.* aforeſaid, hath ſuſtained in the neceſſary Execution of his ſaid Office. And hereof fail not. Given under our Hands and Seals, *&c.*

If they appear, then the two Juſtices may bind them over to appear at the Seſſions, if they think fit ſo to do. The Condition as follows.

THE Condition of this Recognizance is ſuch, *That whereas the above-bounden* A. B. *and* C. D. *have ſeverally refuſed to pay to* T. M. *late Conſtable of the Pariſh of*, &c. *in the County aforeſaid, ſuch Sums which have been ſeverally and reſpectively aſſeſſed upon them, in order to reimburſe the ſaid Conſtable what hath been neceſſarily expended by him in the Execution of his ſaid Office: If therefore the ſaid* A. B. *and* C D. *ſhall perſonally appear at the next General Quarter Seſſions of the Peace, to be holden at* M. *for the County aforeſaid, and ſhall then do and receive what ſhall be injoined by the ſaid Court relating to the Premiſes: Then this Recognizance ſhall be void, or elſe to ſtand in full Force and Virtue.*

Capt. & cogn. octavo die *Auguſti*,
Anno ſupradicto coram nobis. P. L. J. M.

When they appear at the Seſſions, they may be preſented and indicted there, ſetting forth, That the Aſſeſſment was reaſonable, and it muſt appear to be for a Conſtable's Rate, and conclude, *Contra Formam Statuti.*

If they refuſe to appear upon Notice, then the Juſtice may iſſue forth this Warrant:

To the Conſtable of, &c.

Kent. ſs. *WHEREAS we are informed, That* A. B. *and* C. D. *of your Pariſh, Yeomen, had Notice given unto them reſpectively, to appear before us at a certain Time and Place mentioned in a former Warrant for that Purpoſe, to ſhew Cauſe why they did not pay unto* T. M. *late Conſtable of the Pariſh of* D. *aforeſaid, the reſpective Sums aſſeſſed upon them towards the Reimburſement of his neceſſary Charges in the Execution of his ſaid Office; and whereas they have refuſed or neglected to appear according to the Purport of the ſaid Warrant, or to pay the ſaid Money: Theſe are therefore in his Majeſty's Name, to command you to bring the aforeſaid* A. B. *and* C. D. *before us, or ſome other Juſtice of the Peace for this County, at the Houſe of,* &c. *in* M. *upon Thurſday next, by Ten of the Clock in the Forenoon of the ſame Day, to anſwer the Premiſes. Given under our Hands and Seals,* &c.

If they appear before the Juſtices, and they do not think it expedient to bind them over to the Seſſions, then they may grant a Warrant to diſtrain, *&c.* for the Charges, as followeth:

To the Conſtable of the Pariſh of D. *in the County of* Kent.

Kent, ſs. *WHEREAS it appeareth unto us, upon the Oath of* T. M. *late Conſtable of the ſaid Pariſh, That* A. B. *and* C. D. *Inhabitants of the aforeſaid Pariſh, have refuſed to pay the Sums herein after written*; that is to ſay, *That the ſaid* A. B. *hath refuſed to pay* One Shilling *and the ſaid* C. D. One Shilling and Six Pence, *being ſeverally aſſeſſed upon them towards the Reimburſing ſuch Charges which the ſaid* T. M. *hath neceſſarily expended in the Execution of his ſaid Office: Theſe are therefore to require you to levy the ſaid reſpective Sums ſo aſſeſſed upon the ſaid Perſons, by Diſtreſs and Sale of their reſpective Goods; rendring to them the Overplus, if any ſhall be. Given under our Hands and Seals,* &c.

On his Serving of Warrants.

THIS is a Precept in Writing, under the Hand and Seal of the Juſtice of the Peace

It ought to contain the Cauſe; and therefore a Warrant to anſwer ſuch Things as ſhall be objected, without mentioning any Thing in particular, is not good. This is the Opinion of my Lord *Coke*, 2 *Inſt.* 591.

If

If any Perſon abuſe the Warrant, as by throwing it into the Dirt, or treading it under Foot, or not executing it; 'tis a Contempt of the King's Proceſs, and he ſhall be indicted and fined.

The Juſtice ought not to grant a Blank Warrant, for this is finable; nor a Warrant for Felony, without examining the Perſon who required it, upon Oath, and binding him over to give Evidence.

The Officer. The Conſtable being a Perſon to whom it is directed, he ought to execute it with all convenient Speed; and if 'tis a Warrant for the Peace or good Behaviour, he may break open Doors.

Upon arreſting the Party, he need not ſhew his Warrant; but he ought to declare the Contents of it.

If he is reſiſted or aſſaulted, he may juſtify the Beating and Wounding, *&c.*

If after the Arreſt, the Officer lets his Priſoner go, upon his Promiſe to return to appear, he cannot retake him upon the firſt Warrant, becauſe it was executed: but if the Priſoner eſcape, he may take him upon a freſh Purſuit without another Warrant.

If a Juſtice grants a Warrant in Caſes beyond his Authority, the Officer muſt obey; but if it be where he hath no Juriſdiction, or in a Cauſe where he is not properly a Judge, if the Officer executes ſuch Warrants, he is puniſhable.

As if a Poor's Rate is illegally aſſeſſed, and afterwards levied by a Warrant from the Juſtice, *&c.* this will not excuſe the Church-Wardens. *Cro. Car.* 394.

Where a particular Perſon who hath an Authority to act, commits a Miſtake in any Thing which is in his Power or Juriſdiction, in ſuch Caſe the Officer will be excuſed for executing it; but where he exceeds his Authority, all is void, becauſe 'tis limited.

Where the Party is to be brought. If the Warrant is general, *viz.* to be brought before the Juſtice who grants it, or any other Juſtice, *&c.* the Conſtable, who is the Officer and Miniſter of Juſtice, may carry the Party before any Magiſtrate, becauſe he is preſumed to be an indifferent Perſon, and ſworn to execute his Office duly; and therefore 'tis reaſonable that the Election ſhould be in him. 5 *Rep. Foſter's Caſe.*

It was the Opinion of my Lord Chief Juſtice *Wray*, That the Juſtice, *&c.* may grant a Warrant to bring the Perſon before himſelf, becauſe he who hath taken the Examination is moſt fit to do Juſtice.

Where the Officer is liable to falſe Impriſonment. If a Warrant is to apprehend *A. B.* and there are ſeveral of that Name, but of different Additions, and the wrong Perſon is arreſted, an Action of falſe Impriſonment lies.

If after the Arreſt the Officer procures a Warrant, having none before, this is a wrongful Taking, and the Officer is liable to the like Action. *Dyer* 244.

If a Warrant is granted to take *A. B.* the Son of *D. B.* and the Officer arrects *A. B.* the Son of *E. B.* though he is the Offender, yet 'tis falſe Impriſonment; becauſe he had no Warrant againſt ſuch a Perſon. *Quære.*

If an Action of falſe Impriſonment be brought againſt an Officer arreſting another upon Suſpicion of Felony, the Conſtable may plead the general Iſſue, and give the ſpecial Matter in Evidence; which, together with the Warrant, will be a ſufficient Excuſe for him 7 *Jac. c.* 5.

The Form of a Warrant to apprehend a Traitor.

J. G. *Eſq; One of his Majeſty's Juſtices of the Peace within the County of* T. *To the Sheriff of the ſaid County, and to all High Conſtables, Petty Conſtables, and other his Majeſty's Officers, greeting,* &c. *Whereas* L. M. *and* R. S. *are vehemently ſuſpected to have committed Treaſon, whereof I have received Information: Theſe are therefore in his Majeſty's Name, ſtrictly to charge and command you, and every of you, upon Sight hereof, without Delay, within your ſeveral Bailiwicks, Hundreds, and Conſtablewicks, to make diligent Search for the Bodies of the ſaid* L. M. *and* R. S. *and them, and either of them ſo found, to arreſt and attach, and immediately upon ſuch Arreſt, to bring before me at my Houſe at* B. *in the ſaid County. Whereof fail not at your Peril. Sealed with my Seal, and dated the ſeventh Day of* M. *in the 21ſt Year of the Reign of our,* &c.

A Warrant for keeping the Peace.

Eſſex ſs. A. B. *and* C. D. *Eſquires, To the Sheriff of the ſame County, and to all High Conſtables, and Petty Conſtables, and other Miniſters and Officers appointed to keep the Peace within the ſame County, Greeting: Whereas we are informed, that there is a great Meeting appointed to be had at* E. *within this County, upon the firſt Day of* February *next, under Pretence of a Fair, then and there to be kept* [or, *under Pretence of a Cock-fighting to be there had, or under Pretence of a Race to be there run,* and the like] *when and where, by Occaſion or under Colour thereof, it is ſuſpected there may be ſome notorious Breach of the Peace, by Affray, Riot, Inſurrection, or otherwiſe; for the Preventing whereof and the Keeping of the Peace; Theſe are to authorize and require you, and every of you, that calling to your Aſſiſtance and Aid ſuch a Number of Perſons as you ſhall think fit; all which Perſons are by us required to aſſiſt you, and that you be then and there provided during the ſame Meeting; and by all the lawful Ways and Means you can, ſee the publick Peace be kept and preſerved, and the Breakers and Diſturbers thereof puniſh'd: And hereof, and to give us an Account of your Doings herein, within fourteen Days after the ſame Day be paſt, you are not to fail at your Peril. Given under our Hands and Seals at* S. *within the ſame County, the firſt Day of,* &c.

A War-

A Warrant from the High Conſtable to make a privy Search in the Night for Whores, &c.

To the Conſtable, &c.

Middleſex, ſs. BY Virtue of a Warrant to me directed from his Majeſty's Juſtices of the Peace of this County, within this Hundred *A.* Theſe are therefore, in his Majeſty's Name, ſtrictly to charge and command you forthwith upon Sight hereof, to make diligent Search and Enquiry after all *Rogues*, *Vagabonds*, *and Sturdy Beggars* [upon Monday next in the Night of the ſame Day, being the Twenty-ſixth of this Inſtant *February*] And all Perſons that ſhall utter or ſell any *Beer* or *Ale* without Licence of his Majeſty's Juſtice of the Peace of this County, and all ſuch as keep ſuſpected *Bawdy-Houſes*; and to appear before his Majeſty's Juſtices of the Peace at *H.* upon Thurſday next, by Eight of the Clock in the Forenoon, then and there to make a due and true Return of this Warrant, and to bring ſuch Perſons as you ſhall find upon your privy Search, before his Majeſty's Juſtices at the Time and Place aforeſaid, to be dealt with according to Law: Hereof you are not to fail, as you will anſwer the Contrary at your Perils. Dated, *&c.* *A. B.* High Conſtable.

CORONERS.

THE Office of a Coroner is very ancient, and has been, and yet it is held in high Eſteem: For the Lord Mayor of *London*, is held to be Coroner there. 2 *Cro.* 531. And the Chief Juſtice of the King's Bench is Sovereign Coroner of all *England*, 4 *Co.* 57. *b.* And he upon View of the Body of one killed in open View, as a Coroner, may make a Record returnable into the King's Bench. *Ibid.*

But to come nearer to the intended Purpoſe, amongſt other Matters, it is the Coroner's Buſineſs to view the Bodies of ſuch as come to caſual Deaths, make-away themſelves, or are made-away by others, or ſuſpected to be put out of the World by a violent Death, or dying languiſhing in Priſon, where there may be any Suſpicion the Party died not naturally, but by hard Uſage, Starving, or that the Impriſonment cauſeth his Death, *&c.* For he is to know, and certifie how the King came to loſe a Subject.

He is, ſays 3d *Inſtitute*, Fol. 129. to have *Viſum Corporis*, of a Priſoner dying in a Goal, by Reaſon of Dureſs. And the Jury or Inqueſt, before the Coroner, is to be of Perſons within the four next adjacent Vills, made by the Conſtables, and no Challenge lies to any of them ſo legally ſummoned on the Inqueſt. 1 *Cro.* 135. And upon a View of the Body, and a ſtrict Examination how the Party came

came by his Death, they muſt give in their Verdict to the beſt of their Judgment, according to the Evidence, or other Matters appearing to them, whether it be *Felo de ſe*, he killed or drowned himſelf, *&c.* or died by the Hand of other Perſon or Perſons, or by the Fall of a Houſe, Wall, Timber, Kick of a Horſe, or any other Matter or Thing that brought the Party to an untimely End; and the Coroner being ſo ſatisfied, he is to give his Warrant for the Burial of the Party, according as it ſhall be found upon Verdict; and an Indictment may be grounded thereon, againſt ſuch Party or Parties as ſhall be found concerned. And in this Caſe he has Power to commit and bind over Perſons accuſed before him of Murder, or the like, as he ſees Cauſe. And for doing his Office of one ſlain or murthered, he may lawfully take *Thirteen Shillings and Four Pence*, of the Slayer or Murtherer; and if he have none, then of the Town where the Murther was committed, or the Murtherer ſuffered to eſcape. 3 *Hen.* 7 *Chap.* 1 *Lamb.* 454.

Who ought to be a Coroner, and who not. By the Statute of *W.* 1. *cap.* 10. they were to be Knights; *that is*, they were to be Freeholders, and Men of Eſtates ſufficient to qualifie them for this Office; for being choſen by the Freeholders of the County, 'tis they muſt anſwer the Fines, and other Duties impoſed on the Coroners in Matters relating to their Office, if they are not of Ability to do it themſelves.

And therefore, if he hath not ſufficient Lands within the Hundred, a Writ may iſſue to chuſe another; for in ſuch Caſes he ceaſes to be a Coroner, and need not be diſcharged formally by a Writ. *Godb.* 105. *F. N. B.* 163. *contra.*

They muſt be Men, who *melius ſciant, ac poſſunt Officio intendere*; and therefore a blind, deaf, lame or ſick Man, or who is *perpetuo languidus*, is not fit for this Office, and may be removed, if choſen.

How choſen, and how many in a County. By Virtue of a Writ *de Coronatore elegendo*, directed to the Sheriff, he is to be choſen by the Freeholders of the County; and the Sheriff after the Day of Election is to certifie it, and the Name of the Perſon choſen, *&c.* *F. N. B.* 1633.

He is likewiſe to adminiſter the Oath of his Office to him; as to the Number 'tis uncertain; but in moſt Counties there are generally four Coroners.

And becauſe he is elected by the Freeholders, his Office is not to determine by the Demiſe of the King. 1 *Levinz.* 120.

His Office in Relation to the Dead, and the Witneſſes. He is to enquire *ſuper viſum Corporis*, how the Perſon was killed, and by whom, and what Goods and Chattels he had at the Time of the Fact committed.

If the Body cannot be found, then he has no Authority; but in ſuch Caſe the Matter may be preſented to the Juſtices in the Quarter Seſſions, and there found by the Jury; and this will entitle the King to a Forfeiture of the Goods. 1 *Roll. Rep.* 216. *Noy* 87. *Poph.* 209. *Levinz.* 141. *'tis traverſable.* He

He muſt take the Depoſition of Witneſſes in Writing, atteſted under their Hands, and may bind them over to the next Seſſions, Aſſizes, or Goal-Delivery, to give Evidence. *&c.*

If the Jury impannelled by him is ſworn, and the Witneſſes not ready, he may then adjourn them, and bind them by Recognizance to appear again.

When he hath Notice given to view the Body, he muſt make a Precept directed to the Conſtable where it lieth, to ſummon Twenty four Men (who are to be of the Jury) to appear before him at a certain Day and Place, to execute ſuch Things as ſhall be given to them in Charge.

If the Body is buried before he comes, the Vill, *&c.* muſt be amerced, and he may dig it up again; the Vill may be alſo amerced for neglecting to ſend for him, ſo that the Body is putrified to the Annoyance of the People.

Deputy. He is a judicial Officer, and therefore cannot make a Deputy: Beſides, by the Statute called *Officium Coronatoris*, he is enjoined *Statim accedere ad occiſos*, which implies, That he ought to execute his Office in Perſon; and therefore he ought to ſee the dead Body; and an Inquiſition otherwiſe taken is void. *Stamf. Pl. Coron.* 51. 3 *Ed.* 1.

His Fees. He being an Officer at the Common Law for the Adminiſtration of Juſtice, was to have no Fee for executing his Office; but by the Statute of 3 *Hen.* 7. he is impowered upon View of the Body to take *Thirteen Shillings and Four Pence*, of the Goods of the Slayer; if he has none, and is fled, then he may amerce the Town for ſuffering the Criminal to eſcape, and take that Fee out of the Amercement; but he cannot demand any Fee upon the View of a Perſon killed by Misfortune. 2 *Inſt.* 176.

If he doth not come, having Notice of the Death of any Perſon, he may be fined and impriſoned by the Juſtices.

He may be puniſhed. For not binding over Witneſſes to the next Goal-Delivery, *&c.* for not certifying his Recognizances, and the Evidence and Inquiſition taken before him, the Juſtices may fine him.

Inquiſition, and Matters relating to it. He is to take an Inquiſition upon Flight of the Felon, to intitle the King to a Forfeiture. 5 *Rep.* 109. *B.*

But this muſt be within his proper Juriſdiction in the County; for if any Perſon be killed within the Verge of the King's Houſhold, the Coroner there hath an exempt Power. 4. *Rep.* 45.

If there is any Practice with him to ſuppreſs the Evidence for the King, *B. R.* may ſet aſide the Inquiſition upon a *male ſe geſſit*; and if he omit or neglect to enquire, *B. R.* as ſupreme Coroner, may do it, or appoint Commiſſioners; but then it muſt be *ſuper viſum Corporis*, if done by Commiſſioners. 1 *Vent.* 182.

He ought to deliver his Inquiſition at the next Goal-Delivery, or to certifie it to *B. R.* where the Chief Juſtice is the ſupreme Coroner: If he refuſeth, he may be diſcharged of his Office, and fined by the Juſtices.

And therefore, when a Coroner did not return his Inquiſition, it being found Murder, and the ſame Perſon being indicted at the next Goal-Delivery, and the Jury found the Bill for Manſlaughter, the Party came in and confeſſed the Indictment, and was bailed, and afterwards pleaded his Pardon, which was allowed; yet the Court made him plead to an Indictment upon the Coroner's Inqueſt, which he did, *viz. Auterfoit Convict*, and for this Neglect the Coroner was fined.

He may fine any *Nuſance* which occaſioned the Death, *&c.* As if any one riding over a Bridge, fall into the River, and was drowned, the Bridge being broken, or out of Repair, the Coroner may fine it; and in ſuch Caſe the Town ſhall be amerced; but it muſt likewiſe be found, that the Town is bound to repair it. *Allen* 51.

The Vill, *&c.* ſhall be amerced, if the Coroner doth not take an Inquiſition *ſuper viſum Corporis*, becauſe it ſhall be intended they did not give him Notice.

An Information was brought by the Maſter of the Crown-Office, againſt the Debtor of a *Felo de ſe*, the Money being by that Means forfeited to the King: If the Subſtance of the Inquiſition be not ſet forth in the Information, 'tis void. 1 *Sand.* 275.

Melius Inquirend'. A *Melius Inquirend'* is never granted after an Inquiſition *ſuper viſum Corporis* is filed, unleſs it is quaſhed upon Oath made of a Miſdemeanour in the Coroner or the Jury; as that they did not go according to their Evidence. 1 *Mod.* 82. 3 *Mod.* 80. 238.

And in ſome Caſes it may go to the Sheriff; as if the Coroner *ſuper viſum Corporis*, find that a Man *fortuito*, fell into a Pit, *&c.* yet there may go a *Melius Inquirend'* to the Sheriff, to enquire of the Death, *&c.* and what Goods and Chattels he had at that Time.

By the Statute of 4 *Ed.* 1. the Inquiſition ſhould be taken *ſuper ſacrum*, &c. *hominum Villarum prox' adjacen'*, but it was *per ſacrum*, &c. *proborum & legalium hominum de Parochia*, &c. yet it was held good. *Sid.* 204. *Latch* 166. 1 *Vent.* 182. *Cro. Eliz.* 371.

Matters of Form may be amended; *as ſeipſum felonice ſubmerſus fuit*; and it ſhould be *jecit ſeipſum in aqam, & ibidem ſeipſum merſit*. *Sid.* 259.

Returning of a Proceſs. If he return *fugam facit*, 'tis not traverſable; but if he find the Perſon *Felo de ſe*, it may be traverſed. 2 *Lewinz.* 152. 1 *Vent.* 278. 352.

He is a miniſterial as well as a judicial Officer; and therefore where an Exception is to the Sheriff, *viz.* That he is of Kin, or Tenant to the Party; or where 'tis at his own Suit, or if any Default is in him by Partiality or otherwiſe, in making the Pannel; in either of theſe or like Caſes, the Coroner ſhall return the Proceſs.

But

But then, if the original Proceſs is directed to him, all other Proceſs in the ſame Suit muſt be ſo likewiſe, tho' another and more indifferent Sheriff be appointed whilſt that Suit is depending.

And if ſuch Proceſs is directed *Coronatoribus*, it hath been held, Two may return it, tho' there are more in the County, but one cannot; for in this Caſe they are but as one Officer; and therefore, if one arreſt a Debtor, and he eſcapes, the Action ſhall be brought againſt both. 3 *Levinz.* 399.

Relating to the Coroner's Office.

If any Man or Woman, *&c.* be wounded, and thereby in Peril of Death, the Party that did it, or was helping in it, being apprehended, may be committed and kept in Cuſtody, till it be perfectly known by the Teſtimony of ſkillful Perſons, whether the wounded Party will live or die of thoſe Wounds or Blows given; and if he die, the Coroner, upon View of the dead Body, ſhall enquire of him or them that have done the Fact, whether Man or Woman, and take the Names of them that were preſent, as Witneſſes, or any other Ways knowing of it. Alſo he ſhall take eſpecial Notice of the Abettors and Concealers in, or towards the Fact, or any Way therein concerned, and ſo found, to enroll and certifie the ſame.

The Coroner, according to his Inqueſt, ſhall give in their Verdict if there be Cauſe; for he is to take Care to proſecute the Offender or Offenders, if the Relations of the Deceaſed or others refuſe, or are ſlack in ſo doing; ſo that if any Man, *&c.* be ſlain or murthered, and thereof the Slayers, Murtherers, Abettors, Maintainers and Comforters may be indicted, and brought to Arraignment and Tryal of the Iſſue, whether they are guilty of the Murther, Manſlaughter, *&c.* or not guilty; which may be done any Time in a Year and a Day after the ſame Felony and Murther committed; which muſt be dated from the Time of the Wounding, or Beating, not from the Time of the Dying, if the Party languiſh, and live any Time after, tho' ſome what conſiderable; as a Week, a Month, or more.

And the Wife, or Heir of the Perſon ſo ſlain or murthered, as the Caſe requires, may commence his or her Appeal in proper Perſon, any Time within the Year after the ſaid Felony done, before the Sheriff and Coroner of the County where the ſaid Felony and Murther was done, or before the King in his Bench of Juſtices of Goal-Delivery. And the Appellant in any Appeals of Murther, or Death of a Man, *&c.* where Battle by the Courſe of common Law ſeeth not, may make their Attornies, and appear by the ſame.

And the ſaid Appeals after they be commenced, may be proceeded in to the End of the Suit and Execution.

If a Murtherer or Man-ſlayer eſcape, the Juſtices of the Peace have Power to enquire of ſuch Eſcapes, and to certifie them in the King's-Bench; and that after the Felony found, the Coroners deliver their Inquiſitions before the Juſtices at the next Goal-Delivery

in

in the County where the Inquiſition is taken; and they are to proceed againſt ſuch Murtherers, if they be in Goal, or elſe certifie the Inquiſition in the King's Bench, or as it is worded, put the ſaid Inquiſition before the King in his Bench.

All ſuch Coroners as are remiſs in their Office, or Duty of their Place, and make not their reſpective Inquiſitions upon the View of the dead Body, and certifie not as aforeſaid, or ordained, every Coroner for ſuch Offence, forfeits to the King *Five Pounds*, by 3 *Hen.* 7 *chap* 1.

Further Particulars relating to the Coroner's Office.

The Office of *Coroner* hath its Etymology or Derivation from *Corona*, being an Officer of the Crown, and hath principal Cognizance of ſome Pleas, called *Pleas of the Crown*.

Coroners were firſt Eſtabliſhed by King *Alfred*, and ordained to be Conſervators of the Peace. To their Office appertains the receiving of Appeals of the whole County, of Felonies committed within a Year and a Day; to award the Exigents of Contempts, and to pronounce Judgment of Out-Lawries upon County-Days.

Of ancient Time this Office was of ſuch Eſtimation, that none could have it but a Knight; for this was the Policy of ancient Times, that Officers did ever give Grace to the Place, and not the Place (only) to grace the Officer. And to the Intent that the Coroner ſhould have ſufficient within the County to be reſponſible for all that he doth, or ought to do by his Office, and that they might execute their Office without Bribery,

The Coroner's Office is both Judicial and Miniſterial. And as to the View of a Body of a Man, it is his Office, That ſo ſoon as he ſhall be certified of any caſual Death, to ſend the Conſtable of the Place to ſummon a ſufficient Number of Men of the four next adjacent Towns, That at ſuch a Time and Place they appear before the Coroner, where the Body is to be viewed; and if it be buried it is to be taken up; and he is to record the Names of thoſe who buried him. And if it hath been damaged by ill-keeping, or lain ſo long that it cannot be judged how it came by its Death, the ſame muſt alſo be recorded, that this Negligence may be puniſhed at the coming of the Juſtices of Aſſize into the Circuit; for the Town where the Neglect was ſhall be grievouſly amerced upon the Sight of the Coroner's Rolls.

He muſt do his Office in Perſon, and ſee the dead Body when he maketh Inquiſition, otherwiſe the Enquiry is invalid.

If the Coroner be remiſs and negligent in coming to execute his Office, after he is ſent unto, he ſhall be amerced.

The Coroner with the Jury preſent, are to view the Bodies of ſuch as come to caſual Deaths, make away themſelves, or made away by others, or ſuſpected to be put out of the World by violent Means, hard Uſage, ſtarving in Priſon, or elſewhere; and they are to enquire

quire how ſuch Perſon came to his End, and to make ſtrict Examination concerning the ſame, by ſending for any Perſon or Perſons that can give Information thereon. Then are they to give their Verdict to the beſt of their Judgment, ſetting forth the Manner of his being killed, whether he died of another's Felony, or of his own, or by Miſchance, as by the Fall of a Houſe, Wall, Timber, Kick of a Horſe, and the like; and if of Blows, whether of a Staff, Stone, or any other Weapon: And he is to record in his Rolls the Names of ſuch Jurors as were ſummoned and do not appear, that the ſame Offences of Diſobedience may not paſs unpuniſhed: For by a Jury he is to certify how the King came to loſe a Subject, the Strength and Power of a Prince conſiſting in the Force and Number of his People; and therefore its his Intereſt to maintain and ſecure them in Peace and Tranquility.

The Method of Keeping the Coroner's *Court.*

THE Coroner's Court is a Court of Record, and held after this Manner:

When the Coroner cometh to view a Party that hath hanged, killed, or drowned himſelf, or that hath come to his Death by any other Accident, he muſt either go himſelf, or make out his Warrant to impanel a Jury, to the Conſtable or Bailiff in whoſe Liberty the Party lieth dead, to appear before him at ſuch a Place, Day and Hour as he ſhall appoint. The Form of the Warrant runs thus:

To the Sheriff (or Conſtable) of *York*, &c. Greeting.

THESE are to will and require you, in the Name of our Sovereign Lord the King, ſtraitly to charge and command You, That you cauſe to come before me, A. B. *Coroner of the County of* York, *at the Houſe of* C. D. *in* Kingſton, *between the Hours of One and Two in the Afternoon of this preſent firſt Day of* June, *Twenty Four good and lawful Men of the ſaid Town, or the three next adjacent Towns in the ſaid County; then and there to do and execute ſuch Things as ſhall be given them in Charge on his Majeſty's Behalf*; (or) *Then and there to enquire upon the View of the Body of* Thomas Edwards *there lying dead, how and in what Manner he came to his Death. Fail not herein at your Peril, as you will anſwer the Contrary. Given under my Hand and Seal, this firſt Day of* June, *in the Twenty Second Year of his Majeſty's Reign,* Annoq; Domini, 1749. A. B. *Coroner.*

When you come to the Place appointed, call the Conſtable or Bailiff to make Return of their Warrants.

Then command three Proclamations to be made, *O Yes, Silence is commanded.* Then call the Jury after this Manner;

You good Men that are returned to appear here this preſent Time, to enquire for our Sovereign Lord the King, anſwer to your Names, as you ſhall be called, every Man at the firſt Call, upon Pain and Peril that ſhall fall thereon. And

And ſuch of the Jury who fail to appear, ſhall be fined *Forty Shillings.*

The Jury appearing, ſwear Fourteen or Fifteen of them, and give the Foreman his Oath, thus,

You ſhall diligently enquire and true Preſentment make on the Behalf of our Sovereign Lord the King, how and in what Manner, Thomas Edwards, *here lying dead, came to his Death; and you ſhall deliver up to me (his Majeſty's Coroner for the County of,* &c.) *a true Verdict thereof, according to ſuch Evidince as ſhall be given up to you, according to your Knowledge.* So help you God.

Then ſwear the reſt by four at once, thus;

All ſuch Oath, as L. M. *the Foreman of this Inqueſt, for his Part hath taken, you and every One of you, ſhall well and truly obſerve and keep on your Parts, according to your Evidence.* So help you God.

If the Evidence be not ready, you may adjourn until another Day and Place to receive their Evidence, binding the Jury by Recognizance in Twenty Pound each for their Appearance.

Then ſend out your Warrant for the Witneſſes, commanding them to come to be examined before you, and to deliver their Knowledge touching the Matter in Queſtion. And when they appear, take their Examinations in Writing under their Hands.

If it be about the Tryal of a Man's Life, then muſt the Witneſſes be all bound over in *Twenty Pound* a Piece, at the leaſt, perſonally to appear at the next Aſſizes, to deliver their Knowledge therein.

The Recognizance muſt be in this Manner, *viz.*

THE 22d *Day of* Auguſt, *in the 22d Year of the Reign of our Sovereign Lord King* GEORGE *the 2d, of* Great-Britain, *&c.* A.B. *of* C. *came before me* D. E. *one of his Majeſty's Juſtices,* &c. *and acknowledged himſelf to be indebted to our Sovereign Lord the King,* &c.

THE Condition of this Recognizance is ſuch, That if the above-bounden *A. B.* do perſonally appear before the Juſtices of Aſſize and Goal-Delivery, at the next Aſſizes to be holden at------for the ſaid County; and then and there deliver and ſet forth his Knowledge, touching the Death of *Thomas Edwards,* and do not depart thence without Licence of the ſaid Court, that then this Recognizance to be void and of none Effect, or elſe to be and remain in full Force and Virtue. *Acknowledged before me the Day and Year above-written.* D. E.

Then command three Proclamations to be made, thus,

O Yes, O Yes, O Yes, If any Man can give Evidence on the Behalf of his Majeſty, how and in what Manner Thomas Edwards, *here lying dead, came to his Death, draw near and you ſhall be heard.*

The Evidence appearing, give him, her or them the Oath, *viz.*

All ſuch Evidence as you ſhall give to this Inqueſt, concerning the Death of T. E. *here lying dead, ſhall be the Truth, the whole Truth, and nothing but the Truth.* So help you God. The

The Jury being ſworn, command them to ſtand together and hear their Charge, which the Coroner muſt give, *viz.*

Gentlemen,

YOU that are ſworn, you ſhall by your Oath declare of the Death of this Man, whether he died of Felony, or by Miſchance; and if of Felony, whether of his own, or of another's; and if by Miſchance, whether by the Act of God or of Man: And if of Famine, whether of Poverty or of common Peſtilence; and from whence he came, and who he was. And if he died of another's Felony, who were Principals and who were Acceſſaries; and if Hue-and-Cry were made or not, and whether the Man fled or not; You are alſo to enquire, whether he died of long Impriſonment and hard Uſage there, or not; and who threatned him of his Life or Members: and ſo of all prevailing Circumſtances that can come by Preſumption.

And in Caſe he died by Hurt or Fall, then you ſhall enquire the Names of the Finders, of his next Neighbours, and who were his Parents, and if he was killed there, or elſewhere, and if elſewhere, by whom and how he was brought: So alſo you are to enquire, if there was any *Deodand*, and to whoſe Hand it came.

And in Caſe he died of another's Felony, then you are to enquire who were the Felons, from whence they came, and where they now are.

And if he died of his own Felony, then you are to enquire of the Manner, and how he came to make away with himſelf; and of the Value of his Goods, and where they are. All which you are to enquire of, and endeavour to find out. *So far the Charge to the Jury.*

You are alſo to obſerve, if one Man wilfully kill another, or if a Man kill or drown himſelf, the firſt doth forfeit by that Fact both his Lands and his Goods; and the other forfeits but Goods and Chattels, and no Lands.

And if any Homicide happen to be wilful Murder, (which Offence cannot be too ſeverely puniſhed) the Offender herein ought to loſe both Life, Lands and Goods.

But if it be found Man-ſlaughter, and the Offender can read, then he may, in Favour of his Life, by the King's Mercy, have the Benefit of his Clergy, and ſo ſave his Life. But in this Caſe he ſhall forfeit both his Lands and Goods. The Goods being found muſt be appraiſed, and left in the Town or Village where ſuch Offender dwelt, and there ſafely kept, until the Offender be acquitted, or convicted by due Courſe of Law; In the Interim, the Offender muſt be maintained with his Goods, ſo that he may be kept alive to anſwer his Fact: And when he is convicted, ſuch Goods as remain muſt go to thoſe to whom they belong by the Law, and not before. And as for the Offender's Free Land, immediately after Conviction, his

his Majesty must have *Annum, Diem,* and *Vastum* therein, and after, the Lord of whom it was holden, shall have it as an Escheat.

Thus having in brief declared these Things incident to the Office, and to you to enquire of, I will conclude. The Jury must then stand together and hear their Evidence.

Having heard the Evidence, they must give in their Verdict; upon which the Coroner draws up the Inquisition, thus,

An Inquisition of Murder.

Middl. ss. AN Inquisition indented, taken at the Parish of *F.* in the County of *Middlesex*, the 25th Day of *March*, *Anno.* &c. before *T. E.* Gent. Coroner of the County aforesaid, upon Sight of the Body of a certain *W. F.* then and there lying dead, by the Oath of *J. W. R. W.* &c. honest and lawful Men of the Parish aforesaid, and four other Villages in the County aforesaid, next adjoining the same Parish, being sworn, tried and charged to enquire on the Part of our Sovereign Lord the King, after what Fashion and how the aforesaid *W. F.* came to his Death, upon their Oath do say, That *E. L.* late of the Parish of *F.* aforesaid, in the County aforesaid, Labourer, the Twentieth Day of *March*, *Anno. Dom.* 1749, aforesaid, not having the Fear of God before his Eyes, but being moved and led by the Instigation of the Devil, with Force and Arms, *&c.* at the Parish aforesaid, in the County aforesaid, in and upon the aforesaid *W. F.* then and there in the Peace of God, and of our said Lord the King being, feloniously an Assault did make, and that the aforesaid *E. L.* him the said *W. F* then and there on the Earth did cast and throw down; and the aforesaid *E. L.* with his Left Hand and with both the Feet of him the said *E. L.* the aforesaid *W. F.* (so as he lay flat on the Earth) in and upon his Breast with his Hands and Feet feloniously did strike, beat and tread down. And the aforesaid *W. F.* then and there with his Left Hand, and with both the Feet of him the said *E. L.* in and upon the Breast of the said *W. F.* a Mortal Bruise did give, in Length Six Inches and in Breadth Four Inches; of which said mortal Bruise the aforesaid *W. F.* then and there instantly languished, and languishing did live, from the said Nineteenth Day of *March*, *Anno*, &c. until the Twentieth Day of the said Month of *March*, then next following, on which Day the aforesaid *W. F.* at the Parish aforesaid, in the County aforesaid, of the aforesaid Mortal Bruise died; and so the Jurors aforesaid upon their Oath aforesaid say, That the aforesaid *E. L.* the aforesaid *W. F.* feloniously did kill and murder, in Manner and Form aforesaid, against the Peace of our said Lord the King, his Crown and Dignity; and what Chattels the aforesaid *E. L.* had at the Time of the Felony aforesaid, in Manner and Form aforesaid by him committed and done, the Jurors aforesaid do not know.

In Testimony whereof I the said Coroner have, as well as the Jurors aforesaid, to this Inquisition interchangeably set our Seals, the Day, Year, and Place aforesaid. As

An Inquiſition for Man-ſlaughter, *where one was ſtarved, and periſhed for Want of Suſtenance.*

Middl. ſſ. THE Inquiſition indented, taken at *Hamſtead* in the County of *Middleſex*, this Twentieth Day of *December*, *Anno.* &c. before *J. G.* Gent. Coroner of our Lord the King for the ſaid County, upon Sight of the Body of *W. T.* then and there lying dead, by the Oath of *W. P. T. E. J. M.* &c. honeſt and lawful Men of *Hamſtead* aforeſaid, and of Four other Villages in the County aforeſaid, next adjacent the Town of *Hamſtead* aforeſaid, which being charged and ſworn to enquire in what Manner, when and how the aforeſaid *W. T.* came to his Death, upon their Oath do ſay, That *J. B.* of *W.* in the County aforeſaid, Taylor, and *S.* his Wife, not having God before their Eyes, but being ſeduced and led by the Inſtigation of the Devil, the 20th Day of *November*, *Anno.* &c. aforeſaid, with Force and Arms, &c. at *W.* aforeſaid, in the County aforeſaid, in and upon the ſaid *W. T.* then an Apprentice of the ſaid *J. B.* in the Peace of God and of our Lord the King then being, feloniouſly, voluntarily, and of his Malice forethought, an Aſſault did make, and that the aforeſaid *S.* then, to wit, the aforeſaid Twentieth Day of *November*, in the Year aforeſaid, and divers other Days and Times, as well before as after, at *W.* aforeſaid, in the County aforeſaid, feloniouſly, voluntarily, and of her Malice forethought, detained and kept---from the ſaid *W. T.* and to him the ſaid *W. T.* did not exhibit and give good and ſufficient Aliments, Victuals, Cloaths, Bedding, Medicine, and other Neceſſaries, with an Intent the ſaid *W. T.* through Want, then ſhould miſerably languiſh, ſtarve and die: Of which Detention and Want of Aliments from the aforeſaid *W. T.* and no Exhibition and Allowance to the ſaid *W. T.* of good and ſufficient Aliments, Victuals, Cloaths, Bedding, Medicines, and other Neceſſaries, by her the ſaid *S.* unto the ſaid *W. T.* from the aforeſaid Twentieth Day of *November*, in the Year aforeſaid, until the Fifteenth Day of *December*, then next following, in the Year aforeſaid, at *W.* aforeſaid, in the County aforeſaid, miſerably languiſhed, and languiſhing miſerably lived, upon which ſaid Fifteenth Day of *December*, in the Year aforeſaid, the aforeſaid *W. T.* for Want of good and ſufficient Aliments, Victuals, Cloaths, Bedding, Medicines, and other Neceſſaries, at *W.* aforeſaid, in the County aforeſaid, miſerably ſtarved and died: And that the aforeſaid *J. B.* together with the aforeſaid *S.* his Wife, at the Time of the Felony and Murder aforeſaid, by the ſaid *S.* in Manner and Form aforeſaid, done and committed, feloniouſly and voluntarily, and of her Malice forethought was preſent, aſſiſting, aiding, procuring, comforting and helping, the aforeſaid *S.* the aforeſaid *W. T.* in Manner and Form aforeſaid, to ſtarve and murder: And ſo the Jurors aforeſaid ſay upon their Oath aforeſaid, That they the ſaid

J. B.

J. B. and *S.* his Wife, the aforeſaid *W. T.* in Manner and Form aforeſaid, felonioufly and voluntarily, and of their Malice forethought, ſtarved and murdered, againſt the Peace of our ſaid Lord the King, his Crown and Dignity, *&c.* And ſo the ſaid *W. T.* came to his Death, and not otherwiſe, neither any other Manner beſides what aboveſaid. But what Goods and Chattels, Land or Tenements, the aforeſaid *J. B* and *S.* his Wife, at the Time of the Felony and Murder aforeſaid, by the ſaid *J. B.* and *S.* his Wife, in Manner and Form aforeſaid done and committed, or at any other Time afterwards (until the taking of this Inquiſition) had, the ſaid Jurors do not know. *In Teſtimony*, &c.

Inquiſition where one is ſlain by Misfortune, by a Cart loaden with Hay.

Middl. ff. INQUISITION indented, taken at *&c.*------who ſay upon their Oaths, That the aforeſaid *A. B.* the Tenth Day of *May*, *Anno.* &c. aforeſaid, at *N.* aforeſaid, in the County aforeſaid, going with his Cart from *N.* aforeſaid to *L.* in the ſaid County, by the Way between *N.* and *L.* aforeſaid, to wit, at, *&c.* aforeſaid, in the County aforeſaid, his ſaid Cart loaden with Hay, fell upon the Body of the aforeſaid *A. B.* and ſo did ſlay and break his Body, of which the aforeſaid *A. B.* then and there incontinently died. And ſo the Jurors aforeſaid, upon their Oath aforeſaid, ſay, That the aforeſaid *A. B.* in Manner and Form aforeſaid, by Misfortune is come to his Death. And farther the Jurors aforeſaid upon their Oaths aforeſaid ſay, That then and there Four Horſes, with the Cart and load of Hay, containing in Weight by Eſtimation Forty Stone, did move at the Death of the aforeſaid *A. B.* and that the ſaid Four Horſes are of the Price of Eight Pounds Ten Shillings, and that the aforeſaid Cart is of the Value of Twenty Shillings; and that the aforeſaid Cart remaineth in the Cuſtody of *C. D.* of *N.* aforeſaid, to wit, late Wife of the aforeſaid *A. B.* And that the aforeſaid Forty Stone of Hay are of the Value of Forty Shillings and Ten Pence, and remain in Cuſtody of *D. E.* of *N.* aforeſaid, Gent.

In Teſtimony whereof, as well the Coroner as the Jurors, *&c.*

An Inquiſition where one drowns himſelf.

Middleſex, ſs. INQUISITION indented, taken, *&c.*---------who ſay upon their Oath, That the aforeſaid *A. B* the ſecond Day of *May*, *Anno*, *&c.* aforeſaid, about Eight of the Clock in the Forenoon of the ſame Day, not having God before his Eyes, but being ſeduced and led by the Inſtigation of the Devil, of his Malice forethought, at *M.* aforeſaid, in the County aforeſaid, then and there alone being, in the common River there himſelf voluntarily and felonioufly did drown: And ſo the Jurors aforeſaid, upon their Oath aforeſaid, do ſay, That the aforeſaid *A. B.* in Manner and

and Form aforeſaid, then and there voluntarily and felonioufly, as a Felon of himſelf, did kill and murder, againſt the Peace, &c.

In Teſtimony whereof, as well the Coroner aforeſaid, as the aforeſaid Jurors, &c.

If one hang himſelf, then the Inquiſition thus:

Kent, ſs. INQUISITION indented, &c. (the Hour, &c.) not having God before his Eyes, but being ſeduced and led by the Inſtigation of the Devil, at *K.* aforeſaid, in a certain Wood adjoining to the ſaid *K.* then and there alone being, with one Rope made with Hemp, of the Price of one Penny, which he then and there in his Hands had and held, and one End then about his Neck then and there he put, and the other End then about a Branch of a certain Oak Tree he tied, and himſelf then and there with the Rope aforeſaid, voluntarily and felonioufly did hang and ſtrangle; and ſo the Jurors aforeſaid, upon their Oath aforeſaid ſay, &c.

No Forfeiture of Lands.

Of Homicide and Manſlaughter, Felo de ſe.

HOMICIDE is killing of a Man by Man, *Dalt.* 464. *Ex vi Termini*, comprehends Treaſon, Murder, &c. It is no Difference whether the Party ſlain be a Denizon, Alien or Engliſhman, if he lives under the King's Protection. *Dalt.* 464. *Lamb.* 237. *Crompt.* 221. *a Numb.* 1.

To kill one attainted for Treaſon or Felony, or outlawed for Felony, or attainted in Præmunire, is Felony, by 4 *Eliz. Stamford* 13. *Dalt.* 465. *Crompt.* 24. *a Numb.* 29.

Homicide is either killing himſelf, *Felo-de-ſe*; or another. A Man by killing himſelf forfeits to the King his Goods and Chattels, real and perſonal, and his Debts due by Specialty, *Dalt.* 466. But no Lands nor Blood corrupted. *ibid.* But his Goods are not forfeited till his Death, *ibid.*

An Infant, or One *Non compos Mentis*, does not forfeit; but a Lunatick killing himſelf out of his Lunacy, doth forfeit his Goods, *Dalt.* 476.

Homicide of another, is either voluntary or involuntary; voluntary is Murther, *Vide Murder or Manſlaughter.*

Manſlaughter is when two Men, &c. fight together on a ſudden without precedent Malice, and one of them kill the other. *Dalt.* 475. *Lamb.* 248. *Crompt.* 16. *a.*

Manſlaughter is either by *Chance-medly*, or *Se-defendendo*, Houſe and Goods.

By *Chance-medly* is *Felony*, but may have Clergy. *Dalt.* 475.

One Fighting breaks his Weapon, another ſtanding by puts one into his Hand, or otherwiſe lends it him, and with it he kills another, it is *Manſlaugter* in the Lender. *Dalt.* 475. *Crompt.* 16. *b. Numb.* 12. *Lamb.* 252.

The Servant fighting in his Master's Defence, though there were Malice in the Master, and not told to the Servant, and one be killed. *Lamb.* 240. So a Stranger taking Part. *Lamb.* 238. Is Chance-medly. *Dalt.* 485.

If two that were in Malice are reconciled, and fall out upon a new Occasion, and one is killed, it is Manslaughter only. *Dalt.* 476. *Lamb.* 250.

Se defendendo, is where one killeth another in the necessary Defence of himself, or his, thereby to save himself, or his Possession or Goods, or some other Person which he is bound to defend from Peril, and it is either against a Felon, Murtherer, Thief or loyal Subject. *Dalt.* 482. *Lamb.* 152.

Against a loyal Subject; if he be assaulted by another Man, he must fly so much as he may, till he be letted by some Wall, or other material Hindrance, that his Necessity of Defence may seem inevitable; and he shall be committed till the Time of his Tryal, lose his Goods, and sue out his Pardon. *Lamb.* 253. *Dalt.* 484. It is not material, if he strikes again before he gave any deadly Wound, if he flies to the Strait. *Dalt.* 484.

If a Man fly to a Wall, and hold out his Weapon, if the Pursuer run upon it and is killed, it is *Se defendendo*, and forfeits his Goods. *Crompt.* 28. *a Num.* 7. *Dalt.* 475. But if he had fallen on the Ground, and the other fall on it and kill himself, there is no Loss of Goods; for he could not fly, and the Slain is in a Sort *Felo-de-se.* ibid. *P. R.* 122. *b. Stam.* 16. *a.*

If a Man fall to the Ground, there his flying to a Strait is not necessary, because he might be there inevitably killed, if he did not defend himself. *Dalt.* 484.

An Officer or Minister of Justice executing his Office, is not bound to fly. *Dalt.* 485. *Coke* 98, 99.

If a Servant kill one that robb'd or kill'd his Master, so it be done presently, or in Defence of his Master's Person or Goods, if he could not otherwise have avoided the same. *Dalt.* 485. *Crompt.* 28. *Num.* 2. So, to shoot at one that comes to burn a Man's House, is justifiable in him or his Servant. *Dalt.* 483, *&c.*

In the Defence of the Possession of a Man's Goods or House, he may justify to beat him, but may not kill him, though the Party come wrongfully to take his Goods, unless he be a Thief. *Dalt.* 485, *&c.*

To kill a true Man in Defence of House, Goods, or Land, is Manslaughter. *Dalt.* 484. *Crompt.* 27. *b. Num.* 4.

Involuntary Homicide.

THIS is either by Misadventure or Necessity. The first is, when a Man doing a lawful Act, killeth a Man: This is not Felony of Death; but he shall have his Pardon of Course for Life and Lands, but forfeiteth his Goods. *Lamb.* 254. *Dalt.* 478.

For

For Example: A School-Master, Father, Mother, or Master, correcting a Child, Scholar or Servant: Moderatly shooting at Pricks, Butts, or lawful Marks: A Workman casting Tiles, Timber or Stones, from off a House, or any Thing from off a Cart, and giving Warning, or doing other lawful Things, giving Warning.

But the Killing of a Man in doing any unlawful Act without evil Intent, is Felony; as shooting Arrows, casting Stones into Highways where People resort, or unto other Places of usual Resort. *Dalt.* 478.

If a Man be slain by the Fall of a House, or Tree, by a Beast, *&c.* Any Party by a willful Default, causing it, it is Felony. *Dalt.* 479.

The Thing that causes the Death is a *Deodand*, and forfeited to the King. *Dalt.* 479. *Crompt.* 35. *a.*

Deodands are not forfeit till the Matter be found on Record.

If a Man be slain under Fourteen Years of Age, nothing is forfeited as a *Deodand. Dalt.* 480. *Lamb.* 21, *&c.*

Of Appeals in Case of Murthers, &c. *fit to be known by Coroners and others; with the Manner of proceeding in such Cases.*

THE Word *Appeal* is derived from the *French* Verb *Appellor, to call*, because the Party bringing it, calls the Delinquent to Judgment; it is the same with an Accusation, and they are of three Sorts, *viz.*

1st, An Appeal brought by an Heir for some Injury done to his Ancestors, whose Heir he is.

2d, An Appeal brought by a Wife, for Wrong done to her Husband; and by her only it can be brought, if it be for his Death, who has the Right to prosecute it.

3d, A Wrong done to the Appellants themselves, as some Robbery, Maim, Rape, &c. *Coke. Inst. Sect.* 500.

And where a Murder is committed, it must be brought within a Year and a Day; for after that Time it cannot be brought at all. And by a Statute of *Hen.* 7. it is enacted, That the Coroner shall do his Office, and the Offenders may be attainted at any Time within the Year, at the King's Suit; but if acquitted, yet the Party within the Year and Day shall have Liberty to bring an Appeal against such Person either acquitted or attainted, if the Benefit of Clergy be not before thereof had: And in order thereunto, if any Person happens to be acquitted for the Death of a Man within a Year, the Justices before whom he is acquitted, shall not suffer him to go at large, but either to remit him again to Prison, or to let him to Bail after their Discretion, till that Year and Day be past; that so he may be forthcoming to answer the Appeal, if any be brought within that Time.

The Form of an Appeal of Murder.

J G. *here inſtantly appeals* R. B. *of the Death of her Huſband* W. G. *For whereas the aforeſaid* W. *was in the Peace of God and the King at* Woodbridge, *in the County of* Middleſex, *on the Eighth Day of* February, *in the Twenty-ſecond Year of the Reign of our Sovereign Lord* George *the Second*, &c. *At Five of the Clock in the Evening of the ſame Day, came the ſaid* R. B. *as a Felon of our Lord the King, of a premeditated Aſſault, with Force and Arms*, &c. *and upon him the ſaid* W.G. *then and there felonioufly an Aſſault did make, and with a certain Sword made of Iron and Steel, to the Value of* Five Shillings, *which he then and there in his Right Hand did hold, the aforeſaid* W. *upon his Head did ſtrike, and one mortal Wound of two Inches long, at the fore Part of his Head, and an Inch deep, even to the Brain of the ſaid* W. *did then and there felonioufly give; of which ſaid Wound the ſaid* W. *for five Days after following did languiſh; and on the Thirteenth Day of the ſame Month, in the Year aforeſaid, he there died* (or if the Caſe be ſo, *inſtantly died.*) *And ſo the ſaid* R. B. *as a Felon of our Lord the King, the aforeſaid* W. *felonioufly did kill and murder, againſt the Peace of our ſaid Lord the King, his Crown and Dignity. And this he did wickedly, and as a Felon againſt the Peace of God, and of our Lord the King; the aforeſaid* J. G. *offers that the ſame be detained, as the Court of Our Lord the King ſhall think meet.*

And though a Woman can in Caſe of Murder, bring an Appeal for the Death of her Huſband, yet otherwiſe may ſhe bring an Appeal of Robbery, *&c.* for therein ſhe is not reſtrained by *Magna Charta.* Chap. 34. according to the Opinion of my Lord *Coke. Inſt.* 2. *Fol.*68.

But if the Widow of the murthered Huſband marry again before the Appeal is entered, or when it is depending, it ſhall abate; that is, it can be of no Force; nay, if in her Appeal ſhe hath Judgment againſt the Defendant, if after ſhe marries, before he is hanged, ſhe can never have Execution of Death againſt him: But if ſhe be not married, ſhe may proceed to Execution; and it is held ſhe has Power to pardon him, or remit his Offence, even at the Gallows, and alſo the Time for the Year and Day limited, is to commence from the Time the Party dies, not from the Time of the Wound or Cauſe of his Death; for till he dies, there is in this Caſe no Felony committed.

If an Appeal of Murder be brought, and the Suit depending, and after the Year and Day be elapſed, one become acceſſary to the Murder, the Plantiff ſhall have an Appeal againſt him after the Year and Day paſt; but it muſt be brought within the Year and Day after the new Felony of Acceſſary.

Upon an Indictment, if the Offender be found guilty, becauſe its to be at the Suit of the King, it has been ſaid by ſome, there may be, and *too often a Pardon*, has been obtained (tho' even *That* too be *againſt Law*, as appears by the Premiſſes) But in an *Appeal* all agree,

agree, the King can grant *no Pardon*. Nay if a Perſon be tried by Indictment, and acquitted, or convicted and gets a *Pardon*, yet an Appeal may be brought, and if he be thereupon convicted, notwithſtanding ſuch his former Acquital, or *Pardon*, he muſt be *Hanged*.

And thus much I thought fit to add to the Office of a Coroner; for though this is rarely practiſed, it is ſtill in Force, though too often compounded by thoſe that have Right to proſecute in Appeals.

COUNTERFEITS.

IS an Offence at Common Law, and 'tis likewiſe enacted, That getting Money or Goods falſely or deceitfully by Counterfeit-Letters, *&c.* and being convicted thereof at Quarter Seſſions, ſhall ſuffer any corporal Puniſhment, except Death.

Two Juſtices *(Quorum unus)* may bind the ſuſpected Perſon to appear at the next Seſſions, or bail them till that Time, or may commit him at their Diſcretion. 33. *H.* 8. *cap.* 1.

Anno 15 *Car.* one *Terry* got a Wedge of Silver, Value 200 *l.* by a falſe Note, in the Name of another, and being convicted, he had Sentence to ſtand in the Pillory, and was fined 500 *l.* and committed during Pleaſure; tho' my Lord *Coke* tells us, That a Man cannot be fined upon the Statute for this Offence, becauſe the Law directs only a corporal Puniſhment. *Cro. Car.* 564. 3 *Inſt.* 133.

At another Time, one *Hubort* of *Norfolk*, procured *Webſter* to perſonate *A. B.* who was then beyond Sea, and in his Name to acknowledge a Fine of his Lands, for which he was fined and impriſoned, and the *Fine levied* was made void. But now by 21 *Jac. cap.* 26, this is made Felony. *Cro. Eliz.* 530. 12 *Rep.* 123. *Moor.* 630.

A Warrant againſt one for getting Money, &c. by Counterfeit Letters,

To all Conſtables, &c.

Kent, ſi. WHEREAS Information upon Oath hath been made before me, *E. F.* one of his Majeſty's Juſtices of the Peace for the ſaid County, by *C. D.* That *A. B.* hath falſely and deceitfully, by Counterfeit Letters, cheated and defrauded him of Money and Goods to the Value of, *&c.* Theſe are therefore in his Majeſty's Name, to charge and command you, on Sight hereof, to apprehend and ſeize the Body of the ſaid *A. B.* and bring him before me or ſome other of his Majeſty's Juſtices of the Peace for the ſaid County, there to be examined and dealt with according to Law. Hereof you are not to fail, as you will anſwer the Contrary. Given under my Hand and Seal, *&c.*

T

To counterfeit or forge the Coin of this Kingdom, is made High-Treaſon, tho' not uttered; and forging foreign Coin made current, is Miſpriſion of Treaſon; and Juſtices of the Peace have Power to inquire thereof, and to hear and determine Offences touching falſe Money. 3 *H.* 5. *c.* 7. *Dalt.* 451. Uttering falſe Money, knowing it to be ſo, is a great Miſdemeanour, for which a Man may be fined, but 'tis not Treaſon.

Where any Tools or Inſtruments for coining or counterfeiting Gold or Silver Moneys ſhall be found, the Inſtruments and the Perſons in whoſe Cuſtody they are taken, are to be ſeized and carried before a Juſtice, and ſuch Perſons and Inſtruments to be ſecured; and on Trial the Inſtruments to be produced as Evidence, and afterwards deſtroyed; and counterfeit Money given in Evidence, is to be cut in Pieces afterwards, and then given to the Party.

To clip, waſh, round, file, impair, diminiſh, lighten or falſify any Coin or Money of this Realm, or any other Realm allowed or ſuffered to be current within the Realm, *is Treaſon.*

All Coins of Gold and Silver current in this Realm ſhall ſo continue at the Value they were coined for, albeit ſome of them be cracked, ſo as they be not clipped or otherwiſe diminiſhed, reaſonable wearing excepted.

None ſhall melt the ſilver Money of this Realm on pain to forfeit it, and double the Value, one half to the King, the other to the Informer; the Offenders, if Freemen or privileged Perſons of *Cities* or *Corporations*, ſhall be diſfranchiſed and made uncapable of exerciſing any Trade by Virtue of the Privilege of the ſaid *City* or *Corporation*; if not, they ſhall be impriſoned for ſix Months.

If any Perſon ſhall caſt Ingots of Silver, or ſtamp any Marks on Silver, in Imitation of *Spaniſh* Bars, he ſhall not only forfeit the Silver ſo caſt, *&c.* but the Penalty of 500 *l.*

If any Perſon ſhall blanch Copper for Sale, or mix blanch'd Copper with Silver, or buy or ſell, or offer to Sale any malleable Mixture of Metals which ſhall be heavier than Silver, and look, touch and wear like Gold; or ſhall take, pay or put off counterfeited Milled Money, or any Milled Money unlawfully diminiſhed and not cut to Pieces, for leſs than its Denomination doth import, in either of theſe Caſes he ſhall be guilty of Felony. 7 *Annæ.*

Any Perſon may lawfully cut or break in Pieces any Silver Money tendered in Payment, which ſhall be ſuſpected to be counterfeit or diminiſhed, and the Perſon which offers the ſame ſhall ſtand to the Loſs if under Weight: But if the Money be good, and its full Weight, then the Perſon breaking it, ſhall ſtand by the Loſs, and be obliged to receive it at the Rate tendered; and if it be in the Town the chief Magiſtrate, or if in the Country the next Juſtice ſhall determine whether it be counterfeit, who have Power to adminiſter an Oath if there be Occaſion, by Statute 9 and 10 *Will.*

A Warrant to apprehend a Perſon for coining of Money, and to ſeize his Inſtruments, &c.

WHEREAS *A. B.* of *&c.* hath this Day made Oath before me, that on, *&c.* laſt paſt, at the Houſe of *C. D.* ſituate in, *&c.* he being in the next Room to a private Shop or Ware-houſe of the ſaid *C. D.* (who is by Trade a ſilver-ſmith) through a Hole or Cranny in the Partition-Wall or Door, ſaw the ſaid *C. D.* buſy with many Tools and Inſtruments in making and moulding ſome white Pieces of Metal of a round Form, and about the Size of Shillings and Half Crowns, which he took to be the Coining of Money: Theſe are therefore in his Majeſty's Name to command you to apprehend the ſaid *C. D.* and ſeize all the Tools and Inſtruments, and Money, which you can find in the Shop or Houſe of him the ſaid *C. D.* and that you do bring him together with the ſaid Tools and Inſtruments and Money (if any ſuch you can find) before me, or ſome other of his Majeſty's Juſtices of the Peace for this County, to be examined concerning the Premiſes, and to be dealt with according to Law. Given, *&c.*

A Warrant for one that hath melted Money.

Eſſex, ſs. *To the Conſtables*, &c.

FORASMUCH as I am credibly informed, That *A. B.* of *&c.* Gold-ſmith, hath melted the Silver Money of this Realm, contrary to the Statutes in that Caſe made and provided. Theſe are therefore (in his Majeſty's Name) to command you, that you, ſome or one of you, do apprehend the ſaid *A. B.* and bring him before me, or ſome other of his Majeſty's Juſtices of the Peace of the ſaid County, to be examined touching the Premiſſes, and to be farther dealt with according to Law. Hereof fail not at your Perils. Given under my Hand and Seal the, *&c.*

A Warrant to commit a Perſon for melting Bullion, not lawful Silver, but ſuppoſed to be Clippings.

Eſſex, ſs. *To the Conſtable of*, &c. *and to the Keeper of*, &c.

WHEREAS a large Quantity of Bullion hath been lately found and ſeized in the Poſſeſſion of *C. D.* of *&c.* Gold-ſmith, which before the melting thereof was ſuſpected to be unlawful Silver, and the Clippings of Money: And whereas upon the Examination of the ſaid *C. D.* taken before us upon Oath this preſent Day, he hath not been able to make ſufficient Proof that the ſaid Bullion before the melting thereof, was not current Coin, or Clippings of ſuch Coin, according to the Statute in that Caſe made and provided: Theſe are therefore to command you to convey the ſaid *C. D.* to the common Goal of, *&c.* aforeſaid, and to deliver him to the Keeper thereof; hereby alſo requiring you the ſaid Keeper to receive the ſaid *C. D.* into your Cuſtody and Goal aforeſaid, and him there ſafely to keep, until he ſhall be from thence delivered by due Courſe of Law Given, *&c.*

Warrant

Warrant to apprehend one for counterfeiting a Bank-Bill.

Lancaſter, *ſs. To the Conſtable of*, &c.

WHEREAS *Q. E.* of *L.* aforeſaid, Taylor, was this Day charged before me, by the Oath of *J. U.* of *E.* in the ſaid County of *L.* Gent. with felonioufly Counterfeiting [Eraſing or Altering] a Bank-Bill, N° 672. for the Sum of 50 *l.* payable to *J. R.* Eſq; Theſe are therefore, in his Majeſty's Name, to require and authoriſe you, and either of you, to apprehend the ſaid *Q. E.* and to bring him before me, or ſome other of his Majeſty's Juſtices of the Peace, to be examined concerning the Premiſſes, and to be further dealt with according to Law. Given under my Hand and Seal, *&c.*

Commitment of one for counterfeiting a Bank-Bill.

Lan. *ſs. To the Conſtables*, &c. *and to the Keeper of* &c.

WHEREAS *Q. E.* of *L.* aforeſaid, Taylor, was this Day brought before me, and charg'd, upon Oath, by *J. U.* of *E.* in the ſaid County, Gent. with felonioufly counterfeiting [eraſing or altering] a Bank-Bill, N° 672. for the Sum of 50 *l.* payable to *J. R.* Eſq; Theſe are therefore in his Majeſty's Name to require and authoriſe you the ſaid Conſtables, and either of you, to take the ſaid *J. U.* and to convey him to the ſaid Goal: and you the ſaid Keeper are hereby required to receive him into your Cuſtody, and him ſafely to keep until he ſhall be diſcharged by due Courſe of Law. Given under my Hand and Seal, *&c.*

[*In moſt of the American Colonies there is Paper Money, or Bills of Credit made current by the Acts of the Legiſlative Powers of the ſaid Colonies; to counterfeit which, in ſeveral of them is, by thoſe Acts, made Felony, without Benefit of Clergy; but in ſome others only corporal Puniſhment; And thoſe Acts muſt and ought to be the proper Guide for Juſtices, and others, in their ſeveral Juriſdictions, on Matters relating thereto: However the following Precedents may not be amiſs here.*]

Information againſt a Perſon counterfeiting Bills of Credit, &c.

Eſſex, ſs. THE Information of *N. Q.* of *R.* in the County of *E.* Yeoman, taken upon Oath before me, *I. R.* Eſq; one of his Majeſty's Juſtices of the Peace for the County aforeſaid, the third Day of-----in the Year, *&c.*

This Informant on his Oath, depoſeth and ſaith, That on the---- Day of----laſt paſt, at the Houſe of *K. L.* ſituate in *Aſh-Swamp*, *I. L.* had in his Poſſeſſion ſeveral Stamps, Plates or Types, proper for counterfeiting the publick current Bills of Credit of the Colony of -----and that he, this Informant, ſaw the ſaid *I. L.* make, or print, two Ten Shilling Bills, in Imitation of the publick current Bills of Credit of the ſaid Colony; and further, That he ſaw the ſaid *I. L.* offer one Bill thereof in Payment to *W. A.* of *R.* in the ſaid County, who refuſed the ſame, as juſtly fearing it was counterfeited.

Taken before me the Day and Year above-written. S. W.

War-

Warrant to apprehend a Perſon for counterfeiting Bills, &c.

Middleſex, ſs. *To the Conſtable of* B. *in the ſaid County.*

WHEREAS *M. A.* of *Q.* in the County aforeſaid, Yeoman, hath this Day made Oath before me *S. W.* Eſq; one his Majeſty's Juſtices of the Peace for the County aforeſaid, That on the 10th Day of *May* laſt, *J. M.* of *A.* aforeſaid, did print and make ſeveral Bills, *viz.* One of Ten Shillings, and two of Fourteen Shillings, at the Houſe of *E. E.* ſituate in *A.* aforeſaid, in Imitation of the current Bills of Credit of the Province of *N. J.* contrary to Law: Theſe are therefore in his Majeſty's Name, to require and authoriſe you, to apprehend the ſaid *J. M.* and to bring him forthwith before me, or ſome other of his Majeſty's Juſtices of the Peace for this County, to be examined in the Premiſes, and to be dealt with according to Law. Given under my Hand, *&c.*

Examination of a Perſon apprehended for counterfeiting, &c.

Eſſex, ſs. THE Examination of *E. G.* of *R.* in the ſaid County of *E.* taken before me *I. R.* Eſq; one of his Majeſty's Juſtices of the Peace for the County aforeſaid, the 8th Day of *May* in the 22d Year of King *George* the Second, *An. Dom.* 1749. The ſaid Examinant being duly ſworn, depoſeth and ſaith, that as to what he is charged with by *S. T.* of *E.* in the County aforeſaid, relating to the counterfeiting of Bills of Credit of *N. J.* he knoweth nothing thereof, but is entirely innocent, tho' he confeſſeth, That on the 27th of *March* laſt, he was at the Houſe of *R. K.* in *E.* aforeſaid, as ſet forth in the ſaid *S. T*'s Information, and that he was handling Bills of Credit, and holding them near the Candle, to try to diſcover whether they were good or not, they being Bills he had received that Evening by Candle Light; but that he made any of them, or uſed any Paper or Types, as the ſaid *S. T.* depoſes, he denies the ſame, or that he ever had any Hand in ſuch Act.

Taken by me the Day and Year aboveſaid. J. R.

Warrant to commit a ſuſpected Perſon, &c.

Eſſex, ſs. *To the Conſtables,* &c. *and to the Keeper of,* &c.

WHEREAS a certain Quantity of printed Paper, cut, *&c.* and printed in Imitation of the publick Bills, *&c.* Types, *&c.* (as the Caſe may be) were lately found and ſeized in the Poſſeſſion of *L. M.* of *&c.* of which Paper, and with which ſaid Types, *&c.* it is ſuſpected he the ſaid *L. M.* has forged and counterfeited the publick Bills of Credit of *&c.* And whereas upon Examination of the ſaid *L. M.* taken before us this preſent Day upon Oath, he hath not made ſufficient Proof that he was uſing the Paper, *&c.* aforeſaid, on any lawful Occaſion; nor given any Reaſon to think he was not forging and counterfeiting as aforeſaid, contrary to the Law of this, *&c.* in that

that Caſe made and provided. Theſe are therefore to command you, to convey the ſaid *L. M.* to the common Goal at, *&c.* aforeſaid, and to deliver him there to the Keeper thereof, together with this Precept; commanding alſo you the ſaid Keeper, to receive the ſaid *L. M.* into your Cuſtody and Goal aforeſaid, and him there ſafely to keep, until he ſhall be from thence delivered by due Courſe of Law. Hereof fail not. *Given under our Hands and Seals this,* &c.

Cuſtom, and Cuſtom-Houſe Officers.

RESISTING, hindring, affronting, or abuſing or wounding Officers or Deputies, ſhall be committed by the next Juſtice till next Quarter-Seſſions, to be fined, not exceeding *One Hundred Pounds*, and to remain in Priſon till diſcharged by Order of the Exchequer, or till he diſcover who ſet him on Work. 13 & 14 *Car.* 2. *Cap.* 11.

One Juſtice, by Oath of two Witneſſes, may commit any Perſon aſſiſting in the Landing or Shipping prohibited Goods, or for which any Duty is payable, if ſuch Perſon have no Warrant; or if no Officer be preſent, there to remain till he find Sureties for his Good Behaviour, and till he be diſcharged by the Lord Treaſurer, *&c.*

For ſecond Offence, Commitment for two Months, or till he pay *Five Pounds* to the Sheriff, for the Uſe of the King; or till he be diſcharged by the Lord Treaſurer, Chancellor, Under-Treaſurer, or Barons of the Exchequer.

A Warrant againſt thoſe who abuſe or reſiſt a Cuſtom-Houſe Officer, and a Mittimus to ſend the Offender to Goal.

To the Conſtable, *&c.* of *M.* in the County of *Kent*, and to the Keeper of the Common Goal there.

Kent, ſs. *WHEREAS Complaint hath been made unto me, upon the Oath of* A. B. *of* M. &c. *an Officer of his Majeſty's Cuſtoms, That* C. D. *and* E. F. *of* M. *aforeſaid, Yeomen, did lately, with Force and Arms, reſiſt the ſaid* A. B. *at* K. *in your County, being then in the Execution of his ſaid Office: Theſe are therefore in his Majeſty's Name, to command you the Conſtable of,* &c. *to apprehend the ſaid* C. D. *and* E. F. *and to deliver them to the Keeper of the Common Goal in the ſaid County, together with this Precept; hereby alſo commanding you the ſaid Keeper, to take into your Cuſtody the ſaid* C. D. *and* E. F. *and them ſafely to keep until the next Quarter-Seſſions which ſhall be held for the ſame County, there to be puniſhed according to the Statute in that Caſe made and provided. And hereof fail not at your Peril. Given under my Hand and Seal,* &c. R. B.

A War-

A Warrant againſt an Offender aſſiſting in the Landing Goods, and carrying them away without paying Cuſtom.

To the Conſtable of, &c. in the ſaid County.

Kent, ſs. *WHEREAS Complaint hath been made unto me upon Oath, That* A. B. *of*, &c. *hath lately aſſiſted in the Landing and Carrying away ſeveral Goods at* M. *in the ſaid County, for which a certain Duty was due and payable to his Majeſty, which was not paid; and whereas it appeareth to me, upon the Examination of*, &c. *and others, That he the ſaid* A. B. *had not a Warrant for his ſo doing, and that he had not given Notice thereof to any Officer of the Cuſtoms, and that no ſuch Officer was there preſent: Theſe are therefore in his Majeſty's Name, to command you to apprehend the ſaid* A. B. *and to bring him before me, or ſome other Juſtice of the Peace for the County, to anſwer the Premiſes: And hereof fail not. Given under my Hand and Seal, &c.*

Commitment for the Firſt Offence.

To the Conſtable of, &c. *and to the Keeper of the Common Goal of the County of* Kent.

Kent, ſs. WHEREAS it hath been duly proved upon Oath before me, That *A. B.* of, *&c.* (*as in the former Warrant*) Theſe are therefore in his Majeſty's Name, to command you the ſaid Conſtable, to convey the ſaid *A. B.* to the Common Goal, and to deliver him to the Keeper thereof, together with this Warrant; hereby alſo requiring you the ſaid Keeper, to take the ſaid *A. B.* into your Cuſtody, and him ſafely to keep, until he ſhall find Sureties for his good Behaviour, and until he ſhall be diſcharged from the ſame by the Lord Treaſurer, Chancellor, Under-Treaſurer, or Barons of the Exchequer: And hereof fail not at your Perils. Given, *&c.* 13 & 14 *Car.* 2 *cap.* 1.

Warrant to ſearch for Goods (for which Cuſtom ought to be paid) which are privately conveyed away and concealed.

To the Conſtables of the Pariſh of Stepney, *in the County of* Middleſex.

Midd. ſs. WHEREAS *Andrew Bull*, of *Woodbridge*, in the ſaid County, Gent. hath this Day made Oath before me, That on *Monday* laſt paſt, about the Hour of Ten at Night, *John Badblood* of *Stepney* aforeſaid, Grocer, landed at the *New-Dock*, from the Ship *Union*, lately arrived from *Coracoa*, two Caſks of Liquor, about the Size of Quarter-Barrels, and conveyed them to his Houſe ſituate in *Stepney* aforeſaid; and the ſaid *Andrew Bull*, having ſearched the Cuſtom-Houſe Books, and finding no Entry made of the ſaid Barrels

Barrels of Liquor, or any Agreement made with the Collectors for the Cuſtoms thereof; and the ſaid *John Badblood* being no Ways concerned by Profeſſion, or otherwiſe, in foreign Liquors; and the ſaid *Andrew Bull*, having produced a Witneſs to prove that he drank Brandy and Red Wine, on *Wedneſday* laſt, at the Houſe of the ſaid *John Badblood*, who hath proved the ſame accordingly; all which being conſidered, there is good Reaſon to ſuſpect that the ſaid *John Badblood* hath concealed Liquors, for which Duties are payable to the Crown, with Intent to defraud his Majeſty, and contrary to the Statutes in that Caſe made: Theſe are therefore in his Majeſty's Name, to require and authorize you, to aſſiſt the ſaid *Andrew Bull* in the entering of the ſaid Houſe, and to enter with him into the Houſe of the ſaid *John Badblood*, and ſearch for the ſaid Barrels of Liquor, or any other foreign Liquors, for which Cuſtom ought to be paid, which may be concealed there; and in Caſe you meet with any Reſiſtance, that you do enter the ſaid Houſe by Force; and if you find any ſuch Liquors, that you do ſeize the ſame as forfeited, *&c.* Given under my Hand and Seal, *&c.*

Cutting out Tongues, &c.

BEFORE the Statute of 5 *H.* 4. it was not Felony to cut out the Tongue, or put out the Eyes of any one; and therefore when Men were beaten, wounded and robbed, it was uſual to put out their Eyes, or cut out their Tongue, that the Offenders might not be accuſed.

This Miſchief is prevented by that Statute, by making it Felony: And my Lord *Coke* tells us, That from the Time of the making of this Law, for above the Space of two Hundred Years, he could not find more than one Perſon indicted upon this Act. 5 *H.* 4. *c.* 5.

But notwithſtanding this Law, cutting off Ears was not Felony; for by the Statute of 37 *H.* 8. it was no greater Offence to cut off the Ear of a Man than to cut out the Tongue of any living Beaſt, for in both Caſes the Offender is to forfeit *Ten Pounds* to the King, and treble Damages to the Perſon grieved. 37 *H.* 8. *cap.* 6.

It was a Queſtion after theſe Laws, and before the Statute of 22 *Car.* 2. Whether cutting off the Privy Members, tho' the Man ſhould be taken in Adultery, was Felony or not? For by *Bracton*, 'tis ſaid, That in ſuch Caſe, *Sequitur Pœna aliquando capitalis*; and yet I find, that *Anno* 13 *H.* 3. one *John*, a Monk, was taken by *Henry Hull*, in the Act with his Wife, and he cut off the Privy Members of the Monk, and was only indicted for a Mayhem. 3 *Inſt.* 118.

But

But now by the Statute of 22 *Car.* 2. cutting out an Eye, ſlitting of the Noſe, or cutting it off, or the Lip, or cutting off or diſabling any Limb or Member, with an Intention to maim or diſfigure the Perſon, is made Felony without Benefit of Clergy, in the Actor, Counſellor, Aider or Abetter, being privy to the Offence. 22 & 23 *Car.* 2.

One *Stapleton* was lately convicted at the Seſſions in the *Old Baily*, upon this Act, for putting out the Eye of one *Ruſſel*, by ſlinging Mercury in his Face; afterwards in *Hillary*, 1 *Jac.* he pleaded his Pardon.

DISTRESSES.

THE Conſtable in taking Diſtreſſes is to aſſiſt the Landlord or Perſon diſtraining, and where any Goods or Chattels ſhall be taken in Diſtreſs for any Rent reſerved, and due upon any Demiſe, Leaſe or Contract, and the Tenant and Owner of the Goods ſhall not within five Days after ſuch Diſtreſs taken, and Notice thereof given, and of the Cauſe left at the Dwelling-Houſe or moſt notorious Place on the Premiſes charg'd with the Rent diſtrained for, replevy the ſame according to Law; then the Landlord or Perſon diſtraining may, with the Sheriff or Under-Sheriff of the County, or with the Conſtable of the Hundred, Pariſh or Place where the Diſtreſs ſhall be taken (who are required to be aiding and aſſiſting therein) cauſe the Goods and Chattels to be appraiſed by two ſworn Appraiſers, and afterwards ſell the ſame for the beſt Price towards the Satisfaction of the Rent, and Charges of Diſtreſs, Appraiſement and Sale, leaving the Overplus in the Sheriffs or Conſtables Hands for the Uſe of the Owner. *Stat.* 2 *W & M. c.* 5.

N. B. The Under-Sheriff, Conſtable, *&c.* have Power to adminiſter an Oath to the Appraiſers.

Appraiſers Oath.

YOU ſhall ſwear, That you will faithfully appraiſe and value the Goods now taken in Diſtreſs, and mentioned in the Inventory to you ſhewn, as between Buyer and Seller, according to the beſt of your Skill and Underſtanding; you ſhall not, thro' Partiality, Intereſt, or otherwiſe, over or under eſtimate the ſaid Goods, but impartially do your Duties herein. So help you God.

And where Tenants fradulently convey away Goods, the Landlord, *&c.* may in five Days ſeize ſuch Goods whereſoever found, as a Diſtreſs for Rent in Arrear, except *bona fide* ſold for a valuable Conſideration, by *Stat.* 8 *Ann. c.* 17.

DRUN-

DRUNKENNESS.

BY the Statutes of King *James*, 'tis enacted, That any Juſtice of the Peace upon his View, Confeſſion of the Party, or Proof of one Witneſs upon Oath, may convict any Perſon for Drunkenneſs. *4 Jac. 1. c. 5. 21 Jac. 1. cap. 7.*

Being convicted, he is to pay *Five Shillings* for every Offence, to the Church-wardens of the Pariſh where the Offence is committed, within one Week after Conviction; which if he neglects or refuſe, the ſame may be levied upon his Goods by Warrant from one Juſtice, before whom he was convicted; and if not able to pay it, then he is to be put into the Stocks Six Hours for every Offence.

If he be convicted the ſecond Time, then to be bound with Two Sureties in *Ten Pounds*, to be of the good Behaviour, or be committed.

The Proſecution muſt be within Six Months after the Offence.

The Inferior Officer neglecting to levy the Penalty, forfeits *Ten Shillings*, to be levied and diſpoſed as the Penalty it ſelf.

This is the Subſtance of the Statutes, *4 Jac. cap. 5.* and *21 Jac. cap. 7.* the former Statute being made perpetual by the latter.

An Ale-Houſe-keeper convicted of Drunkenneſs, is diſabled to keep an Ale-Houſe for *Three Years. 21 Jac. 3.*

A Warrant on the firſt Conviction, within Six Months after the Offence.

To the Conſtable of, &c. *and to the Church-wardens of*, &c. *in the ſaid County.*

Kent, ſs. WHEREAS *A. E.* of the Pariſh of, &c. in the ſaid County, Taylor, was on this preſent Day, upon due Proof upon Oath, convicted before me for being drunk on the 11th Day of *Auguſt* laſt paſt, in the ſaid Pariſh: Theſe are therefore to require you, to demand the Sum of *Five Shillings*, of the ſaid *A. E.* for the Uſe of the Poor of the ſaid Pariſh; which, if not paid into the Hands of the Church-wardens of the Pariſh aforeſaid, within one Week next enſuing, that then you levy the ſame upon the Goods and Chattels of the ſaid *A. E.* by Diſtreſs and Sale thereof, rendring unto him the Overplus: And if the ſaid *A. E.* ſhall not be able to pay the ſaid Sum, and if no Diſtreſs can be taken, that then you ſet him in the Stocks, there to remain for the Space of Six Hours. Given under my Hand and Seal, &c.

ESCAPE.

THIS is where one is arreſted, and afterwards is at Liberty, not being delivered by due Courſe of Law; and 'tis either negligent or voluntary: But in Treſpaſſes, or any Offence not Treaſon or Felony, there is no Difference whether the ſame is voluntary or not, for in both Caſes the Officer is finable.

By a Stranger. If a Stranger apprehend a Felon, or one ſuſpected, and delivers him to another who ſuffers him to go at large, 'tis an Eſcape in both; for the firſt Man ought to have delivered him to the Conſtable.

For Murder, the Townſhip ſhall be amerced if the Murderer eſcape *tempore Diurno*, though it was committed in the Town, Field, or in a Lane, but then there ſhould be Complaint made to a Juſtice of Peace.

By Negligence in Officers. To bail one not bailable by Law, *pro defectu Scientia*, it is a negligent Eſcape.

A Goaler ſuffering a Priſoner to go abroad, though he return, 'tis a negligent Eſcape, and finable; for he ought to keep him in *Arcta Cuſtodia*; yet *per Hale*, Chief Juſt. if after a negligent Eſcape, and before the Goaler is puniſh'd, he take the Priſoner upon freſh Suit, he is excuſed. 3 *Rep. Rigeway's* Caſe.

If the Goaler is inſufficient, the Sheriff muſt anſwer for theſe Eſcapes, becauſe 'tis in a Civil Action; but 'tis otherwiſe where the Offence is Criminal.

The Puniſhment is aggravated by the Proceeding againſt the Party eſcaping; for if attainted, and afterwards he eſcapes, 'tis *One Hundred Pounds* Fine; if indicted, *Five Pounds* Fine; if not, then 'tis finable at Diſcretion.

1. The Act muſt be Felony at the Time of the Eſcape, otherwiſe 'tis but finable.

2. There muſt be a legal Commitment.

After a Pardon for Murder, but pending an Appeal, the Priſoner was ſuffered to eſcape, 'tis Felony in the Goaler. *Plowd.* 476. *B.* So it is likewiſe to ſuffer a Felon willfully to eſcape, or to bail him, for he hath no Power to take Bail.

'Tis the ſame Crime in a Juſtice to take a Felon out of Goal without Bail, or to ſuffer him to go at large without Bail or Commitment who confeſſes a Felony before him.

'Tis Felony likewiſe in a Conſtable to ſuffer a Felon to deſtroy himſelf.

He who ſuffers the Eſcape, muſt be puniſh'd for the ſame Crime for which the Party eſcaping, ſtood committed.

A Man was put in the Stocks upon Suſpicion of Felony, and another let him go; this was held to be Felony at Common Law, although the Party was never indicted. *Dyer.* 99.

As to the Amercement of a Vill where a Felony is done, and the Offender eſcapes, if it is in the Day-Time, the Vill is anſwerable; but if in the Night, 'tis otherwiſe. 1 *Leon.* 107.

If a Felon eſcapeth after Condemnation, and is retaken, upon Confeſſion or Proof that he is the ſame Perſon, he ſhall be executed. *Poph.* 131.

He who wounded another is taken by a Conſtable, and ſuffered to eſcape, the wounded Man dies within a Year and Day, 'tis only finable. 3 *Leon.* 207.

A Man is taken for Manſlaughter *per Infortunium*, or *ſe defendendo*, and ſuffered to eſcape, 'tis not Felony in the Officer, but finable.

Theſe Eſcapes muſt be preſented before the Offender ſhall be compelled to anſwer.

Juſtices of the Peace have Power in Seſſions, to enquire of Eſcapes of Felons. 1 *R.* 3. 3.

By a late Statute, the Sheriff may commit his Priſoner to the Goal where he keeps Priſoners for Debt, and not to the Common Goal of that County where the Offender was taken: but ſubject to the ſame Reſtrictions, Regulations and Penalties, as if he had been committed to the Common Goal; and if the Party eſcape out of ſuch Place, the Sheriff ſhall be anſwerable as in other Eſcapes. 5 *Annæ.*

But the Offender may be retaken, even upon the Lord's-Day, by Virtue of a Warrant from a Judge, upon Oath made before any Perſon commiſſioned under Seal of the ſame Court; and the Oath duly filed, as if ſuch Oath had been made before the Judge himſelf.

My Lord *Coke*, in his Expoſition upon the Statute *de frangentibus Priſonam*, is of Opinion, That the Goaler ſhall not anſwer for a voluntary Eſcape, until the Priſoner be attainted. 2 *Inſt.* 592.

ESTREATS.

THESE are the Extracts of Fines, Forfeitures and Amercements, taken out of the Rolls of the Clerk of the Peace; of which he makes two Parts, and delivers one to the Sheriff, the others to the Barons of the Exchequer.

Eſtreats of the Penalties for ſhooting in Guns, muſt be ſent into the Exchequer, by the Juſtice who examined the Matter.

The Sheriff levying the King's Debt, without ſhewing the Party the Eſtreats under the Seal of the Exchequer, muſt be fined, and pay treble Damages to the Party.

Iſſues eſtreated, ſhall not be levied upon any other Perſon than upon him who by the Eſtreat ought of Right to be charged, upon Pain

Pain, that every Clerk writing ſuch Eſtreat, and cauſing it to be executed, and the Officer, ſhall forfeit *Five Marks* to the King, and as much to the Party grieved; to be recovered by Action of Debt, *&c.* 27 *Eliz. cap.* 7.

By the Statute of 2 *&* 3 *Phil. & Mar. cap.* 8. Stewards of Leets have Power to fine thoſe who do not work on the Highways; and within Six Weeks after *Michaelmas* they muſt deliver Indentures of thoſe Fines eſtreated, one to the Bailiff or High-Conſtable of the Liberty, the other to the Conſtable or Church-wardens of the Pariſh where the Offence was committed.

In Default of Preſentment at Leets, the Juſtices, in their Seſſions, ſhall fine theſe Defaulters; and then the Clerk of the Peace muſt deliver indented Eſtreats under his Hand and Seal as aforeſaid, which ſhall be a Warrant to levy, *&c.*

Evidence. See *Felonies.*

THE Witneſſes, *&c.* muſt be bound in a Recognizance to appear and give Evidence at the next General Goal-Delivery; if they refuſe, they may be committed, or bound to good Behaviour.

The Wife can be no Witneſs againſt her Huſband, unleſs ſhe is the Party grieved; in ſuch Caſe it hath been allowed.

In my Lord *Audley's* Caſe, which was for being acceſſary to a Rape of his Wife, ſhe was admitted as Evidence againſt him; and then a Diſtinction was made between the Caſe of a common Perſon between Party and Party, and the Caſe between the King and the Party, upon an Indictment; in the firſt of which Caſes ſhe may not be a Witneſs, and the laſt ſhe may: But my Lord *Hales* was of another Opinion, *viz.* That in Felonies, neither the Wife, nor her Examination, ſhall be uſed for or againſt her Huſband; and that Diſtinction in my Lord *Audley's* Caſe, hath ſince been denied to be Law. *Hutt.* 116. *H. P. C.* 263. *Raym.* 1.

But yet a Wife *de Facto*, as an Heireſs taken away, and by Threats prevailed on to marry the Man, ſhall be a good Witneſs againſt him, and if convicted upon her Evidence, ſhall be hang'd. 1 *Vent.* 243.

An Infant may be a Witneſs even againſt his Parents, indicted for Witchcraft. *Dalt.* 366.

One attainted of Perjury, though pardoned, or of Forgery or Conſpiracy, is not to be a Witneſs; yet the Juſtice may bind ſuch Witneſſes to give Evidence, but he is to inform the Judge of their Credit. Yet one convicted of Felony, and pardoned, is a Witneſs; for the Pardon takes away both *Pœnam & Reatum*. *Godb.* 288. *Raym.* 369. 1 *Vent.* 349. So likewiſe if burnt in the Hand. *Viles* 388.

A Perſon convicted for publiſhing a Libel, and another for ſinging a Ballad againſt the Government, and both ſentenced to the Pillory, were Witneſſes to a Will; and upon an Appeal to the Delegates, they were allowed to be good Witneſſes, becauſe the Infamy ariſes from the Nature of the Crime, and not from the Judgment; but in this Caſe neither of the Offences were infamous, by the Canon or Civil Law, (and 'tis upon thoſe Laws that they were now to judge) tho' 'tis otherwiſe by the Common Law. *Levin.* 3 *Part.* 426.

But a Perſon duly ſet in the Pillory, is not allowed by our Law, to be a Witneſs. *H. P. C.* 263.

If a Witneſs is not able to travel, the Juſtice may excuſe his perſonal Appearance, and certify his Examination at the next Aſſizes.

If a Felon confeſs the Fact, he may give Evidence againſt another, as well to the Jurors who ſhall then inquire thereof on the Behalf of the King, as alſo to thoſe who ſhall paſs upon the Trial of the ſaid *T. P.* for the ſame.

In the Caſe of the Regicides, it was reſolved, That any of the King's Council might privately manage the Evidence for the King before the Grand Jury, in order to the finding the Bill; becauſe the King's Council are the only Proſecutors in his Caſes.

In Treaſon, working Corruption of Blood, or in Miſpriſion of ſuch Treaſon, the Party accuſed is not to have a Note of the Witneſſes Names againſt him; but they muſt be two lawful Perſons, and both to the ſame Overt-Act of the ſame Treaſon: And therefore, if two or more diſtinct Treaſons are alledged in one Indictment, one Witneſs to one, and another to another Treaſon, they ſhall not be eſteemed two Witneſſes. 7 *W* 3. *cap.* 3.

And no Evidence ſhall be admitted to an Overt-Act which is not expreſly laid in the Indictment.

The Accuſed may make his Defence by Witneſſes upon Oath, and may have the ſame Proceſs to compel them to appear, as is uſually granted for Witneſſes againſt him.

By the Statute of 4 *Jac.* 1. *cap.* 1. Felonies committed by *Engliſhmen* in *Scotland*, are to be tried by a Jury in *Cumberland*, *Weſtmorland*, or *Northumberland*, and the Felon ſhall be admitted to have his Witneſſes examined upon Oath, *&c.* which my Lord *Coke* tells us, is a good Precedent for the Diſcovery of Truth, and to inform the Conſciences of the Judge and Jury, for *Jurato creditur in judicio*, and that there is not ſo much as *ſcintilla juris* againſt the Examination of ſuch Witneſſes upon Oath. But notwithſtanding his Opinion, it was never allowed in Treaſon before the Statute of 7 *Will.* and the Practice was ſtill otherwiſe in all other Felonies.

But now by another Statute, 1 *Annæ*, any Perſon produced as a Witneſs on the Behalf of a Priſoner upon Trial for Treaſon or Felony, muſt be upon Oath: *To ſpeak the Truth, the whole Truth, and*

and nothing but the Truth; and if convicted of willful Perjury, ſhall ſuffer ſuch Puniſhment as by the Law may be inflicted on ſuch an Offender.

As to what Evidence ſhall maintain the Indictment, theſe Things are to be obſerved.

1. If the Felony is laid to be committed one Day, the Jury may find the true Day, and the Forfeiture ſhall relate to that Day.

2. If 'tis laid to be done in a certain Place, the Evidence may be of the Fact in another Place, but then it muſt be in the ſame County.

3. If the Indictment and Evidence differ in the Manner of the Death, then it doth not maintain it; as if a Man is indicted for Poiſoning, and the Evidence is of Stabbing: But where they agree in Subſtance, 'tis otherwiſe; as if the Indictment is for Poiſoning with one ſort of Poiſon, and the Evidence is of another.

4. Indictment, that *A.* gave the mortal Wound, and that *E.* and *F.* were preſent and abetting: The Evidence was, That *E.* gave the Wound, and the other were abetting.

5. So on Indictment againſt *E.* as acceſſary to *K.* and *L.* and the Evidence is only, That he was acceſſary to one of them.

6. So for Murder of Malice Fore-thought, and the Evidence is of Malice only in Law; as killing an Officer, or without Provocation.

In all theſe Caſes, the Evidence maintains the Indictment.

A Warrant to ſummon a Witneſs concerning a Felon.

Suſſex, *ſs.* To the Conſtable, *&c.*

WHEREAS I have been informed, That A. B. *of* &c. *was lately robbed at,* &c. *and that* C. D. *of* &c; *is a material Witneſs to prove by whom the ſaid Robbery was committed: Theſe are therefore to require you to cauſe the ſaid* C. D. *forthwith to come before me, or ſome other Juſtice of the Peace for this County, to give ſuch Information and Evidence, as he knoweth concerning the ſaid Offence, that ſuch further Proceedings may be had therein as to Juſtice doth appertain.* Given, *&c.*

For a Witneſs to appear and give Evidence at the Seſſions.

Kent, *ſs.* To the Conſtables, *&c.*

FORASMUCH as A. B. *of* &c. Barber, *is thought to be a fit and neceſſary Witneſs to be examined on his Majeſty's behalf: Theſe are therefore (in his Majeſty's Name) to command you, That you, ſome or one of you, do forthwith warn him the ſaid* A. B. *perſonally to appear before the Juſtices of the Peace at the next Seſſions of the Peace, to be holden for this County at* H. *then and there to teſtify his Knowledge on the behalf of his ſaid Majeſty, to and upon ſuch Matters as he ſhall be then and there examined of. Hereof fail not,* &c.

Upon the Statute of Stabbing, the Evidence was, That the Deceaſed gave the firſt Stroke, 'tis ſufficient to maintain the Indictment for Manſlaughter.

But if the Indictment and Evidence differ in the Manner of the Death, as if it be for Poiſoning, and the Evidence is of Stabbing; that will not maintain the Indictment.

A *Feme-Covert* or Infant being a Witneſs, cannot be bound in a Recognizance to appear at Seſſions; and if ſhe is bound with her Huſband, 'tis void as to her; but they may be bound by Sureties, and if a *Feme-Covert* cannot find Sureties, ſhe ſhall be committed.

EXAMINATION.

THE Juſtices may examine Witneſſes upon Oath; and by Virtue of the Statute of 2 and 3 *Phil.* and *Mar.* they may examine the Felon likewiſe, but not on Oath. *H. P. C.* 262.

This Examination muſt be in Writing, and it muſt be certified to the next Aſſizes, or elſe the Juſtice may be fined by the Judge.

It may be given in Evidence at the Trial, but 'tis not ſufficient to convict, unleſs the Accuſed confeſs at the Trial; yet Mr. *Dalton* mentions a Conviction upon it without any further Evidence.

And yet in the Caſe of *Tongy*, *Phillips* and *Stubbs*, who were indicted for High Treaſon, it was reſolved by all the Judges, That if a Traitor is examined before a Juſtice of Peace, or Privy-Councellor, and confeſſeth the Treaſon, and ſhould afterwards deny it at his Trial; yet two Witneſſes, who can prove ſuch Confeſſion, are good Evidence againſt the Party himſelf, who made it at his Examination, but not againſt any other Perſon whom he then accuſed; and that in ſuch Caſe there needs not two Witneſſes to prove the Criminal guilty of Treaſon.

So in my Lord *Morley's* Caſe it was held, That if Witneſſes, examined before the Coroner were dead, or unable to travel, and Oath made thereof, ſuch Examination might be read, the Coroner making Oath that they are the ſame and not altered.

Several Perſons conſpired, *&c.* to pull down Incloſures, and to provide Armour, *&c.* and to go to *London* and join with more; and this they confeſſed on Examination: The Queſtion was, Whether they ſhould be arraigned for this Offence, becauſe they had confeſſed it already? And it was held they ſhould, and that their Confeſſion before the Arraignment might be given in Evidence againſt them. 2. *And.* 67.

If upon Examination the Felon confeſſeth the Fact, the Juſtice ſhould take his Name ſubſcribed to his Confeſſion.

And ſuch Confeſſion may be given in Evidence with an Oath before whom it was made. *H. P. C.* 264.

Examination taken in one County, may be certified in another.

The Felon may be examined before he is committed, but not upon Oath, becauſe *Nemo debet ſeipſum accuſare.*

His Examination, as well as that of the Witneſſes, muſt be certified by the Juſtice to the next Aſſizes.

The

The Form of the Examination of a Felon.

THE Examination of *W. W. &c.* taken before me, *P. L.* Esq; one of his Majesty's Justices of the Peace for the County of *O.* on the 10th Day of *August, &c.*

This Examinant saith, &c.

The Examination of Witnesses must be taken severally, and upon Oath thus:

The Examination of *A. B.* of &c. taken upon Oath before me, *P. L.* Esq; *ut prius.*

EXTORTION.

IS an Offence, where an Officer by Colour of his Office takes Money, or any other Thing of Value not due, or more than is due, or before 'tis due: And in a large Sense, 'tis where any Person is oppressed by an extorting Power, or under a Pretence of Right, 1 *Inst.* 368. *b.*

An Attorney taking 1 *l.* 3 *s.* of his Client, *Extorsive contra formam Statuti*, which must be the Stat. of 3 *Jac. cap.* 7. which gives the Client Costs and treble Damages, where an Attorney demands by his Bill more than his due Fees and Disbursments; the Question was, Whether this is to be recover'd by Action or Information? And by some Opinions an Information will lie. *Sid.* 434.

A Bailiff of a Hundred, taking *Fifty Shillings, colore Officii*, without expressing particularly for what: After Verdict this was held sufficient, by reason of the Words *colore Officii*; but it had been otherwise upon Demurrer. *Sid.* 91.

A Bailiff to a Sheriff, indicted at Sessions for taking *Twenty Shillings* of *T. P. Extorsive colore Officii*, was committed, and pleaded, and was tried the same Day in Sessions and convicted, and upon a Writ of Error the Judgment was reversed, because a Man cannot be indicted and tried at the same Sessions. *Cro. Car.* 438. *Jones* 379. 280. But the Damages are to be recovered by Action.

Taking more than *Four Pence* for an Arrest, forfeits treble Damages to the Party grieved, and besides *Forty Pounds* between King and Prosecutor, *per* 23. *H.* 6. *cap.* 10. But the Jury must find the single Damages, and then the Justices may treble them. *Sid.* 91.

An Information against a Clerk of Assize, for taking more than his Fees, was ordered to be tried at Bar. *Sid.* 420.

A Coroner taking more than his Fees, or refusing to view the Body before he had *Six Shillings and Eight Pence* for himself, and *Two Shillings* for his Clerk; he was committed, *&c.* 3 *Inst.* 149.

A Goaler taking more than his Fees.

He

He was convicted of Extortion, fined one Thouſand Marks, committed during the King's Pleaſure, bound to his good Behaviour for a Year, and ordered to acknowledge his Offence publickly at the next Aſſizes, and turned out of Commiſſion.

A Sheriff taking more than his Fees, or any Thing of a Conſtable for bringing a Felon to Goal.

'Tis Extortion in him to take *Sixty Pound* to execute a Judgment in Dower, 1 *Keb.* 743; but if he is acquitted, no new Trial ſhall be had. 2 *Keb.* 404.

By Stat. of 12 *Q. Annæ*, 'tis enacted, that no Perſon after 29th of *September*, 1714, take for Intereſt above 5 *l. per Cent. per Annum*, on the Forfeiture of treble the Value of the Money lent, and the Bonds, *&c.* to be void. *vid.* 12 *Annæ*.

Scriveners, Brokers, *&c.* taking above 5 *l. per Cent. per Annum* for Brokage, ſoliciting, or procuring the Loan, or Forbearance; or above *Twelve Pence* beſides the Stamp Duties, for making or renewing the Bond, *&c.* forfeits *Twenty Pound* with Coſts of Suit, and half a Year's Impriſonment; one Moiety to the King, the other to the Informer. To be recovered by Bill, Plaint, *&c.* in any of his Majeſty's Courts at *Weſtminſter*, &c.

FELO-DE-SE.

IS one who committeth Felony, by murdering himſelf voluntarily. It has been the Opinion of learned Men, That a Perſon who is *Compos Mentis*, cannot be guilty of ſo much Malice towards his Perſon, which may occaſion him wilfully to kill himſelf; becauſe naturally the Intention of Men aim at what is good for themſelves, and at what conduceth to their own Preſervation; and therefore 'tis to be preſumed, that where a Man killeth himſelf, he is not *Compos Mentis*.

The Perſon who is guilty of this Offence muſt be,

1. Of the Age of Diſcretion. 2. *Compos Mentis*. 3. The Act muſt be voluntary. 4. Death muſt enſue within a Year and a Day after the Stroke or Wound; otherwiſe no Forfeiture of Goods, *&c.* incurreth.

But in ſome Caſes the Act may be involuntary: As, if I am aſſaulted, and draw my Sword to defend myſelf, and happen to fall down, and the other purſuing his wicked Intentions to deſtroy me, falls upon my Sword and kills himſelf, he is *Felo-de-ſe*.

But if I ſtand upon my Defence without being aſſaulted, and am only in Danger thereof, and another runs upon my Sword and kills himſelf, he is not *Felo-de-ſe*.

CONVICTION. This muſt be by the Oath of Twelve Men before the Coroner *ſuper viſum Corporis*; and when his Inquiſition is returned and filed, 'tis not traverſable. *Sid.* 90. 1 *Vent.* 278. *contra.*

If

If the Body cannot be found, &c. then the Inquiry may be before the Juſtices in Seſſions; and this is traverſable. 3 *Inſt.* 55.

So if the Enquiry be in *B. R.* in the ſame County, 'tis traverſable by Executor or Adminiſtrator.

And till Conviction, no Goods are forfeited.

The Coroner's Inqueſt found, That *ſeipſum felonice ſubmerſus fuit*, he was ordered to attend *B. R.* to amend it; for it ſhould be *jecit ſeipſum in aquam*, &c. *Sid.* 259.

If a Preſentment is made before a Coroner, that a Man was *Felo-de-ſe*, and that he had Goods in the Poſſeſſion of *S.* this Preſentment muſt be certified into *B. R.* upon which, Proceſs out of the Crown-Office iſſues againſt *S.* and 'tis continued 'till he is outlawed. 2 *Leon.* 200.

This is Forfeiture of all the Goods and Chattels which the Party had at the Time of the Stroke given, or at any Time ſince; for it relates to that Time, and not to the Death.

And yet there is an Opinion in my Lord *Dyer*, That if Money is owing to one, who is *Felo-de-ſe*, upon ſimple Contract, and not on *Speciality*, the Debt is not forfeited; becauſe ſuch Debtor may wage his Law with the King. *Dyer* 262.

A Debtor was bound with Sureties to pay the Money, and made a Bargain and Sale to the Sureties of Goods, to the Value of the Debt, to indemnifie them; in which Deed there was a Covenant, That if the Debtor ſaved them harmleſs, that the Bargain ſhould be void, and that in the mean Time ſhe ſhould have the Uſe of the Cattle: Before the Debt became due, the Debtor killed himſelf, and the Sureties ſeized the Cattle; but it was held, the Lord Almoner ſhould have them, or the Money for which they were ſold, tho' the Property was in the Vendees; but then he ought to diſcharge them from the Debt. *Dyer* 160.

Melius Inquirend. Not granted but where a Miſdemeanour in the Coroner. *Vent.* 182. 352.

Of all Offences, &c. except Murder, a *Felo-de-ſe* is not under this Exception, (Pardon) becauſe there is a Difference between killing ones ſelf and another; for the firſt is againſt the Law of Nature, the other againſt the *Moſaical* Law, by which Vengeance is to be taken againſt the Man-ſlayer; but no Vengeance can be had againſt one who is *Felo-de-ſe*; therefore his Goods, &c. are forfeited to the King for depriving him of the Benefit of a Subject. *Levinz.* 1 *Part* 8.

If a Man 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. *ad.*

Felonies,

Felonies. Vide *Evidence, Larceny,* &c.

MY Lord *Coke* tells us, this Word is derived from the *Latin* Word *Fel*, or from the old *Saxon* Word *Fell*; the one ſignifying *Gall*, and the other *Fierce*; and his Reaſon is, becauſe either of thoſe Words are ſuitable to the Crime, which is always intended to be done with a *bitter* or *fierce* Mind.

This makes we reflect on what my Lord *Verulam* wrote to that Great Lawyer, *viz.* That when he ſpoke in the Law, (which he calls his own Element) he had no Equal; but when he wandered (as he tells us he often did) he was very much out of the Way: And this appears by his Derivation of this Word, and in many more Inſtances which I could mention.

The learned Sir *Henry Spelman* gives us a different but a true Account of this Word (*viz*) That 'tis derived from the *Saxon* Word *Feah*, which we now call *Fee*, and which then ſignified a Reward or Eſtate; and from the *German* Word *Lon*.

Which in *Engliſh* is *Price*; ſo that this was a Crime which was [illegible] with the Price (that is the Loſs) of his Eſtate.

For in thoſe Days there was a Pecuniary Puniſhment for all Crimes, which was aboliſhed by *Hen.* 1. and inſtead thereof he appointed Hanging for Felony.

What Felonies are, *by Common or Statute Law.*

Felonies at Common Law are, (1.) Againſt the Life of a Man, as Chance medley, *Deodand*, *Felo-de-ſe*, Manſlaughter, Manſlaughter *ex neceſſitate*, *ſe defendendo*, Murder.

(2.) Againſt the Goods, as Larceny, Robbery, Piracy.

(3.) Againſt the Habitation, as Burglary.

(4.) Againſt publick Juſtice, as Burning his Houſe, Break of Priſon, &c.

Felonies by Statute Law are, Stealing of Goods which by Agreement he is to uſe, or ſhall be let to them in Lodgings. 4 *W. & M.*

Delivering Silk by a Throwſter to a Man to work, and he ſteals it, this was Felony before that Statute; So the Delivery of Plate to a Butler, or Sheep to a Shepherd, and they ſteal it; becauſe the Property was ſtill in the Owner. *Keeling.* 35.

Imploying the King's Armour, Munition, or Ordnance, to the Value of *Twenty Shillings*, Proſecution muſt be within a Year, loſeth Lands but during Life, no Corruption of Blood, the Wife ſhall have Dower. 31 *Eliz. cap.* 4.

This cannot be determined in Seſſions.

Bail acknowledged in the Name of another not privy or conſenting. 21 *Jac. cap.* 26. But if taken *de bene eſſe* at a Judge's Chamber, and not filed, no Felony. *Sid.* 90.

Concealing

Concealing the Death of a Baſtard, unleſs the Mother proves by one Witneſs it was dead-born. 21 *Jac. cap.* 27.

Buggary, with Man or Beaſt, there muſt be *Penetratio & Emiſſio, &c.* 27 *H.* 8. *cap.* 6. revived by 5 *Eliz. cap.* 7. No Clergy.

Burglary, *Vid.* Robbery.

Burning, a Rack or Stack of Corn, Hay or Grain in the Night-time, or Barns or Out-houſes. 21 & 22 *Car.* 2.

But where a Man was indicted, for that he being poſſeſſed of an Houſe, did *felonice* ſet it on Fire, with an Intent to burn his Neighbour's Houſe: This was adjudged no Felony, but a Treſpaſs. *Keeling* 29.

Cloth ſtolen from the Tenters in the Night. 22 *Car.* 2.

Stealing Goods out of a Coach-Houſe, to the Value of *Five Shillings*, tho' not broke open, or aſſiſting any Perſon to do it either by Day or Night. 10 and 11 *W.* 3 *H.* 5. *cap.* 1. 2. *H.* 6. *cap.* 9. Clergy.

Blanching Copper or Silver for Sale, or mixing blanched Copper with Silver, or knowingly buying or ſelling it, or offering it to Sale, or any maleable Compoſition of Minerals, or Metals heavier than Silver, and looking like Standard-Gold; paying or putting off counterfeited Mill'd Money, or unlawfully diminiſh'd (and not cut in Pieces) at a lower Rate than its Denomination doth import.

No Corruption of Blood, Loſs of Dower; Proſecution muſt be within three Months, *&c.* continue till next Seſſions of Parliament. 8 and 9 *Will.*

Enrolled in the Name of another not privy or conſenting. 21 *Jac. cap.* 26.

Egyptians above Fourteen Years of Age remaining here a Month. 1 and 2 *Phil.* and *Mar. cap.* 4. 5. *Eliz. cap.* 20. No Clergy.

Priſoner ſuffered voluntary to eſcape being under an Arreſt for Felony, 'tis Felony in the Officer.

To counterfeit or forge Exchequer-Bills or to demand Money on them, knowing them to be counterfeit. 8 and 9 *Will.*

Acknowledging a Fine in the Name of another not privy or conſenting. 12 *Jac. cap.* 26.

Seſſions have no Juriſdiction of this Offence. See *Counterfeits.*

Forging a Deed, after a former Conviction for the like Offence. 5 *Eliz. c.* 14. No Clergy.

Hunting in a Forreſt, unlawfully by Night with painted Faces. 1 *H.* 7. *cap.* 1.

Deſtroying or killing Horſes in the Night-time; but wounding them only, forfeits treble Damages.

Receiving, retaining or maintaining a Jeſuit knowingly, 27 *Eliz.* c. 2. No Clergy.

Imagining or conſpiring to kill the King, or any of his Council, 3 *H.* 7. *cap.* 14. No Clergy.

A Limb

Marrying, (1.) a ſecond Huſband or Wife, the firſt living, but then the Man muſt be above Fourteen, and the Woman above Twelve; if under that Age, and marry, and diſagreeing afterwards, may marry again.

(2.) Either of them being abſent above 7 Years beyond Sea, tho' Notice; but if in *England* muſt not have Notice that the Party is living.

(3.) Divorce *a menſa & thoro* may marry: As *Cauſa Adulterii*, which was *Middleton*'s Caſe; or *cauſa Sævitiæ*, which was *Rook*'s Caſe.

(4.) After a Sentence of Nullity in the Eccleſiaſtical Court, in theſe three laſt Caſes may marry again. 1 *Jac.* 11. Clergy.

A Rape was Felony at Common Law; but by the Statute of *W.* 1. *cap.* 13. made a Miſdemeanour only, puniſhable by Fine and Impriſonment: But 10 Years afterwards, by the Statute of *W.* 2. *cap.* 34. it was made Felony again.

In *Michaelmas*-Term, 14 *Eliz.* a *Scotchman* was indicted for a Rape upon a Girl ſeven Years old, and no more, and upon the Evidence of credible Witneſſes was found guilty; but the Court very much doubted whether the Fact could be committed upon ſuch a young Girl: And this was the Reaſon of making the Statute 18 *Eliz.* declaring it Felony to raviſh a Girl under 10 Years of Age, tho' conſenting to the Act. *Vide, Rape. Dyer* 304.

If a Woman conſent after the Fact, 'tis ſtill a Rape; and if ſhe will not proſecute, the Huſband may, or the Father or next of Kin may appeal.

And if a Woman be under ten Years, then, tho' ſhe conſent, 'tis a Rape: And if ſhe be above ten Years, and not conſent at firſt, tho' ſhe conſent afterwards, it is likewiſe a Rape. 18 *Eliz. c.* 6. and no Benefit of Clergy is allowed.

The ſooner the Complaint is made the better, by reaſon the Rape may be the eaſier proved, but our Law allows forty Days.

If a Man ſhall take away a Woman by Force, which hath Subſtance in Lands or Goods, or that is Heir apparent, and ſhall marry or defile her, it is Felony. 3 *H.* 7. *c.* 2.

But it is ſaid a Man may force a Woman to make a Contract of Matrimony, without being guilty of Felony, for 'tis the Marrying or defiling makes it Felony.

By the laſt Statute of *Phil. & Mar.* If a Man ſhall take away any Woman-Child under the Age of ſixteen Years, out of the Cuſtody and againſt the Will of the Father or Mother, or of the Guardian of the Child, the Offender ſhall be fined and impriſoned in *B. R.*

A Free-Man of *London* deviſed the Cuſtody of his Daughter to a Relation, and died; the Daughter being at the Time of the Death of her Father in the Country, the Relation to whoſe Cuſtody ſhe was deviſed, got a Warrant from my Lord Chief Juſtice to take her, which he did, but ſhe was then married to a Stranger, which was held to be out of the Statute, becauſe the Child was never in Poſſeſſion of the Guardian. *Sid.* 363.

A

A Limb cut off or diſabled, with an Intention to maim or diſfigure the Perſon. 22 and 23 *Car.* 2. No Clergy.

An Information was exhibited againſt a Perſon for Combination in procuring a clandeſtine Marriage in the Night, without Bans or Licence, between a Maid-Servant and a young Gentleman who was Heir to an Eſtate, and the Parſon being in Liquor, they were fined 100 Marks, and ordered to be committed till paid. *Cra. Cra.* 557.

Stealing of Records, 8 *H.* 6. *cap.* 12. Clergy.

Robbing a Houſe, Barn or Stable in the Day-time, and taking in Value *Five Shillings*, tho' no Body within, and breaking in the Night-time, and putting the Owner, *&c.* in fear. 39. *Eliz. cap.* 15.

Subjects in Paſſing over the Sea to a Foreign Prince in order to ſerve him, 3 *Jac. cap.* 4.

If any Perſon will wilfully caſt away a Ship, or procure the ſame to be done, he is guilty of Felony. *Per* Statute 1 *Annæ.*

Servants above Eighteen Years old, other than Apprentice, going away with or embezzelling the Goods of his Maſter, in Value *Forty Shillings*, delivered to him, *&c.* 21 *H.* 8. *cap.* 7. After Deceaſe of his Maſter, ſpoiling Goods, *&c.* 33 *H.* 6. *cap.* 1. and not appearing in *B. R.* upon Proclamation, he hath Clergy by the Statute of 1 *Ed.* 6. *cap.* 12. See the Act 12. *Annæ,*

If I deliver a Bond to my Servant to receive *Twenty Pounds*, which he receives, and goes away with the Money, this is not within the Statute, becauſe a Bond is not properly Goods, but a Choſe in Action: So if I deliver Goods to my Servant to ſell in a Market, which he doth, and runs away with the Money; 'tis not within this Law, becauſe he had not the Money by my Delivery: But if one Servant delivers Goods to another Servant, and he runneth away with them, this is Felony; becauſe the Delivery of the Servant is the Delivery of the Maſter. *Dyer* 6. *b.*

Breaking a Warehouſe, Shop, or Stable, in the Day Time, and taking to the Value of *Five Shillings*, 3 *&* 4 *W. & M.* Tho' he doth not break it in the Day Time, yet if he take the Value of *Five Shillings*. 10 *&* 11 *W.*

Stealing any Goods, which by Contract or Agreement the Party was to uſe; Felony. 3 *&* 4 *W. & M.* now made perpetual, *per* 6 *&* 7 *W.*

Acknowledging a Statute in the Name of another, not privy or conſenting. 21 *Jac. cap.* 26.

Tranſporting a Rogue, and he returning without Licence. 39 *Eliz. cap.* 4. 1 *Jac. cap.* 7. 25. Clergy; if burnt, no Clergy.

Witchcraft in the firſt Degree.

1. By Invocation or Conjuration of Evil Spirits.
2. Conſulting, entertaining or employing them.
3. Taking up a dead Perſon to be employed, not actually uſed in Charm or Witchcraft.
4. Doing

4. Doing any Witchcraft, Inchantment or Charm, &c. whereby any Perſon is killed, deſtroyed, conſumed, or lamed; no Clergy, 1 *Jac. cap.* 12.

Witchcraft in the ſecond Degree.

By taking upon them by Inchantment, Charm, &c. to tell where Treaſure is, or where Goods loſt, &c. may be found, or to provoke unlawful Love, or by deſtroying Goods or Cattle, or uſing Witchcraft to hurt any Perſon, tho' not done, the firſt Offence is Impriſonment for a Year, and Pillory; and being convicted thereof, and receiving Judgment, and offending again, 'tis Felony. 1 *Jac. cap.* 12.

Dr. *Lamb* was indicted, for that he uſed *quaſdam malas & execrabiles & diabolicas Artes*, and the Indictment was quaſhed; becauſe there was not a Word in it which ſignified Witchcraft: It may be expreſſed by the Word *Incantatio*. *Latch* 156.

A *Woman* taken away againſt her Will, and marrying her; but then ſhe muſt have Lands or Goods, &c. or be an Heir apparent, and muſt be married or defiled. 3 *H.* 7. *cap.* 2.

A *Woman* taken in one County, and marrying in another, Trial muſt be where married; it cannot be in Seſſions, Felony.

A *Woman* privy to Marriage, and not to the Force, not Guilty; marrying with Conſent, but under the Force, Felony. 19 *Eliz. cap.* 2. no Clergy.

A Feme Convert cannot ſteal her Huſband's Goods, but if ſhe is taken away with them againſt his Conſent, 'tis Felony; ſo 'tis if ſhe deliver'd the Goods of her Huſband to an Adulterer, this is Felony in him.

Deſtroying or killing Sheep in the Night-Time, is Felony. *Stat.* 22 & 23 *Car.* 2.

Where a Felon is found guilty at the Proſecution of the Party robbed, the Owner of the Goods, the Juſtices have Power to award Reſtitution of the Goods ſtolen, unleſs they are ſold in a Market, ſeized by the Lord, as waived. *Per Stat.* 21 *H.* 8.

The Indictment for a Felony in ſtealing Goods muſt be, *quod Felonice cepit & aſportavit*. Now, if Goods are delivered to a Carrier, to carry to *D.* and he carrieth them to another Place, and there converteth them to his own Uſe, this is Felony; for tho' it cannot ſtrictly be ſaid, that he *Felonice cepit* thoſe Goods, yet the carrying them to another Place, and there diſpoſing of them to his own Uſe, ſheweth that he always intended to ſteal them, and not to take them upon the Contract or Agreement of the Owner.

So if one come to a Market pretending to buy a Horſe, and the Owner giveth Leave to ride the Horſe to try his Paces, and he rideth away, this is Felony: So if I deliver Goods to a Porter to carry to ſuch a Place, and he carrieth them to another Place, and there openeth and diſpoſeth of them; this is Felony.

The

The Law is the ſame if the Goods were carried to the Place appointed, and then embezzelled; becauſe when they are brought to that Place, the Contract is determined, and the Poſſeſſion is re-veſted in the Owner, and ſo being taken away afterwards, 'tis Felony. *Keeling* 82. 83.

By the Statute 10 & 11 *William* 3. 'tis enacted, That he who buys Goods, knowing the ſame to be ſtole, or who ſhall receive or conceal any Burglar, Felon or Thief, knowing them to be ſo, ſhall be adjudged acceſſary to the Fact, and being convicted, ſhall ſuffer Death. But if the principal Felon cannot be taken, then the Buyer or Receiver of the Goods which he ſtole, ſhall be proſecuted only for a Miſdemeanour, and fined and impriſoned, or ſuffer any other corporal Puniſhment the Court ſhall inflict, though the principal Felon is not convicted; and this ſhall exempt the Acceſſary from any farther Puniſhment, if it ſhall happen that the Principal ſhould afterwards be convicted.

By the Statute 7 *Annæ*, 'tis made Felony to forge or counterfeit any *Exchequer* Bill, or any Indorſement thereon, or to tender any ſuch Bill in Payment, or demand to have the ſame exchanged for ready Money, by the Governor of the Company of the Bank of *England*, or by any Receiver or Collector, knowing the ſame to be forged or counterfeited, with an Intent to deceive any Perſon; and 'tis Felony without Benefit of Clergy.

And by another Statute made 12 *Annæ*, For the more effectual preventing and puniſhing Robberies that ſhall be committed in Houſes, as well in the Day as in the Night, it is enacted, That whoever ſhould ſteal Money or Goods to the Value of *Forty Shillings*, being in any Dwelling-Houſe, or Out-Houſe thereunto belonging, although ſuch Houſe or Out-Houſe be not actually broken by ſuch Offender; and altho' the Owner of ſuch Goods, or any other, be or be not in ſuch Houſe or Out-Houſe; or ſhall aſſiſt, or aid any Perſon to commit any ſuch Offence, being thereof convicted, ſhall be abſolutely debarred from the Benefit of Clergy.

Provided, it do not extend to Apprentices under the Age of 15 Years, who ſhall rob their Maſters as aforeſaid.

And there having been ſome Doubt, whether the entring into the Manſion-Houſe of another, without breaking the ſame, with an Intent to commit ſome Felony, and breaking the ſaid Houſe in the Night-Time to get out, be Burglary; It is enacted, That if any Perſon ſhall enter into the Manſion-Houſe, or Dwelling-Houſe of another, by Day or by Night, without breaking the ſame, with an Intent to commit Felony, or being in ſuch Houſe ſhall commit any Felony, and ſhall in the Night-Time break the ſaid Houſe to get out of the ſame; ſuch Perſon ſhall be adjudged and taken to be guilty of Burglary, and the Offender ouſted of the Benefit of his Clergy, in the ſame Manner as if he had entred the ſaid Houſe in the Night-Time, with an Intent to commit Felony.

And

And by another Statute 12 *Annæ*, the counterfeiting or forging of Lottery Orders, or to ſell ſaid Orders, knowing them to be counterfeited or forged, is made Felony without the Benefit of Clergy.

No Clerk of Aſſize or Peace, ſhall take any Thing of a Witneſs for giving Evidence againſt a Felon; which ſee under Title, *Clerk of the Peace.*

Felonies committed in the Reign of one King, the Proſecution may be in the Reign of another.

Felonies committed in one County, and the Offender taken in another, may be impriſon'd where taken, and remov'd to be proſecuted where the Fact was done.

But if he carry the Goods with him, 'tis Felony in every County where they are carried.

Stealing of a Bond is Felony, becauſe 'tis a Thing in Action; and ſtealing of Goods from a Man who hath a Property in them only *pro tempore*, as a Bailiff, *&c.* is Felony.

By the Statute of 23 *H.* 8. *cap.* 1. Clergy is taken away from Principals and Acceſſaries in Robbery: And becauſe Men robbed in one County, and fled into another, and ſo were indicted only for Felony, and had their Clergy; therefore by the Statute of 25 *H.* 8. *c.* 3. Clergy was taken away from thoſe who were found guilty in any County for ſtealing Goods, if it appear to the Judge that he ought not to have Clergy if he had been tried in the County where the Fact was committed. *Anno* 13 *Eliz.* a Man committed a Robbery in *Wilts*, and fled into *Berks*, where the Goods were taken upon him, and there he was indicted only for Felony, and found guilty to the Value of *Ten Pence*: And it appearing to the Court that he had robbed the Perſon in the Highway, the Queſtion was, whether he ſhould be hang'd by the Statute of 25 *H.* 8. or only whipp'd for Petty Larceny? And reſolv'd by all the Judges, That he ſhould be only whipp'd, becauſe the Statute extends only to ſuch who ſhall *demand their Clergy*, and ſays it ſhall be *denied*, if upon Examination it ſhall appear there was a Robbery done: But here is found guilty of Larceny only, and ſo need not demand his Clergy. *Moor* 550.

Officers may break open an Houſe to take a Felon, or any one ſuſpected thereof.

And if ſuch Officer hath a Warrant to take a Felon, who is killed in reſiſting, 'tis no Felony in the Officer; but if the Officer is killed, *contra.*

If a Felon eſcape from an Officer by Force, and he cannot otherwiſe retake him, he may be killed, for the Officer will be juſtified by his Authority.

Cutting Corn, and carrying it away at the ſame Time, no Felony; but if he lay it aſide, and afterwards carries it away, Felony.

A Felon brought before a Juſtice upon Suſpicion, tho' it appear he is not guilty, yet he is not to be diſcharged without a Trial.

A Wat-

A Warrant to search for a Felon, and to raise Hue-and-Cry, *&c.*

To all Conſtables and other Officers in the County of *K. &c.*

Kent *ſs.* *WHEREAS* A. B. *of* &c. *hath this preſent Day upon Oath complained unto me* P. L. *Eſq; one of his Majeſty's Juſtices of the Peace for the County aforeſaid, That upon* Tueſday *the ſecond Day of* September *laſt at* &c. *he was robbed of* &c. *and other Things, and that he hath great Cauſe to ſuſpect* C. D. *an idle Perſon,* [here deſcribe his Perſon, Cloaths and Age.] *Theſe are therefore to require you, and each of you, to ſearch diligently within your ſeveral Precincts for the ſaid* C. D. *and likewiſe to make Hue-and-Cry after him from Town to Town, and from one County to another, as well by Horſemen as Footmen; and if you ſhall find the ſaid* C. D. *that then you apprehend him, and carry him before ſome Juſtice of Peace where he ſhall be taken, to the End he may be examined touching the Premiſes: And hereof fail not. Given,* &c.

A Warrant to apprehend a Felon.

To the Conſtable.

Kent *ſs.* *WHEREAS* A. B. *of* &c. *hath this preſent Day made Oath before me* P. L. *Eſq; one of his Majeſty's Juſtices of the Peace for the ſaid County, and thereby charged* C. D. *of* &c. *with the felonious taking,* &c. *from him the ſaid* A. B. *on,* &c. *Theſe are therefore to command you to apprehend the ſaid* C. D. *and to bring him before me, or ſome other of his Majeſty's Juſtices of the Peace for this County, to be examined concerning the Premiſſes with which he is charged: And hereof fail not. Given,* &c.

Warrant to apprehend an Acceſſary to Felony.

Bed. ſſ. To the Conſtables of the Pariſh of *Potton* in the ſaid County of *Bedford.*

WHEREAS on the 30*th of* June *laſt paſt, ſeveral Goods,* &c. *were feloniouſly ſtoln and taken away from* J. S. *by one* A. B. *of* P. *aforeſaid, and the Fact hath been duly proved upon him: And whereas I am informed, that* C. D. *of your Pariſh, adviſed and encouraged the ſaid* A. B. *to commit the Felony aforeſaid* [*or hath received and entertained the ſaid* A. B. *ſince the Fact committed, or bought Part of the Goods ſo ſtoln by the ſaid* A. B.] *whereby he is become Acceſſary to the ſaid Felony, according to the Statutes in that Caſe made: Theſe are therefore, in his Majeſty's Name, to require and authoriſe you to apprehend the ſaid* C. D. *and to bring him before me, or ſome other of his Majeſty's Juſtices of the Peace for this County, to anſwer what is laid to his Charge, as aforeſaid, and to be dealt with according to Law. Given under my Hand and Seal,* &c.

Warrant

Warrant to commit a Criminal in order to Examination.

Bed. ss. To the Conſtables of the Pariſh of *Potton*, in the ſaid County of *Bedford*, and to the Keeper of his Majeſty's Goal in and for the ſaid County.

WHEREAS a Felony hath been lately committed, and A. B. *of your Pariſh, being ſuſpected thereof, hath been this Day brought before me, one of his Majeſty's Juſtices of the Peace for this County, to be examined concerning the ſame, and hath refuſed to be examined as the Law requires* [*or the Witneſſes not being ready to prove the Crime againſt him*]: *Theſe are therefore, in his Majeſty's Name, to require and authoriſe you the ſaid Conſtables, to convey the ſaid* A. B. *to the ſaid Goal: And you the ſaid Keeper are hereby required to keep the ſaid* A. B. *in your ſafe Cuſtody for the Space of three Days; which I do adjudge neceſſary to ſummon the Witneſſes againſt him, and finiſh his Examination. Given under my Hand and Seal, &c.*

The Examination of a Felon.

The Examination of *Charles Dawſon*, of *Woodbridge*, in the County of *Middleſex*, taken before me *James Smith*, Eſq; one of his Majeſty's Juſtices of the Peace for the ſaid County, this Fifteenth Day of *May*, 1749.

THE Examinant being charged before me, by T. H. *of* Woodbridge *aforeſaid, Grocer, with the felonious Stealing out of the Houſe of the ſaid* T. H. *in* Woodbridge *aforeſaid, ſeveral Goods, viz. Three Silver Spoons, a Gold Ring, and a Pair of Silver Buttons, to the Value of three Pounds, on* Monday *the* 12th *Day of this Inſtant* May; *he the ſaid* C. D. *upon his Examination now taken by me, denieth that he ſtole the ſaid Goods, or ever had them in his Poſſeſſion* [*or confeſſeth that he ſtole the ſaid Goods, and ſold them to* J. D. *of* Raway *in the ſaid County, Silverſmith, for Twenty Shillings, as the Caſe is.*]

Taken before me the Day and Year aboveſaid, James Smith.

Theſe Examinations are to be taken before any Offender ſhall be committed. The Examination of the Offender without Oath, and the Witneſſes upon their Oaths.

A Warrant to cauſe Witneſſes to appear and give Evidence.

To the Conſtable, &c.

Kent, ſs. YOU are hereby required forthwith to warn *W. S.* of *&c.* and *R. M.* of *&c.* to be at my Houſe in *O. &c.* by Nine of the Clock, *&c.* to teſtify their Knowledge concerning a certain Felony ſuſpected to be done by *C. D.* of *&c.* And hereof fail not. And that you be there likewiſe with this Precept, to ſhew how you have executed the ſame. Given under my Hand, *&c.*

Examin

Examination of a Witneſs, relating to Felony.

The Examination of *E. F.* of *P.* in the County of *U.* Taylor, taken upon Oath before me *R. F.* Eſq; one of his Majeſty's Juſtices of the Peace for the ſaid County, the Third Day of *July*, 1749.

THIS Examinant upon his Oath, depoſeth and ſaith, That on the 30th of June *laſt paſt*, C. D. *of* P. *aforeſaid, Turner, did enter the Houſe of* A. B. *of the ſame Place, and from thence felonioufly ſteal one Silver Tankard, mark'd* A. B. *and alſo three Salvers, and half a Dozen of Spoons, belonging to the ſaid* A. B. *and that the Examinant being at that Time a Servant to the ſaid* A. B. *endeavoured to apprehend the ſaid* C. D. *but there being no other Perſon in the Houſe belonging to the aforeſaid* A. B. *the ſaid* C. D. *very much beat and wounded this Examinant, and left him bound on the Floor, whilſt he made his Eſcape with the Plate and Goods aforeſaid, and this Examinant further ſaith not.*

Taken before me the Day and Year aboveſaid. *R. F.*

Warrant to ſearch for ſtolen Goods, and apprehend the Felon.

Bed. ſſ. *To the Conſtable of the Pariſh of* B. *or either of them.*

WHEREAS Complaint hath been made unto me, *T. B.* Eſq; one of his Majeſty's Juſtices of the Peace for the ſaid County, by *J. K.* of *N.* in the ſaid County, Yeoman, that of late certain Goods have been felonioufly taken from him, and that he hath Reaſon to ſuſpect *E. W.* of the ſaid Pariſh of *N.* Spinſter, now reſident in your Pariſh of *B.* to have ſtoln the ſame: Theſe are therefore, in his Majeſty's Name, to require you, that upon Receipt hereof, you make diligent Search in the Houſe of the Widow *R.* of *B.* aforeſaid, where the ſaid *E. W.* now is; and if upon Search you ſhall find the ſaid *E. W.* or any other ſuſpected Perſons, or any of the ſaid Goods ſuſpected to be ſtoln, that then you bring the ſaid *E. W.* and ſuch other ſuſpected Perſons before me, to anſwer the Premiſes; and that you likewiſe ſeize and ſecure ſuch Goods as you ſhall ſuſpect to be ſtoln: And hereof fail not, as you ſhall anſwer it at your Peril. Given under my Hand and Seal, *&c.*

Warrant to apprehend one for receiving ſtolen Goods.

Bed. *ſs. To the Conſtables of,* &c. *and either of them.*

WHEREAS *L. E.* of *D.* in the County of *Cambridge*, Farmer, hath this Day made Oath before me, that on or about the 25th Day of *January* laſt, a Pair of Breeches of Beaver-Skin, of the Value of *Twenty Shillings*, were felonioufly taken from him, and that he ſaw the ſaid Breeches worn by *J. D.* Labourer, of your ſaid Town of *P.* on Saturday laſt, being the 31ſt of *May*: Theſe are therefore in his Majeſty's Name, to require and authoriſe you,

and either of you, to apprehend the said *J. D.* and to bring him before me, or some other of his Majesty's Justices of the Peace, to be examined concerning the Premisses, and to be further dealt with according to Law. Given under my Hand and Seal, &c.

Another Warrant to search for suspected Persons, &c. and to apprehend, &c.

Kent, ss. *To the Constables of* M. *in the County of* K. *and to all the other Constables within the said County.*

WHEREAS Complaint upon Oath hath been made unto me, by *A. B.* of, &c. That certain Sheep, &c. and other Goods, were lately feloniously taken from him, and that he hath just Reason to suspect several idle and disorderly Persons within your Parish, to have unlawfully taken the same: These are therefore to command you, that immediately upon Receipt hereof, you diligently search every suspected House and Place within your Parish, which you and the said *A. B.* shall think convenient to search; and if you shall find any of the said Goods in the Possession of any such suspected Person or Persons, or shall have any just Cause to suspect any Person, that then you bring such Person or Persons before me, or some other Justice of the Peace for the County aforesaid, to answer the Premises, and to be examined concerning the same: And hereof fail not. Given, &c.

A Mittimus.

To the Keeper of the Common Goal of &c. or to his Deputy.

Kent, ss. *THESE are to charge and command you to receive into your Goal the Body of* C. D. *late of* &c. *taken by* J. O. *and* J. P. *Constables of* &c. *and brought by them before me for Suspicion of Felony; and that you safely keep him in your said Goal and Custody, until he shall be from thence discharged by due Course of Law. Given* &c.

To give Evidence at Sessions.

To the Constable, &c.

Kent, ss. WHEREAS *I am informed, That* W. S. *of,* &c. *is a material Witness to be examined on his Majesty's Behalf, concerning a felonious Act suspected lately to be done by* C. D. &c. *These are therefore to command you to warn the said* W. S. *personally to appear at the next General Quarter-Sessions of the Peace, to be held for the said County at* M. *then and there to give Evidence upon such Matters as he shall be examined. Given under my Hand,* &c.

Single Recognizance to prosecute a Felon.

Bed. ss. *BE it remembered, that on the Twentieth Day of* April, *in the twenty second Year of the Reign of our Sovereign Lord* George *the Second, by the Grace of God, of* Great-Britain, France, *and* Ireland, *King, Defender of the Faith,* &c. J. S. *of* H. *in the County aforesaid, Carpenter, came before me* W. W. *Esq; one of his Majesty's Justices of the Peace for the said County, and acknowledg'd himself to be indebted*

indebted to our ſaid Sovereign Lord the King; in twenty Pounds, of good and lawful Money of England; *to be levied on his Goods and Chattels, Lands and Tenements, to the Uſe of our ſaid Sovereign Lord the King, his Heirs and Succeſſors, in Caſe Default ſhall be made in the Condition following.*

THE Condition of this Recognizance is ſuch, that whereas J. E. *of* Bliſton, *in the ſaid County of* Bedford, *Taylor, was this preſent Day brought before me, and charged by the ſaid* J. S. *with the felonious taking of fifteen Sheep, being the Goods of him the ſaid* J. S. *If therefore the ſaid* J. S. *do at the next Goal-Delivery, to be holden in the County aforeſaid, prefer or cauſe to be preferred, one Bill of Indictment of the ſaid Felony, againſt the ſaid* J. E. *and do alſo then and there give Evidence concerning the ſame, as well to the Jurors that ſhall enquire thereof on the Part of our Sovereign Lord the King, as alſo to the Jurors that ſhall paſs upon the Trial of the ſaid* J. E. *for the ſame; then this Recognizance to be void, or elſe to remain in full Force and Virtue.*

Taken before me the Day and Year above-ſaid, *W. W.*

Condition of a Recognizance to appear and give Evidence againſt a Felon.

THE Condition of this Recognizance is ſuch, *that if the ſaid* W. S. *ſhall perſonally appear at the next General Seſſions of the Peace, to be held at* M. *for the ſaid County of* Kent, *and then and there to give ſuch Evidence as you know againſt,* &c. *of and concerning the felonious ſtealing of two Silver Spoons, the Goods of* A. B. *and do not depart thence without Leave of that Court, that then,* &c.

If there be no direct Charge againſt the Perſon, but only Suſpicion, then you bind the Perſon in a Recognizance, with a Condition to appear at the Aſſizes or Seſſions, as followeth.

The Condition for a ſuſpected Perſon to appear, &c.

THE Condition of this Recognizance is ſuch, That if the above-bounden *A. B.* ſhall perſonally appear, *&c.* and do then and there anſwer all ſuch Matters and Things which ſhall be objected againſt him, being ſuſpected to have feloniouſly taken the Goods of, *&c.* and do not depart without Leave of the Court, that then this Recognizance to be void, *&c.*

If the Felon doth not fly, but is apprehended with the Goods, the Owner ſhall have them; if he flies, and freſh Purſuit is made, and he waves the Goods, and they are taken up and carried away before the Owner comes, the *Property* is altered by the *Seizure*, and veſted in the Lord; but if the Purſuit was always in View of the Felon, 'tis otherwiſe *Het.* 65.

At Common Law a Felon's Goods are not forfeited till Conviction, and till then the Party ought to have the Benefit of them to maintain himſelf; 'tis true they may be put in *ſalva Cuſtodia*, but cannot be ſeized for the Uſe of the King till the Party is convicted.

This Statute is but an Affirmance of the Common Law; for there is a Writ to deliver the Goods upon Security given, and 'tis grounded upon this Reaſon, That the Felon may have ſomething to ſupport himſelf in *Priſon*; but the Statute doth not extend to a Perſon *at large*, for in ſuch Caſe the Officer may ſeize them by the Statute 25 *Ed.* 3. *cap.* 14. *Raym.* 414.

For a Priſoner to be bailed.

To the Keeper, &c.

THESE are to charge and require you, That immediately upon your Receipt of this, you bring before me the Body of *W. W.* now in your Cuſtody, to be bailed as Law requireth. Given under, *&c.*

A Liberate *to releaſe a Priſoner committed on Suſpicion of Felony.*

WHEREAS *A. B.* of *&c.* hath before us found ſufficient Security for his Appearance before the Juſtices of, *&c.* at, *&c.* there to anſwer to ſuch Things as ſhall be then objected againſt him for the felonious Taking of, *&c.* from, *&c.* on or about, *&c.* laſt, for Suſpicion whereof he was committed to your ſaid Goal: Theſe are therefore to require you to forbear to detain the ſaid *A. B.* any longer in your Cuſtody, but that you do forthwith releaſe him from thence, and ſuffer him to go at large. Given, *&c.*

Felony; Pleas thereunto.

THESE are three Sorts, *viz.* 1 Demurrer. 2. In Abatement or Bar. 3. The General Iſſue.

1. If the Defendant demur, he ought to be very certain that the Indictment is faulty; for if it be adjudged good, he ſhall have Judgment and Execution, becauſe by the Demurrer the Fact is confeſſed as laid in the Indictment.

2. In Abatement. 1. *Miſnoſmor* in the Sir-name. 2. *Miſnoſmor* in the Chriſtian Name.

If in the Sir-name, 'tis a good Plea in Abatement unto an Appeal, but not to an Indictment; but in the Chriſtian Name 'tis a good Plea to an Indictment; and if 'tis found or confeſſed by the Attorney General, 'tis naught; but then the Party muſt confeſs his true Name, that he may inſtantly be indicted.

In Bar, *Autorfoitz* Acquit. 1. This muſt always be intended of a lawful Acquittal; for if the Indictment or Appeal is inſufficient and faulty, and the Defendant is acquitted thereon, he may be indicted again for the ſame Felony, unleſs Judgment is given upon ſuch Indictment, for that muſt ſtand till reverſed Error.

2. This

2. This muſt be always of the ſame Felony, and therefore 'tis no good Plea to an Indictment or Appeal for another Felony.

3. An Acquittal upon an Indictment of Death, is no Plea to an Appeal brought for the ſame Death; but an Acquittal upon an Indictment or an Appeal, in Caſes of Felony, is a good Plea to any other Indictment for the ſame Felony, tho' 'tis not ſo in the Caſe of Death. But then the Appeal muſt not be erroneous in Subſtance nor be brought by a wrong Perſon.

Auterfoitz Convict, of Manſlaughter, either upon an Indictment or an Appeal, is a good Plea to any other Indictment for the ſame Death.

FEME-COVERT.

THE Peace may be granted againſt her, or againſt an Infant, tho' under fourteen Years of Age; but then ſhe muſt not be bound, tho' with her Huſband, for the Recognizance will be void as to her, but ſhe muſt find Sureties; which, if ſhe cannot do, ſhe muſt be committed.

If ſhe commit a Riot or Treſpaſs without her Huſband, ſhe may be indicted and fined, but the Fine ſhall not be levied on her Huſband, but on her after his Death, and ſhe ſhall be committed till 'tis paid, 9 *Rep.* 72. Dr. *Huſſey*'s Caſe; 11 *Rep.* Dr. *Foſter*'s Caſe.

If ſhe ſteal Goods by Compulſion of her Huſband, 'tis not Felony in her, becauſe of the Neceſſity of Obedience; but if it was at his Perſuaſion without any Conſtraint, ſhe is then guilty of Felony, and her Huſband is Acceſſary.

But this Priviledge doth not prevail in Caſes of Treaſon and Murder, becauſe of the Greatneſs of thoſe Offences.

It hath been held, That if both ſteal together, this ſhall be taken to be the Act of the Huſband alone, and that ſhe cannot be ſo much as Acceſſary to it, becauſe of the Neceſſity of Obedience, as aforeſaid; but I think Obedience ſhould only extenuate the Crime, for ſuch it is, and ſhe ought not to conſent to it; if ſhe doth, ſhe may be indicted.

She cannot ſteal her Huſband's Goods; but if ſhe is taken away with them againſt his Conſent, 'tis Felony in him that takes her: ſo 'tis if ſhe deliver her Huſband's Goods to an Adulterer, this is Felony in him.

In an Indictment for her ſelling Ale without Licence, the Huſband muſt be joyn'd, becauſe he is to pay the Fine.

She may be committed for a Force or Riot, as aforeſaid, but an Infant cannot; yet if ſhe be aſked to find Sureties of the Peace, and cannot, ſhe may be committed,

FORCE

FORCE, Lawful.

IN this Caſe Doors may be broke open, 1. To apprehend for Treaſon, Felony, or Suſpicion thereof, any Perſon who hath wounded another very dangerouſly, and flieth for the ſame to a Houſe, or a popiſh Recuſant Excommunicate.

2. An Affray in the Houſe, and the Doors ſhut.

3. Upon a Warrant for the Peace or good Behaviour, *quære.*

4. Upon a *Capias Utlegatum* in a perſonal Action, and upon a *Capias pro fine* directed to the Sheriff.

A Man was outlawed for want of an Appearance: The Sheriff came to his Houſe with a *Latitat*, and with a *Capias Utlegatum*, without the Privity of the Plaintiff, and the outward Door being open, he entered; then he and his Company ſhut the Door and drew their Swords, and went to the Chamber where the Man was in Bed, and knocked gently at the Door, which was lock'd, but did not tell who they were, or for what they came; but the Door not being immediately opened, they broke it open, and arreſted the Perſon upon the *Latitat*, and took Bond for his Appearance, and *Forty Shillings* for ſuing out a *Superſedeas* to the Out-lawry; but the Sheriff was fined *Two Hundred Pound* for this Outrage and Terror, and for not telling who he was, that the Door might be opened without Violence.

So where a Sheriff had *meſne Proceſs* againſt one, and came to his Houſe and knock'd gently at the Door; the Wife opened it a little to ſee who it was, and he forced in with his Sword drawn, and broke open the Door where the Defendant lay: This was unlawful, becauſe the firſt Entry was ſo, for the opening the Door by Craft and Violence, which was intended.

But if upon ſuch *Proceſs* a Bailiff catch the Defendant by the Hand, as he held it out of the Window; this is ſuch a Taking, that he may juſtify the breaking open the Houſe.

5. Upon a forcible Entry or Detainer, found by Inquiſition before the Juſtices, or upon their own View.

6. Upon a Judgment in Ejectment; but then the Officer muſt ſignify the Cauſe of his coming. 5 *Rep.* 91.

7. In all Caſes where the King is Party, or hath any Intereſt, *&c.*

But you cannot break open a Door upon an Execution at the Suit of a Common Perſon, for 'tis illegal; and if the Officer is kill'd in doing it, 'tis only Manſlaughter, *Jones* 592.

FORCIBLE

FORCIBLE ENTRY.

AT Common Law, where a Man had a Title to Lands, he might not only enter, but detain by Force; and tho' it was done in the Preſence of an Officer, yet he had no Power to interpoſe, unleſs ſome great Miſchief (as Murder, &c.) was committed.

And this was the Occaſion of making the Statute of 5 *R.* 2. *c.* 7. which prohibits the Force, tho' the Perſon had a Title; and appoints that the Juſtices ſhall enquire into it, and not otherwiſe, that is, in their Seſſions.

This being for that very Reaſon found to be inconvenient, a quicker Remedy was provided to remove the Force, by the Statute of 15 *R.* 2. which gives one or more Juſtices Authority to take ſufficient Power with them, and to view the Place where the *Entry* and Detainer is, by Force, and to commit the Offenders, there to remain till they have made Fine and Ranſom to the King.

By this Statute likewiſe, the Sheriff and all others are to be Aſſiſtant to the Juſtices, upon Pain of Fine and Impriſonment.

But ſtill there remained ſome Inconveniencies which this Law did not remedy.

1. As if the Entry was peaceable, and the Detainer by Force.

2. If the Perſons were gone before the Juſtices came, they could proceed no farther.

3. They had not Power to give Reſtitution to the Party grieved.

All theſe Matters were remedied by the Statute of 8 *H.* 6. which gives Power to one or more Juſtices, by Warrant, to command the Sheriff to ſummon a Jury to enquire of the Force, and to ſeize the Tenements as well in the Abſence as Preſence of the Offender.

If a Jury impanelled by the Sheriff by Virtue of the Juſtices Precept, ſhall make Default in their Appearance, the Juſtice may award an *Alias* and *Pluries*, and return *Forty Shillings* Iſſues upon the ſecond Precept on each of the Jury, and *Five Pound* Iſſues on the third Precept, and at every Time afterwards double.

It likewiſe appoints the Statute of 15 *R.* 2. to be put in Execution, altho' the Detainer by Force was after a peaceable Entry; and all at the Coſts of the Party grieved.

It likewiſe inflicts the Penalty of *Twenty Pound* upon the Sheriff neglecting his Duty, to be recovered by Indictment at Seſſions, and divided between King and Proſecutor.

But the Juſtices cannot make Enquiry into a Force, after a peaceable Poſſeſſion for three Years. 2 *Cro.* 199.

And by the Statute 31 *Eliz.* no Reſtitution can be made upon Indictment of Force, &c. where the Party had ſuch a quiet Poſſeſſion for three Years, as aforeſaid.

Afterwards

Afterwards ſome Doubts ariſing, whether the Juſtices had any Power but only in Caſes of Freehold; this was the Occaſion of making the Statute of *21 Jac. cap.* 15. by which they have Power to give Reſtitution to Tenants for Years, Tenants by *Elegit*, Statute, *&c.* Copyholders, *&c.* as well as to Freeholders, put out or detained by Force; So that now a compleat Remedy is given.

1. Againſt thoſe who enter with Force, and continue the Poſſeſſion peaceably.

2. Againſt thoſe who enter peaceably, and hold out with Force.

3. Againſt thoſe who both enter and hold out with Force.

What is a forcible Entry. It muſt be *manu forti*, and 'tis Force if he enter to commit a Treſpaſs, tho' the Party doth not quit the Poſſeſſion; but if the Entry is peaceable, then it is Diſſeiſin, not Force; being provided with Weapons, threatning Life or Loſs of Limbs, breaking open Doors, or entering, the Doors being open with unuſual Armour or Weapons, ejecting or diſtraining for Rent with Force.

The Reaſon why it muſt be ſet forth to be done *manu forti*, is to diſtinguiſh it from all other Treſpaſſes; thoſe are peculiar Words adapted to an Indictment for this Offence; And therefore *vi & armis*, or *fortitudine & potentia magna*, or ſuch like Words, tho' they may ſignify the ſame Thing, yet will not make the Indictment good. *Stiles* 135. *Cro. Eliz.* 461. *2 Bulſt.* 258. *Noy* 155.

Forcible Detainer. Is denying Entrance to the Juſtice, though by one Perſon. By keeping Cattle in another Man's Ground, claiming any Right of Common, *&c.* Menacing to keep the Poſſeſſion, though no Force uſed.

Reſiſting, threatning, or reſcuing in Caſes of Diſtreſs for Rent or Common, one Juſtice may remove the Force, record it upon View, but cannot make Reſtitution alone, without the Help of another.

What Perſons may be guilty of both. Indictment for a *forcible Entry* and *Detainer*, the Jury find the Entry with Force, but the Detainer peaceable; and this was held inſufficient to grant Reſtitution upon it.

So where the Jury found *quoad* the *Entry ignoramus*, and *quoad* the *Detainer Billa vera*, and upon Reſtitution awarded by the Juſtice of Peace, *B. R.* ſet it aſide, and granted a Reſtitution; becauſe the Indictment being entire for the Entry as well as the Detainer, and the Jury having found but one, 'tis therefore void. *Yelv.* 99. 100. *2 Cro.* 151. *Sid.* 97. 414 *contra.*

Indictment *quare in medietatem intravit* is void, for the Entry muſt be into the whole. *Palm.* 419.

An Infant above Fourteen & *Feme Covert*, for which they may be committed and fined, tho' 'tis Prudence not to commit the Infant, and the Huſband ſhall not be charged with the Fine of his Wife.

If ſeveral come with an Intention to enter, and one commit the Force, all are guilty, tho' the others are peaceable.

If

If more than three, 'tis a Riot, and then the two next Juſtices may enquire within a Month by a Jury.

The Power of the Juſtices upon the Statute of 15 R. 2. c. 2.

One Juſtice may go to the Place and take the Aſſiſtance of the Sheriff if he thinks fit, may break open the Door if reſiſted, and may arreſt and commit the Offenders; he may command any one to aſſiſt him, and commit and fine thoſe who refuſe.

If he ſees the Force, he may Record it, and commit the Offenders, for his View is a Conviction, and this Record being certified in *B. R.* the Court will grant Reſtitution, and aſſeſs a Fine. 8 *Rep.* 120.

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.

If the Offenders are gone before the Juſtices come, then they may direct their Precept to the Sheriff, to impanel twenty four Men, of *Forty Shillings, per Annum* Freehold, each of them; and Twelve muſt be ſworn to enquire of the Force, and when found the Juſtices may either themſelves put the Party in Poſſeſſion, or make a Precept to the Sheriff for that Purpoſe: And this muſt be done, tho' they view the Force, if they intend to put the Party into Poſſeſſion, Upon the Statute of 8 *H.* 6. two Juſtices.

The ſame Juſtices before whom the Force was found, having made a Precept to the Sheriff to reſtore the Party, may grant a *Supersedeas* to ſtay Reſtitution if he ſee Cauſe.

But if the Party doth not think fit to apply himſelf to the Juſtices, then he may have an Action of Treſpaſs againſt the Defendant (who had no Title of Entry) and entering with Force, and may recover treble Coſts and Damages; but if his Entry was upon good Title, tho' with Force, then you muſt proceed by Indictment.

Continuing in Poſſeſſion three Years peaceably, he may juſtify the Detainer by Force.

But muſt not reſiſt the Juſtice when he comes to view.

This Poſſeſſion may be pleaded to an Indictment for a Force, which will not only excuſe the Fine and Commitment, but prevent the Reſtitution.

The Entry muſt be *vi et armis*, or peaceably and detaining with Force, according to the Words of the Statute of 8 *H.* 6. *Roll. Abr.* 2. *pag.* 80.

The Quality of the Thing upon which the Entry is made, muſt alſo be ſet forth, as into a Meſſuage, Meadow, Wood, *&c.* for entring *in Tenementa* generally is not good, becauſe of the Uncertainty, for it may extend to a Houſe or Cottage. 2 *Roll. Rep.* 46. So an Entry into two Cloſes, *Pratiſve Paſturæ*, is not good. *Roll. Abr.* 2. *pag.* 81.

It

It must be either *Manu forti*, or *multitudine Gentium*, and it must conclude *adhuc extratenet*, for without those Words there cannot be any Restitution; and likewise *contra Formam Statut. Roll. Abr. 2. pag.* 82.

It must be certain, therefore an Entry into *Messuagium*, or *Cottagium sive Tenementum*, is void. *Roll. Abr. 2. pag.* 80.

But in *Clausum* is good, for that is certain enough.

And as to the *Certiorari*, that must be delivered in open Sessions, which is a *Supersedeas*.

But the Traverse is no *Supersedeas*, because the Force being found upon the Indictment, the Justice may restore the Party grieved, or otherwise may certify the Indictment to *B. R.* but he that tendereth the Traverse, must bear all the Charges of the Prosecution, both before the Justice and in *B. R.*

If the Justice will try the Traverse presently, it must not be by the Jury who found the Force, but by a new Jury, to be returned by the Sheriff the next Day, and this Traverse must be made in Writing.

The Expulsion must be out of House or Lands, and so set forth in the Indictment.

In the Indictment the Estate must be set forth, for 'tis not enough to alledge generally that *Possessionatus fuit*, because a Tenant at Will may be so possess'd, and he is not within either of the Statutes. *Sid.* 102. 1 *Mod.* 73.

But since I have mentioned the Statutes, I must likewise take Notice, that 'tis not the best Way to recite them in the Indictment; for if misrecited in any Particular, it will be quashed. *Cro. Eliz.* 93, 96, 106, 307, 697. 1 *Bulst.* 218.

The Indictment was for a forcible Entry into a *Copyhold*, viz. That the Defendant *ejecit & disseisivit*, for which Reason it was quash'd, because *Disseisin* is applicable only to a *Freehold*; and therefore in all Cases, except of a *Freehold*, it ought to be *ejecit expulit & amovit Raym.* 67. 4 *Inst.* 176.

And even in the Case of a Freehold, *expulit seu disseisivit* is void, because 'tis in the Disjunctive; for there must be an actual Expulsion Disseisin. 1 *Roll. Rep.* 406.

And so is *disseisivit*, without shewing what Estate he had. 1 *Vent.* 306.

If it is for *disseising* the Landlord, and expelling the Tenant, tho' the Entry was made by Command of the Landlord, and he opposed Restitution; yet it was granted by *B. R.* for they may reform the several Degrees of Wrongs; but if it had been only for expelling the Tenant, he could not have Restitution. *Yelv.* 81.

It must be *adhuc existens liberum Tenementum*, as well as *adtunc.* 2 *Cro.* 214. 639. *Levinz.* 1 *p.* 90.

Pleas

Pleas to an Indictment.

1. Quiet Poſſeſſion for Three Years before the Inquiſition found. 31 *Eliz. Cap.* 11. *Raym.* 84.

This muſt be underſtood of a Term of Years; but if it had been a Freehold, then he muſt ſet forth that he was ſeized, *&c.* and was in Poſſeſſion for three Years, *&c.* and 'tis not material to ſhew how ſeized, becauſe 'tis not the Title, but the Poſſeſſion, which is requiſite to be alledged. *Sid.* 156.

2. The Defendant may tender a Traverſe.

3. He may demur to the Inſufficiency of the Indictment.

4. And plead to Inſufficiency of Jurors, not having *Forty Shillings* Freehold.

5. May bring a *Certiorari*, which is a *Superſedeas* for Tythes, Rents, *&c.* 1 *Cor.* 146.

To remove a Force out of a Pariſh-Church or Parſonage-Houſe, tho' there is another Remedy, by *vi Laica removenda. Sid.* 191.

After Enquiry, the Juſtice may break open the Houſe, and reſtore the Party himſelf, for none but he who is actually put out of Poſſeſſion, can be reſtored.

Where they find a Force, and make a Record of it on their own View, they may commit the Offenders, but cannot grant Reſtitution. 1 *Vent.* 308. *Sid.* 156.

It muſt be of Houſe or Land; it cannot be of Rent, Common Advowſon, *&c. Quere.*

If the Defendant traverſe the Indictment, the beſt Way for the Juſtice is, to certify it into *B. R. Sid.* 287.

But after a Traverſe, the Court cannot grant Reſtitution. 1 *Vent.* 265. But in *Dyer* there is a contrary Opinion. *Dyer* 122.

If the Juſtices certify, That Complaint was made to them of a forcible Entry into a Houſe, and thereupon they went thither and found it true, and removed the Force, and fined the Defendant *Twenty Pounds.* This Certificate is not good, becauſe they do not ſhew the Time when the Complaint was made, which they ought to do, becauſe ſuch Certificate is in Nature of an Indictment, and traverſable. 2 *Roll. Rep.* 39.

No other Juſtice or Juſtices, except *B. R.* but he or they before whom the Force is found, can award Reſtitution.

But then the Force muſt be found by an Inquiſition of Twelve Men, or otherwiſe the Juſtice may be puniſh'd; but the Entry and holding with Force being found, the Juſtice may re-ſeize by Virtue of the Statute of 8 *H.* 6. *cap.* 9. and reſtore the Party to his Poſſeſſion.

Or he may direct his Precept to the Sheriff for that Purpoſe, *Teſte* by himſelf. *Dyer* 187.

And if the Sheriff return, that he cannot make Reſtitution, becauſe he was reſiſted, he ſhall be fined; for he may raiſe the *Poſſe Com.*

The

The Juſtices, upon an Indictment found, may give Reſtitution to a Freeholder, to a Tenant for Years, or by Copy of a Court-Roll; to a Tenant by *Elegit*, Statute-Merchant or Staple. 21 *Jac. cap.* 15.

One Joint-Tenant, or Tenant in common, putteth out the other. *Quere*, what the Juſtice can do there, becauſe his Entry and Poſſeſſion was lawful.

If an Indictment be removed, and no Proſecution the next Term, the Court may award Reſtitution.

A Man cannot juſtify the breaking open an Houſe, by Virtue of a Warrant from a Secretary of State; and no Houſe can be broke open, unleſs there is a Civil Officer preſent.

But if a Man hath a Warrant to apprehend another, and he break open a Door to execute it, and ſo miſtakes the Law, he is not guilty of Felony, for that was not his Deſign. Now, ſince there muſt be a felonious Intent to make a Man guilty of Felony, and there being no ſuch Intention appearing, the Party is only a Treſpaſſer.

If after a Door is broke open, one of the Company ſteals any Thing, 'tis Felony only in him, and not in the Reſt, unleſs they were aſſenting to it.

The Record of a forcible Entry, upon the View of a Juſtice, upon the Statute of 15 R. 2.

Kent, ſs. I P. S. *Eſq; one of the Juſtices aſſigned to keep the Peace in the County aforeſaid, do certify, That on the Ninth Day of* June, *in the Twenty-ſecond Year of the Reign,* &c. A. B. *of* M. *in the County aforeſaid, Yeoman, hath complained to me, That* C. D. *of,* &c. *and others, Diſturbers of the Peace of our ſaid Lord the King, to me unknown, the Day of ---- in the Year aforeſaid, into one Meſſuage, with the Appurtenances then and thereto belonging, being the free Tenement of* E. F. *Gent. and in the Poſſeſſion of the aforeſaid* A. B. *for the Term of ſeven Years yet to come, ſituate at* M. *aforeſaid, in the County aforeſaid, peaceably and quietly have entered; and afterwards,* viz. *the aforeſaid Ninth Day of* June, *in the Year aforeſaid, at* M. *aforeſaid, in the County aforeſaid, the aforeſaid* A. B. *from the aforeſaid Meſſuage with Force and Arms,* viz. *with Staves, Swords,* &c. *unlawfully, and with a ſtrong Hand, did expel, eject, and remove, and the aforeſaid* A. B. *being ſo expelled and ejected, and removed from the Meſſuage aforeſaid, with the Appurtenances as aforeſaid, with Force and Arms unlawfully, and with a ſtrong Hand, then and there did keep out and detain, to the great Damage of the ſaid* A. B. *and againſt the Peace of our ſaid Lord the King, and contrary to the Form of the Statute in that Caſe made and provided; and whereupon the aforeſaid* A. B. *hath required of me a Remedy, and in that Behalf to be reliev'd. Therefore, I the aforeſaid* P. S. *immediately in my proper Perſon, came to the Meſſuage aforeſaid, with the Appurtenances, and then and there found the aforeſaid* A. B. *of the aforeſaid Meſſuage, with the Appurtenances, by the aforeſaid* C. D. *with Force and*

and Arms unlawfully, and with a ſtrong Hand kept out and detained, againſt the Form of the Statute aforeſaid; upon which I the aforeſaid P. S. *then and there cauſed the aforeſaid* C D. *to be taken and arreſted, and to the Goal of* M. *in the County aforeſaid to be ſent, there to remain under ſafe Cuſtody, until he ſhall find, before me, or ſome other Juſtice of our ſaid Lord the King, aſſign'd to keep the Peace in the County aforeſaid, ſufficient Security, that he ſhould perſonally appear at the next General Seſſions of the Peace of our ſaid Lord the King, in the County aforeſaid to be held, to anſwer the Treſpaſs and Contempt aforeſaid, and that in the mean Time he ſhould well behave himſelf. In Teſtimony whereof, I the aforeſaid* P. S. *to this Certificate have put my Hand and Seal, the Eleventh Day of* June, *&c.*

A Precept to the Sheriff in the Name of Venire Facias, *to ſummon a Jury.*

Middl. ſs. P L. Eſq; one of the Juſtices of our Lord the King, aſſign'd to preſerve the Peace in the County aforeſaid, To the Sheriff of the ſame County, *Greeting:* On the Behalf of our ſaid Lord the King, I command thee, that thou cauſe to come before me, at *M.* in the County aforeſaid, the firſt Day of *July* next, Twenty four honeſt and careful Men of the Vicinage of *M.* aforeſaid, every one of them having *Forty Shillings* of Lands and Tenements, or Rent at leaſt, by the Year, beyond Reprizes, to inquire upon their Oaths for our ſaid Lord the King, of a certain Ingreſs with ſtrong Hand, made into the Meſſuage of one *A. B.* at *M.* aforeſaid, againſt the Form of the Statute in ſuch Caſe made and provided; and ſee that upon every one of the Jurors by himſelf in this Behalf to be impanell'd *Twenty Shillings*, as Iſſues at the Day aforeſaid thou doſt return: And this thou art by no Means to omit, under Penalty of *Twenty Pounds*, and have thou then there this Precept. Witneſs the ſaid *P. L.* the Thirteenth *July*, Anno, *&c.*

A Precept to impannel a Jury to enquire of a Forcible Entry.

WHEREAS Complaint hath been made unto me *W. B.* Eſq; one of his Majeſty's Juſtices, *&c.* That a Forcible Entry hath been lately made by ſeveral Perſons into the Meſſuage of, *&c.* Theſe are therefore to require you, to ſummon Twenty-four Freeholders reſiding neareſt the ſaid Pariſh of, *&c.* having 40 *s. per Ann.* each at leaſt (above Reprizes) to come before me at *&c.* on, *&c.* next, in order to my chuſing out of the ſaid Number of Twenty-four, a Jury of Twelve Perſons, to enquire on the Behalf of his Majeſty, into the Force aforeſaid, according to the Statute in that Caſe made and provided: And that you at the Time and Place aforeſaid, do give me the Names of the Perſons you ſhall warn by Virtue of this Precept. Given, *&c.*

An

An Inquiſition upon the Force.

AN Inquiſition taken for his Majeſty at *M.* in the County of *K.* on the firſt Day of *July*, in the 22d Year of his Majeſty's Reign, *&c.* upon Oath of A.B. C.D. E.F. G.H, *&c.* before *N. K.* appointed one of his Majeſty's Juſtices for preſerving the Peace of the ſaid County, as alſo for trying and judging all Felonies, Treſpaſſes, and other Crimes committed in the ſaid County; who upon Oath declare, That *I. K.* of *M.* Yeoman, in the ſaid County, was legally and peaceably ſeized in his Demeaſne as of Fee, and in one Meſſuage with its Appurtenances, in *M.* aforeſaid, and did peaceably continue his ſaid Poſſeſſion, until *R. V.* of *&c.* and *R. W.* of *&c.* and other Malefactors not known, on the Thirtieth of *June* laſt paſt, did, by Force and Arms, *viz.* Battoons, Swords and Guns, enter into the ſaid Meſſuage with its Appurtenances, and *diſſeiſed*, and with a ſtrong Hand expelled the ſaid *I. K.* and thus diſſeiſed and expelled from the aforeſaid Meſſuage on the Thirtieth of *June*, until the Day of the taking this Inquiſition, they have with a ſtrong Hand, and armed Power, kept him out, and do as yet keep him out, to the great Diſturbance of the Peace of his ſaid Majeſty, and againſt the Form of the Statute in that Caſe made and provided; where none of them, nor any other Perſon whom he or they might repreſent, either held or did hold any Part in the aforeſaid Meſſuage, with its Appurtenances, or any parcel thereof, for three Years immediately preceeding his aforeſaid Entry, nor any other Time avoiding to the Knowledge of the aforeſaid Deponents.

The Entry and Expulſion being thus found by the Jury, the Juſtice may make a Precept to the Sheriff for Reſtitution thus:

Bed. ſs. T L. Eſq; one of his Majeſty's Juſtices of the Peace for the ſaid County, to the Sheriff thereof, *Greeting*: Whereas by a certain Inquiſition taken before me the firſt Day of *July* laſt paſt, at *M.* in the County aforeſaid, upon the Oath of *A. B. C. D.* &c. according to the Form of the Statute in that Caſe made and provided: It was found, that *R. V. R. W.* and others *(as in the Inquiſition)* as by the ſaid Inquiſition of Record doth more fully appear: Theſe are therefore, in his Majeſty Name, to require you to go to the ſaid Meſſuage, and other the Premiſſes, and cauſe the ſame, with the Appurtenances, to be re-ſeized, and the aforeſaid *J. K.* to be reſtored thereunto, and to his full Poſſeſſion thereof, in as large and ample Manner as he was before the ſaid Entry was made: And hereof fail not. Given under my Hand and Seal, *&c.*

A Mittimus of ſuch who hold Lands, &c. by Force.

Kent, ſs. P. L. Eſq; one of his Majeſty's Juſtices of the Peace for the County aforeſaid, To the Keeper of the Common Goal at *M.* in the ſaid County, or to his Deputy there: Whereas on this preſent Day of September, in the Year 1749, Complaint hath been made unto me by *A. B.* of, &c. of a Forcible Entry made by ſeveral Perſons, into the Lands at, &c. I went immediately to the ſaid Lands, where I found *D. E. F. G. H. I.* &c, of, &c. Labourers, forcibly, and with ſtrong Hands, holding the Premiſes, againſt the Form of the Statute in that Caſe made and provided: Therefore, I ſend you herewithal the Bodies of the ſaid *D. E. F. G. H. I.* being convicted of the ſaid forcible Holding by my own View; commanding you, in his Majeſty's Name, to receive them into your Goal and Cuſtody, and there ſafely to keep them until they ſhall be from thence delivered by due Courſe of Law. Given under my Hand and Seal the Day and Year firſt above-written.

FORFEITURE.

THIS is occaſioned by the Tranſgreſſion of ſome penal Law, whereby the Offender loſeth his Lands and Goods.

But this Difference is to be obſerv'd, That where Lands are forfeited, it ſhall relate to the Time of the Offence committed; but in Caſe where Goods and Chattles are forfeited, there ſhall be no Relation, for the Goods of the Felon are his own till Conviction or Attainder; and the Sheriff or other Officer ought not to remove them, becauſe the Property is not alter'd till Conviction; but uſually they ſecure the Goods of the Felon as ſoon as he is apprehended; but it is expreſly againſt the Statute of 1 *R.* 3. *cap.* 3. by which 'tis enacted, That none ſhall ſeize the Goods of any arreſted for Suſpicion of Felony, before he is convicted or attainted thereof, upon Pain to forfeit double the Value of the Goods, &c. to be recovered by the Party grieved, in an Action of Debt, &c.

If it is found by the Coronor's Inqueſt, that the Party *fugam fecit*, he forfeits his Goods, notwithſtanding he ſhould be afterwards acquitted of the Felony by the Petty-Jury, and they ſhould find that he did not fly for the ſame: So where a true Man is purſued as a Felon, and he fleeth and waiveth his *own Goods*, thoſe are forfeited as if they had been ſtolen; for *fatetur facinus qui judicium fugit*.

Now the Reaſon of the Forfeiture in the firſt Caſe, is becauſe the King hath a Prerogative to take the Advantage of that Record which is moſt for his Intereſt, and that is the Record of the Coroner. *Stamf. Pl. Coron.* 183. B.

If

If a Man is acquitted of the Felony, but the Jury find *quod fugam fecit*, he ſhall loſe his Goods which he had at the Time of the Acquittal, and not at the Time of the Flight. *Gould.* 135.

In Treaſon Lands in Fee or in Tail, or for Life or Years, after Conviction or Attainder, all the Goods and Chattels of what Kind ſoever. In Petit-Treaſon Lands in Fee, for a Year and a Day, Lands in Tail, during Life of the Offender.

In Felony, Lands in Fee-Simple, for a Year and a Day from the Time of the Felony committed, and the Profits during Life of the Offender, Goods and Chattels from the Time of the Attainder or Conviction.

In Man-ſlaughter and *Felo-de-ſe*, Petit-Larceny. Offenders in theſe Caſes, forfeit Goods and Chattels.

In Chance-medly, and *Se-defendendo*, Offenders forfeit Goods and Chattels, but they may have Pardon of Courſe.

FORGERY.

THIS is an Offence at the Common Law, and likewiſe puniſhable by a particular Statute. 5 *Eliz. c.* 14.

If the Indictment is at Common Law, the Offender convicted muſt ſtand in the Pillory, be fined and impriſoned during the Pleaſure of the Court. *Ray* 81.

Mr. *Dalton* is of Opinion, That Juſtices of Peace cannot meddle with theſe Offenders, becauſe they cannot take Notice of the firſt Conviction.

Beſides, by the expreſs Words of the Statute of 5 *Eliz.* Juſtices of Aſſize, and of Oyer and Terminer are to hear and determine this Offence. *Cro. Eliz.* 87, 601, 697.

Since the making this Statute, few Indictments have been brought for Forgeries at Common Law; ſome there are, *viz.* One *Howell Gwynn* cut off a dead Man's Hand, and put a Pen and Ink in it, and ſigned and ſealed a Deed with the Hand, and made Oath that it was the Hand-writing of *B.* and that he ſealed and delivered the Deed; he was convicted and fined *One Hundred Pound*, and was to ſtand in the Pillory two Hours at the Hall-Gate. *Stiles* 363.

So one *Farmer* was indicted for a Forgery; he demurred to the Indictment, and it was found againſt him, and had Judgment to ſtand in the Pillory, was fined *One Hundred Pound*, and impriſoned during Pleaſure. *Raim.* 81.

But ſince the Statute many Indictments have been brought to puniſh an Offender of this Nature, who for the firſt Offence, that is for forging 1. Falſe Deeds. 2. Writing ſealed. 3. Court Roll. 4. Will: To the Intent that the Freehold of the Lands on the Right

or Title thereof, may be troubled or charged, he is to be ſet in the Pillory in ſome Market Town, to have his Ears cut off there, and his Noſtrils ſlit, and ſhall forfeit the Profits of his Land to the King during his Life, and ſhall be committed alſo for Life.

Every Indictment brought upon the Statute muſt purſue ſome of the Words of it; as if a Man is indicted for forging a Will, by which a Leaſe for Years is conveyed; this is not within the Statute under the Word *Will*, becauſe it doth not charge the Freehold, or diſturb the Right thereof; and the Word *Will* in the Statute, relates only to ſuch Wills which convey a *Freehold*; but it comes under the Words *Writing ſealed*, and therefore ſhall be puniſhed by that Law. *Dyer* 302.

Four Years after the making of this Statute, one *Taverner* was convicted for forging a Cuſtomary of a Mannor, in which he had inſerted ſeveral falſe Cuſtoms, and had put the Hands and Seals of Eleven Tenants to it; and it was proved that he did it wittingly, ſubtilly, and falſly; and this was held Forgery within the Statute. *Dyer* 322. *B.*

In the next Paragraph, there are other Offences mentioned, as forging a Leaſe for Years, Annuity, Obligation, Bill, Acquittance, Releaſe, or other Diſcharge of a perſonal Thing.

And there is ſome Variation in the Puniſhment of theſe Offences, *viz. Pillory*; but the Offender loſes but one of his Ears, and is to ſuffer but a Year's Impriſonment without Bail.

The ſecond Offence in all the Caſes above-mentioned, is Felony; but this ſeldom or never happens.

Now forging a Deed, by which Goods and Chattels are conveyed, are within neither of theſe Paragraphs; firſt, becauſe it doth not concern a Freehold, and 'tis neither a Bill, Bond, Acquittance or Diſcharge of a perſonal Thing, and ſo not within the Words of the Statute.

The Father bound his Son Apprentice, and gave Bond of *One Hundred Pounds* for his good Behaviour; the Maſter razed out *Libris* and put in *Marcis*, and this was held not within the Statute, becauſe he did a Prejudice to none but himſelf; that is by making the Bond void, or at leaſt by putting in a leſſer Sum for a greater; but if he had increaſed the Sum, it had been otherwiſe. *Moor* 619.

Forging an *Aſſignment* of a Leaſe is not within the Statute, becauſe it doth not charge the Lands, but only tranfers an Intereſt which was in Being before. *Noy* 42.

But making a Foeffment, tho' Livery and Seiſin was not indorſed when the Deed was delivered, and afterwards ſelling the Land for a valuable Conſideration to another, and the endorſing Livery on the firſt Deed; this was held Forgery both in the Feoffer and Feoffee, becauſe it was to deceive an honeſt Purchaſer. *Moor* 655.

The Teſtator appointed a Man to write his Will, and to inſert ſuch a Clauſe, which he omitted, this is not Forgery; ſo if he write a Will without any Direction, and bring it to the Teſtator, who is not of perfect Memory, and he ſigns it: But if the Deviſor directs a Gift to one for Life, Remainder to another in Fee, and the Writer omits the Eſtate for Life, ſo that the Remainder veſts immediately upon the Death of the Deviſor; this is Forgery. *Noy* 18. *Moor* 760.

Mittimus for forging a Bond.

To the Conſtables of, &c. and to the Keeper of, &c.

WHEREAS A. E. *of* D. *aforeſaid, School-Maſter, was this Day brought before me, and charged by the Oath of* C. D. *of* D. *aforeſaid, Eſq; with forging a Bond of* One Hundred Pound, *for the Payment of* Fifty Pound *to him the ſaid* A. E. *by* W. W. *of* N. *in the ſaid County of* B. *Gent.* [*Deed, Will, Writing obligatory, Bill of Exchange, Promiſſory Note,* &c.] *contrary to the Statutes in that Caſe made and provided: Theſe are therefore in his Majeſty's Name, to require and authoriſe you the ſaid Conſtables, to take the ſaid* A. E. *and to convey him to the Goal aforeſaid: And you the ſaid Keeper are hereby required to receive the ſaid* A. E. *and him ſafely to keep in your Cuſtody, until he ſhall be diſcharged by due Courſe of Law. Given under my Hand and Seal,* &c.

Foreſtallers, Ingroſſers and Regrators.

A Foreſtaller is one that buys or cauſeth to be bought, any Corn or other Victuals whatſoever, that is carrying to the Fair or Market to be ſold, before it be brought into the fair Market: And Perſons which diſſuade the Owners of ſuch Goods to bring the ſame to the Market, or when there, perſwade them to advance the Price, are Foreſtallers. Per Stat, 5 and 6 *Ed.* 6.

Butter, Cheeſe, Fiſh, Fowl, Conies, Pigs, Sheep, &c. are Goods within the Act of Foreſtalling, Ingroſſing and Regrating.

An Ingroſſer is One that doth buy Corn growing upon the Ground (otherwiſe than by Demiſe or Grant) or any Butter or Cheeſe, or other Victuals, with Intent to ſell the ſame again for unreaſonable Profit, and doth ſell the ſame accordingly.

A Regrator is one that in open Fair or Market doth buy and get into his own Hands, Corn, or other dead Victuals, and the ſame doth ſell again in ſome other Fair or Market, within four Miles thereof.

Offenders of this Nature are puniſhed at the Quarter-Seſſions, on Proof by two Witneſſes, or Preſentment by the Jury: And for the firſt Offence they forfeit the Goods, or the Value thereof, and are to

to ſuffer two Months Impriſonment without Bail: For the ſecond Offence, double the Value of the Goods and ſix Months Impriſonment: And for the third Offence, the Offender loſeth all his Goods, muſt ſtand in the Pillory, and be impriſoned during the King's Pleaſure.

The Proſecution muſt be within two Years after the Offence committed; and one Moiety of the Forfeitures goes to the King, and the other to the Proſecutor, to be levied by *Fieri Fac.* or *Capias* by the Juſtices.

Perſons buying Barley or Oats to make Malt, or Oat-meal, and Proviſion bought of any Town-corporate-ſhip, *&c.* and Fiſhmongers, Innholders, Victuallers, Butchers, Poulterers, or People living within a Mile of the Sea, which buy and ſell Fiſh by Retail, at reaſonable Rates; Badgers, Carriers, *&c.* liſenced by three Juſtices; Things reſerved on a Leaſe, ſo as all be done without Foreſtalling; and Perſons tranſporting of Corn or Cattle, and Drovers allowed by three Juſtices, and Things brought from beyond Sea; are excepted out of the Act of Foreſtalling, *&c.*

Games unlawful, and Gaming Houſes.

BY the Statute of 33 *H.* 8. one Juſtice may commit thoſe who keep unlawful Gaming Houſes, till they find Sureties by Recognizance not to keep ſuch Houſes any more; they likewiſe forfeit *Forty Shillings* a Day, to be divided between the King and Proſecutor. 33 *H.* 8. *c.* 9.

He alſo may commit, without Bail, any Perſon reſorting to, or playing there, till he be bound in ſuch Sum as the Juſtice ſhall think reaſonable, not to offend again; and beſides, he forfeits for every Offence *Six Shillings and Eight Pence.*

And in order to apprehend ſuch Perſons, the Statute giveth the Juſtice Authority to enter into any common Place where unlawful Games are ſuſpected to be uſed: As Bear-baiting, Cock-fighting, Foot-ball, Bull-baiting, Coits, Nine-Pins, Bowling, Dice, Tennis: Cards, are unlawful Games.

Perſons prohibited by this Law, are Apprentices, Huſbandmen, Servants of all Kinds, Artificers, Labourers, Fiſher-Men, Mariners, Watermen.

They muſt not play at any of theſe Games except at *Chriſtmas*; nor then, but in their own Houſes, and Servants in their Maſters Houſes, and by their Leave.

The Forfeiture is *Twenty Shillings* for every Offence, to be divided as aforeſaid.

But a Man of *One Hundred Pound* per Annum, may licence his Servant to play at Bowls or Tennis.

One Juſtice may commit for cheating at Play. *Cro. Car.* 235.

And *Anno* 9 *Annæ*, for the better preventing exceſſive and deceitful Gaming, a Law was made, That all Notes, Bonds, Securities, &c. whatſoever, entered into on account of Gaming or playing at Cards, Dice, Tables, Tennis, Bowles, or other Game whatſoever; or on Betting, or lending Money thereon, ſhall be void.

And where the Securities, &c. ſhall be on Lands, &c. ſuch Mortgage, &c. ſhall be for the ſole Benefit of the next in Remainder, as if the Grantor had been actually dead. 9 *Annæ*.

If any Perſon loſe *Ten Pound* in Money or Goods, to one or more Perſon or Perſons, he may within three Months ſue for the ſame by Action of Debt: Or, if the Loſer do not ſue for the ſame, any other Perſon may, and recover treble the Value, with Coſts, againſt the Winners: One Moiety to the Perſon who ſues for the ſame, the other to the Poor where the Offence is committed.

Any Perſons cheating at Play, or winning above *Ten Pound*, and being convicted by Indictment or Information, ſhall forfeit Five Times the Value; And in Caſe of ſuch ill Practice, the Offenders ſhall be deemed infamous, and ſuffer corporal Puniſhment as in Caſes of wilful Perjury. The Penalty to be recovered by Action as aforeſaid.

And that ſuch diſſolute Perſons as ſupport their extravagant Expences by Gaming, may be brought before two or more Juſtices to find Sureties for the Good Behaviour for 12 Months, or be committed to the common Goal.

If after finding Sureties he ſhall play again to the Value of *Twenty Shillings*, during the Time he ſhall be ſo bound, the Recognizance to be forfeited.

And any Perſon challenging or fighting another on Account of Gaming or Betting, forfeits to his Majeſty all his Goods and Chattels, and ſhall ſuffer two Years Impriſonment without Bail.

Playing within any of His Majeſty's Palaces, where His Majeſty, &c. ſhall be actually reſident is excepted; ſo as ſuch playing be not in any Houſe, the Freehold whereof ſhall be out of the Crown, &c. and ſo as ſuch playing be for ready Money only.

A Warrant upon 33 H. 8. *againſt Gaming Houſes.*

To all Conſtables, &c. and other his Majeſty's Officers whom theſe may concern.

Kent, *ſs.* *WHEREAS Complaint upon Oath hath been made unto us, whoſe Hands and Seals are hereunto ſet, His Majeſty's Juſtices of the Peace of the County of* Kent, *That there are many unlawful Gaming-Houſes ſet up within the ſaid County, which has and now does prove ruinous and deſtructive to his Majeſty's Liege Subjects, and tends to the Ruin and Debauchery of Youth; and the Cauſe of many heinous Murders, Robberies, Felonies, Outrages and Riots, to be done and committed; and* [illegible] *Divine Service, by ſuch Miſdoers, on Holy and Feſtival*

Feſtival Days, not heard or ſolemnized, to the High Diſpleaſure of Almighty God, and contrary to the Laws and Statutes of this Realm: Theſe are therefore in his Majeſty's Name, to charge and command you, and every of you, to whom theſe Preſents ſhall come, to make due Search within the ſaid County of K. *And to come, enter and reſort into all and every the Houſes and Places where ſuch Games ſhall be ſuſpected to be holden, exerciſed, uſed or occupied; and as well the Servants, Agents, and Keepers of the ſame, as alſo the Perſons there haunting, reſorting and playing, to take, arreſt and impriſon; and them ſo taken and arreſted, to bring before us, and other his Majeſty's Juſtices of the Peace, which will be aſſembled at a Petty Seſſions held for that Purpoſe at the Veſtry Room of,* &c. *in the ſaid County, the next Morning by Ten of the Clock, after ſuch their being taken as aforeſaid, to the End they may be examined and dealt with according to Law; Hereof you are not to fail. Given under our Hands and Seals,* &c.

Recognizance thereon.

A. B. of, &c.---40 *l. C. D.* of, &c.---20 *l. E. F.* &c.---20 *l.*

Upon Condition, That the above-bound *A. B.* ſhall no longer uſe, keep or occupy any Common Houſe, Alley or Place (where any unlawful Game ſhall be held or exerciſed) nor any unlawful Game whatſoever: That then, &c.

Warrant to apprehend a Perſon for unlawfully Gaming, having no viſible Eſtate.

Bed. ſs. To the Conſtables of *B.* in the ſaid County.

WHEREAS Complaint hath been duly made before us, that A. B. *of* B. *aforeſaid, Labourer, doth frequently uſe and play at Cards, Dice, and other unlawful Games, in the Pariſh of* B. *aforeſaid, and that he hath no Eſtate, nor follows any Employment to maintain himſelf, but lives chiefly by Gaming and Sharping upon other People: Theſe are therefore, in his Majeſty's Name, to require and authoriſe you, to apprehend the ſaid* A. B. *and bring him before us, or ſome other of his Majeſty's Juſtices of the Peace for this County, to anſwer what ſhall be objected againſt him in that Behalf, and be dealt with according to Law, Given under our Hands and Seals,* &c.

Commitment of a Gameſter.

Bed. ſs. *To the Conſtables,* &c. *and Keeper of his Majeſty's Goal,* &c.

WHEREAS it hath been duly proved before us, that *J. S.* of your ſaid Pariſh, Barber, on *Monday* the 7th of this inſt. *Auguſt*, did play at Cards, Dice, and other unlawful Games, at the Houſe of *J. C.* in *B.* aforeſaid, not having any viſible Eſtate or Employment for his Support and Maintenance; and he the ſaid *J. S.* not being able to give ſufficient Security for his Good Behaviour for

the

the Space of Twelve Months, as the Statute directs: Theſe are therefore in his Majeſty's Name, to require and authoriſe you the ſaid Conſtables, to convey the ſaid *J. S.* to the ſaid Goal, and deliver him to the Keeper thereof; And you the ſaid Keeper are hereby required to receive the ſaid *J. S.* into your Cuſtody, and him ſafely to keep in your ſaid Goal, until he ſhall give Security as aforeſaid. Given under our Hands and Seals, *&c.*

Commitment of a Perſon for keeping an unlawful Gaming-Houſe.

Bed. ſſ. To the Conſtables, *&c.* and Keeper, *&c.*

WHEREAS A. B. *hath this Day been convicted before me, of keeping an unlawful Gaming-Houſe in the Pariſh of* S. *aforeſaid, and hath refuſed to give Security for his not keeping ſuch Gaming-Houſe for the future, as the Statutes in ſuch Caſes require: Theſe are therefore, in his Majeſty's Name, to require and authoriſe you the ſaid Conſtables, to convey the ſaid* A. B. *to the Common Goal in and for this County; and you the ſaid Keeper, are hereby required to receive the ſaid* A. B. *and him ſafely to keep in your Cuſtody, until he ſhall give Security as aforeſaid. Given under my Hand and Seal,* &c.

Goaler and Goal, Priſoner and Priſon.

A PRISON is a Place where a Man is reſtrained of his Liberty, to anſwer an Offence done againſt the Law.

The Commitment muſt be by a Judge of Record, and by a lawful Warrant.

There are ſeveral Sorts of Priſons, *viz.* 1. The Common Goal; and to this Place Juſtices muſt commit Murderers and Felons, and not elſewhere.

2. The Stocks.

3. The Priſon of a Lord of a Franchiſe.

4. The Cuſtody by any who hath lawfully taken the Offender, or the Houſe of a Conſtable, or other Perſon, where a Priſoner is lawfully detained.

A Felon eſcaping from any of theſe Places, makes it a Breach of Priſon.

To break a Priſon there muſt be an actual Force; for if he go out, the Doors being open, 'tis not Felony; neither is it material that 'tis the King's Priſon; for if 'tis the Conſtable's Houſe 'tis ſufficient. *Dalt.* 507.

Reſcuing him to bring him away, 'tis Felony in the Reſcuer. If the Goaler permits a voluntary Eſcape, 'tis Felony in him: But if the Eſcape is negligent, and not voluntary, 'tis Felony in the Priſoner, and a Miſdemeanor only in the Goaler. When

When a Conſtable carries a Felon, or one ſuſpected of Felony, to Goal, the Goaler is obliged to receive him; but if he refuſes to do it, then the Conſtable may either ſecure the Priſoner in his own Houſe, or carry him back to the Town where apprehended, and the Town ſhall be chargeable for the keeping of him to the next Goal-delivery, where the Goaler ſhall he puniſhed. 10 *H.* 4. *Dal.* 586.

If a Goaler permit a Felon to eſcape, it is Felony; but he may kill an unruly Priſoner, and be no Felony; but if it be by hard Uſage, 'tis Murder. And if the Goal be broken by Thieves, the Goaler is chargeable, but not if it be broken by Enemies.

Juſtices in Seſſions have Power to tax every Pariſh in the County, not exceeding *Eight Pence* per Week, towards the Relief of the Priſoners in Goal. This Tax is to be levied every *Sunday*, by the Church-wardens, and by them to be paid quarterly to the Conſtables; but if in a Corporation, then to the chief Officer, and the Conſtables; and ſuch chief Officer is to pay the ſame every Quarter-Seſſions, to the Collector, who is to diſtribute it weekly to the Priſoners. 10 & 11 *W.* 3.

And if thoſe Officers neglect their Duty, forfeits *Five Pounds* between King and Priſoners.

The Majority of Juſtices in Seſſions, upon Preſentment of the Grand Jury, of the Inſufficiency or Inconveniency of the Goal, may agree upon a Sum, as upon Examination of able Workmen ſhall be thought neceſſary, for building, finiſhing, or repairing thereof.

This Sum, by Warrant under their Hands and Seals, may be levied upon the ſeveral Hundreds and Diviſions, by equal Portions.

This Warrant is to be directed by the Juſtices in Seſſions, to the High Conſtable, Petty Conſtables, Bailiffs, or other Officers, as they ſhall think fit, for levying the ſame.

Perſons refuſing or neglecting to pay the Aſſeſſment, four Days after Demand by the proper Officer who is to collect it, or conveying away their Goods or Eſtate, *&c.* one Juſtice preſent at that Seſſions may make a Warrant to the Collector, to levy the Sum aſſeſs'd by Diſtreſs and Sale, *&c.* and keep the ſame four Days before Sale, at the Charge of the Owner; and if he doth not pay the Money within the four Days, then the Goods muſt be appraiſed by two Inhabitants where they were taken, or by other ſufficient Perſons, and ſold by the Collector, returning the Overplus; but deducting the Charge of taking and keeping the Diſtreſs.

Juſtices in Seſſions are to appoint one or more Receivers, giving Security to be accountable for the Money received and diſburſed, in Purſuance of ſuch Order as he ſhall have under the Hands and Seals of the Juſtices.

Officers refuſing to account for four Days after Demand, the Juſtices may commit them without Bail.

The

The Receipt of the Receiver ſhall be a Diſcharge to the other Officers, paying the Proportion of their Aſſeſſment.

Diſcharge of Juſtices under Hand and Seal in Seſſions, to the Receivers, ſhall be allowed as a ſufficient Releaſe in any Court of Law or Equity.

Juſtices may covenant with Perſons, for building, finiſhing, or repairing Goals, *&c.*

Murderers and Felons ſhall be impriſoned in the Common Goal, and not elſewhere.

Juſtices in the County have no Power to meddle in Corporations, but head Officers only. 14 *Eliz. cap.* 5.

Priſoner in carrying to Goal, is to bear his own Charges, and the Charge of thoſe who attend him; if he refuſe, one Juſtice may ſend a Warrant to the Conſtable of the Place where the Priſoner hath any Goods, to ſell as much as by the Appraiſement of the Neighbours, may be ſufficient to ſatisfie the Charge; and if he hath no Goods, then the Conſtable and Church-wardens, and two or three of the Pariſh, or if there are no ſuch Officers, then four of the chief Men of the Pariſh where the Felon was taken, may make a Rate, which one Juſtice may allow, and then 'tis to be paid; and if any Perſon refuſe to pay it, the Juſtice may ſend his Warrant to levy it by Diſtreſs, *&c.* and Sale after Appraiſement. 3 *Jac. cap.* 10.

A Commitment of a Felon to Goal.

Kent, ſſ. To the Keeper, *&c.*

THESE are to charge and command you, to receive into your Goal, the Body of A. B. *late of,* &c. *this Day convicted before me for committing of Felony in,* &c. *and that you do ſafely him keep in your ſaid Goal and Cuſtody, until he ſhall be from thence diſcharged by due Courſe of Law. Given,* &c.

A Warrant for falſe Impriſonment.

Kent, ſs. *To all Conſtables,* &c.

THESE are in his Majeſty's Name to command you, and every of you, upon Sight hereof, to take and bring before me, or ſome other of his Majeſty's Juſtices of the Peace for the ſaid County, the Body of *A. B.* and *C. D.* of whom you ſhall have Notice, to anſwer to all ſuch Matters and Things as on his Majeſty's Behalf ſhall be objected againſt them, by *E. F.* for falſly and unlawfully impriſoning her by the Space of Six Hours, and until ſhe did give unto the ſaid *A. B.* and *C. D.* the Sum of *Fifteen Shillings,* for her Diſcharge; for which they ſtand indicted; to which Indictment they the ſaid *A. B.* and *C. D.* have not yet appeared, as appears under the Hand of *S. H.* Eſq; Clerk of the Peace of the County of *Kent,* and to find ſufficient Sureties for their ſeveral Appearances, to plead to, and to anſwer the ſaid Indictment. Hereof fail not at your Peril. Given under my Hand and Seal, *&c.*

GOOD

GOOD BEHAVIOUR.

THE Surety for the Good Behaviour, is granted by the Juſtices of Peace, as well by the Authority of the Commiſſion of the Peace by Force of Aſſignment, as alſo by 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 the Preſervation of the Peace (as that other is) as you may obſerve out of the uſual Forms 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 (ſay they) is not broken without an Affray committed, Battery, Aſſault, Impriſoning, 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.

2. Or by his wearing Arms, or other Weapons more than uſually he hath done, or more than be mete for his Degree.

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. *Dalt.* 409.

Yet note, Theſe 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.

But though theſe 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.

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

Alſo this Surety of Good Behaviour, is moſt commonly granted either in open Seſſions; 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 the 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.

In all Offences againſt the Peace of a lower Degree, the Juſtice may take the ſingle Recognizance of the Perſon offending, if he think fit.

And where Sureties are to be taken, 'tis generally demanded of the Juſtice at the Inſtance of the Party, and before he grants his Warrant, he is to adminiſter an Oath to the Perſon who requires the ſame; which Oath is to the following Effect:

You ſhall ſwear, That you are in fear of your Life, or ſome perſonal Injury to be done to you by, &c. *and that you do not demand the Peace of him for any Malice or Revenge, but for your own Safety and the Cauſes aforeſaid.*

This Oath being adminiſtred, the Juſtice may grant his Warrant to bring the Party offending before him: Which Warrant being directed to a ſworn Officer, he need not ſhew it to the Party, but he ought to imform him of the Contents, and then he may juſtify breaking open Doors to take him. *Dalt.* 578.

A Warrant to bring a Perſon before a Juſtice to find Sureties of the Peace.

To the Conſtable of, &c. and to the Keeper of, &c.

WHEREAS A. B. *of,* &c. *hath this Day made Oath before me, That he hath been grievouſly threatned by* C. D. *of,* &c. *and is afraid that the ſaid* C. D. *will beat or wound him, he being in fear of his Life, whereupon he hath prayed Surety of the Peace againſt him: Theſe are therefore in his Majeſty's Name, to command you to apprehend the ſaid* C. D. *and bring him before me, or ſome other Juſtice of the Peace for this County, to find ſufficient Security for his perſonal Appearance at the next General Quarter-Seſſions of the Peace to be holden for the County aforeſaid, then and there to abide and do what ſhall be enjoined by the ſaid Court; and alſo in the mean Time to keep the Peace, and eſpecially towards the ſaid* A. B. *And if the ſaid* C. D. *ſhall refuſe ſo to do, then you are hereby required to convey him to the Goal of,* &c. *aforeſaid, and to deliver him ſafely to the Keeper thereof: Commanding alſo you the ſaid Keeper, to take the ſaid* A. B. *into your Cuſtody, and him there to keep, until he ſhall find Security for his Good Behaviour as aforeſaid. Given,* &c.

If

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 *O.* and hath it granted to him; when *O.* ſhall come before the Juſtice, *O.* 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 *O.* but to perſuade him, and to ſhew him the Danger of his Oath which he is to take; but yet if *O.* 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 on ſuch Complainant. *Dalt.* 382.

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. *Dalt.* 383.

Surety for the Good Behaviour is chiefly to be granted (by the Juſtices of Peace out of their Seſſions) in theſe Caſes following; *viz.*

Firſt, againſt common Barreters, Common Quarrellers, and common Breakers of the Peace.

2. Alſo it is grantable againſt Rioters.

3. Alſo againſt ſuch as ſhall lie in Wait to rob, or ſhall be ſuſpected to lie 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.

5. Alſo againſt ſuch as are like to commit Murder, Homicide, or other Grievances to any of the Kings 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 Neighbour's Fowls, whereby moſt of them died; and it was holden to be a good Cauſe to bind the Offender over, by the whole Bench: And ſince I have known it allowed as a good Cauſe by the Judges of Aſſize. *Dalt.* 410.

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 Goal, if he refuſe to be bound. Sir *Francis Bacon* 111.

It is alſo grantable againſt ſuch as are of evil Name and Fame, generally, but more eſpecially againſt ſuch as are defamed or detected in any of thoſe Particulars following:

Firſt,

1. First, against those that are greatly defamed for resorting to Houses suspected to maintain Adultry, 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, (by *Wray*, *Anderson*, and *Manwood*) 28 *El.*

3. Also against common Whore-mongers, or common Whores; for Bawdery is an Offence temporal, as well as spiritual, and is against the Peace of the Land. *Dalt.* 411.

Upon Information given to a Constable, that a Man and a Woman be in Adultry or Fornication together (or that a Man and a Woman of evil Report, are gone to a suspected 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 disturb the Peace, or that be Persons of evil Behaviour, or of evil Fame or Report generally, or that shall keep Company with any such, or with any other suspicious Persons in the Night. 13 *H.* 7. 10 & 13 *E.* 1. *Winch. cap.* 4.

Against such as by Night shall *eavesdrop* Men's Houses, *Dalt.* 411.

Against *Night-walkers*, that shall cast Men's Gates or Carts, *&c.* into Ponds, *&c.* or shall commit other like Misdemeanors or Outrages in the Night-time, *ibid.*

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 Account of such their Living.)

6. Against common Haunters of Alehouses or Taverns, and common Gamesters, but more especially if they have not whereon to live.

7. Against common Drunkards. *See* Tit. *Drunkenness.*

For all these Offenders, and the like, are evil Members in the Commonwealth, and such their Demeanor and Living is greatly to be suspected; 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*. *Dalt.* 412.

Also the good Behaviour seemeth grantable against such as shall make false Out-cries, or shall raise Hue-and cries without Cause; for these are Disturbances of the Peace. *Cromp.* 179.

Also it seemeth grantable against Cheaters and Cozeners.

Libellers also may be bound to their good Behaviour, as Disturbers of the Peace, whether they be Contrivers, procurers or publishers of a Libel; for such Libelling and Defamation tendeth to the raising Quarrels and Effusion of Blood, and are especial Means and Occasions tending, and inciting to the Breach of the Peace. *Dalt.* 412.

Likewise

Likewiſe this Surety of the good Behaviour is uſed to be granted againſt the putative Father of a Baſtard-Child.

Alſo againſt him that ſhall *abuſe a Juſtice of Peace*, Conſtable, or other Officer of the Peace, in executing their Office.

A Juſtice of Peace ſeeth a Man break the Peace (*ſ.* make an Affray or Aſſault 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.

Alſo, he that ſhall abuſe a Juſtice's Warrant, may be bound to the good Behaviour.

And ſo of ſuch as ſhall charge another with Felony before a Juſtice, and yet will not give Evidence, &c. *Dalt.* 414.

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; yet the Party hath no Remedy, 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.

A Warrant for the Good Behaviour.

Kent, ſs. To the Conſtables, &c.

WHEREAS Information hath been given unto me upon Oath, That A. B. *of, &c. is a Perſon of a lewd Life and Converſation, and a common Diſturber of the Peace: Theſe are therefore to command you, forthwith to bring the aforeſaid* A. B. *before me, or ſome other Juſtice of the Peace for this County, to anſwer unto ſuch Matters as ſhall be objected againſt him, by* C. D. *of, &c. And alſo, that you require him the ſaid* A. B. *to bring ſufficient Sureties for his Good Behaviour, until the next General Quarter-Seſſions of the Peace, to be held, &c. And hereof fail not. Given under my Hand and Seal, &c.*

Upon this Warrant, the Officer may break open an Houſe to take the Party. *Moor's Rep.* 606.

The Form of a Recognizance for the good Behaviour.

Bed. ſs. BE it remembered, that *T. R.* of *L.* in the County aforeſaid, Yeoman, *T. Q.* of the ſame, Tanner, and *N. N.* of the ſame Place, Carpenter, on the third Day of *Jan.* in the Year of our Lord 1749, came before us, *H. P.* and *R. I.* Eſqs; two of his Majeſty's Juſtices of the Peace for the County aforeſaid; and in their proper Perſons, acknowledg'd themſelves indebted to our Sovereign Lord the King, in manner following; that is to ſay, the aforeſaid *T. R.* in forty Pounds, and the aforeſaid *T. Q.* and *N. N.* ſeverally, in twenty Pounds, of good and lawful Money of *England*, to be levied on their reſpective Goods and Chattels, Lands and Tenements, to the Uſe of our ſaid Sovereign Lord the King, his Heirs and Succeſſors, in Caſe Default ſhall be made in the under-written Condition.

THE

THE Condition of this Recognizance is ſuch, That if the above-bounden *T. R.* ſhall perſonally appear at the next General Quarter-Seſſions of the Peace, to be holden at *B.* to do and receive what ſhall be then and there enjoined him by the Court, and in the mean Time, that he be of Good Behaviour towards our Sovereign Lord the King, and all other the People of this Kingdom; that then this Recognizance to be void, or elſe to remain in full Force.

If it be for the Peace, then ſay,

TO anſwer unto ſuch Matters as ſhall be objected againſt him by *T. P.* of *N.* aforeſaid, and to do and receive what ſhall be then and there enjoined by the Court, and in the mean Time to keep the Peace of our Sovereign Lord the King, as well towards his Majeſty, as all his liege People, and eſpecially towards the ſaid *T. P.* and ſhall not do or procure to be done, any bodily Hurt to him; that then this Recognizance to be void, or elſe to remain in full Force.

Taken before us the Day and Year above mentioned. H. P. R. B.

Note here, If the Juſtice only ſubſcribe his Name to the Recognizance, without putting his Seal, it may be well enough. And further, that all Bonds, Obligations, and Recognizances that ſhall be taken by any Juſtice of the Peace, or any other Perſon, for any Cauſe touching the King, muſt be made, and be taken in his Name, and by theſe Words, and under a Penalty to him that takes them, as I have elſewhere ſaid, *Our Lord the King.*

Condition for appearing at the Seſſions.

THE Condition of this Recognizance is ſuch, That if the within bounden *A. W.* ſhall make his Perſonal Appearance before his Majeſty's Juſtices of the Peace, at the next Quarter-Seſſions of the Peace to be holden for the ſaid County of *B.* then and there to anſwer unto ſuch Matters, as on his Majeſty'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 henceforth this preſent Recognizance ſhall be void, or elſe to remain in full Force and Virtue.

A Condition for one that hath dangerouſly hurt another.

THE Condition of this Recognizance is ſuch, That whereas the within bound *K. R.* hath now dangerouſly hurt and wounded *L. G.* of *R.* within the ſaid County of *S.* Butcher, giving him divers Blows, or Cuts on the Head, *&c.* with a Chopper made of Iron and Steel, ſo as the ſaid *L. G.* is in danger of Death thereby; If therefore the ſaid *K. R.* ſhall make his perſonal Appearance before the King's Majeſty's Juſtices at the next General Goal-Delivery, to be held in the ſaid County of *S.* then and there to make Anſwer to the Premiſes, and to receive that which then ſhall be by the Court injoined him; and that he the ſaid *K. R.* in the mean Time, do keep the Peace of our ſaid Sovereign Lord the King, towards the King's Majeſty, and all his liege People; that then, *&c.* as before.

The

The Juſtices muſt certify the Recognizance at the next Seſſions, or forfeits *Ten Pound*; and if the Party do not appear, the Recognizance itſelf, with the Cauſe of the Forfeiture, muſt be certified in the *Exchequer*, that Proceſs may be awarded againſt the Offenders.

A Warrant to find Sureties for the Peace, where an Aſſault is made upon an Officer in Diſcharge of his Duty.

Orange, ſs. To all Conſtables, *&c.*

THESE are in his Majeſty's Name, to command you and every of you, upon Sight hereof, to take and bring before me, or ſome other of his Majeſty's Juſtices of the Peace for the ſaid County, the Body of A. E. *(of whom you ſhall have Notice) to anſwer all ſuch Matters and Things as on his Majeſty's Behalf ſhall be objected againſt him, by* F. G. *one of the Conſtables of,* &c. *for aſſaulting, beating and bruiſing him in the Execution of his Office; as Oath hath been made: Hereof you are not to fail at your Peril. Given,* &c.

A Mittimus.

Suſſex, ſs. *To the Keeper,* &c.

RECEIVE into your Cuſtody, the Body of *E. D.* this Day brought before me, and accuſed upon the Oath of *R. S.* one of the Conſtables of, *&c.* for aſſaulting, beating and bruiſing him in the Execution of his Office; and for refuſing to find ſufficient Sureties for his perſonal Appearance at the next General Quarter-Seſſions of the Peace, to be holden for the ſaid County of *S.* there to anſwer the ſaid Complaint: Him in your Cuſtody ſafely keep, until he find Sureties as aforeſaid, or otherwiſe be diſcharg'd by due Courſe of Law. Given, *&c.*

A Liberate.

Kent, ſs. To the Keeper of, *&c.*

WHEREAS H. N. *hath before me found ſufficient Sureties for his perſonal Appearance at the next General Quarter-Seſſions of the Peace, to be holden for the ſaid County, there to anſwer what ſhall be objected againſt him, by* C. D. *Conſtable of,* &c. *for aſſaulting, beating and bruiſing him in the Execution of his Office: Theſe are therefore to will and require you, upon Sight hereof, to ſet at Liberty the Body of the ſaid* H. N. *if detained for the Cauſe aforeſaid, and no other. And for your ſo doing, this ſhall be your Warrant. Given,* &c.

The Recognizance.

E. F. of, *&c.* Blackſmith.---20 *l. G. H.* of, *&c.* Taylor---20 *l.*

Upon Condition, That *A. B.* ſhall perſonally appear at the next General Quarter-Seſſions of the Peace to be held for the ſaid County; there to anſwer what ſhall be objected againſt him, by *C. D.* Conſtable of, *&c.* for aſſaulting, beating and bruiſing the ſaid *C. D.* in the Execution of his Office; and in the mean Time to be of his good Behaviour: That then, *&c.*

Taken and recorded before me, the 5th Day of June, 1749.

Goods

Goods Detained, &c.

THOUGH for Detainer of Goods, *&c.* the proper Remedy is by Action at Law, yet in ſmall trivial Matters of poor indigent Perſons, not capable of maintaining a Law-Suit to do themſelves Juſtice, a Juſtice of Peace may interpoſe: And on Complaint, may iſſue his Warrant to bring the Perſon offending before him, and compel a Reſtitution; and if he refuſe to make ſuch Reſtitution, two Juſtices may grant a Warrant to deſtrain for the ſame or the Damage.

A Warrant to bring a Perſon before two Juſtices for Detainer of Goods.

Bed. ſs. *To the Conſtable,* &c.

WHEREAS Complaint hath been made unto us by *F. V.* of, *&c.* That *D. E.* of your Pariſh, unjuſtly detains from him certain Goods *(viz.) &c.* or owes him ſuch Money and will not come to an Accompt, to the great Prejudice of the ſaid *F. V.* and againſt the Peace, *&c.* Theſe are therefore in his Majeſty's Name, to command you, to bring the ſaid *D. E.* before us, or ſome other of his Majeſty's Juſtices of the Peace for this County, to make anſwer to the ſaid Complaint, and that we may do therein as to Juſtice appertains. Given, *&c.*

A Warrant to take a Diſtreſs for the Value of Goods detained.

Eſſex, ſs. *To the Conſtable,* &c.

WHEREAS Complaint having been made unto us by *A. B.* of, *&c.* That *C. D.* of, *&c.* did unjuſtly detain from him certain Goods *(viz.) &c.* which the ſaid *C. D.* borrowed of him the ſaid *A. B.* And the ſaid *C. D.* being by Virtue of our Warrant brought before us to anſwer the ſaid Complaint, and to be obliged to make Reſtitution according to Juſtice; and upon his Examination not being able to clear himſelf from the ſaid Charge, and having imbezzeled or at leaſt refuſed to deliver the Goods aforeſaid to the ſaid *A. B.* whereby the ſaid *A. B.* hath received the Sum of, *&c.* Damage, which the ſaid Goods are valued at by a moderate Computation: Theſe are therefore to require you, to levy the ſaid Sum of, *&c.* on the Goods and Chattels of the ſaid *C. D.* by Diſtreſs and Sale thereof, and that you do pay the ſame to the ſaid *A. B.* as ſoon as it ſhall be levied, returning the Overplus of the ſaid Diſtreſs (if any) to the ſaid *C. D.* Given, *&c.*

HARVEST-

HARVEST-TIME.

ARTIFICERS and Perſons fit to labour, may in Harveſt-Time be compelled by one Juſtice or Conſtable, and upon Refuſal may be put into the Stocks two Days and one Night; and the Conſtable and other Head Officer is to do it, under Penalty of *Forty Shillings*. 5 *Eliz. Cap.* 4.

Hawkers and Pedlars.

BY the Statute of 8 and 9 *W.* 'tis enacted, That every Hawker, Pedlar, or Petty-Chapman, or other Trading Perſon, going from Town to Town, *&c.* muſt take a Licence;

And if on Foot he muſt pay *Four Pounds*. If with Horſe, Aſs, or Mule, *Eight Pounds*.

And if he travels without a Licence, or contrary thereto, he forfeits for every Offence to the Informer and Poor of the Pariſh where diſcovered, *Twelve Pounds*,

Refuſing to ſhew his Licence, being demanded by any Officer of the Peace, he forfeits to the Poor where the Demand ſhall be made, *Five Pounds*,

And for Non-payment of the ſame, muſt ſuffer as a common Vagrant, and be ſent to the Houſe of Correction.

Travelling with forged Licences, forfeits to the King and Proſecutor, to be recovered in the Courts at *Weſtminſter*, 50*l.* and to be ſubject to the Penaltes for Forgery.

A Conſtable neglecting or refuſing to aſſiſt in the Execution of this Act, being convicted on Oath before a Juſtice of the Peace, forfeits for every Offence to the Poor and Proſecutor, to be levied by Diſtreſs, *&c. Two Pound.*

Any Perſon may ſeize and detain ſuch Hawker till he produce a Licence, or if Trading without a Licence, till Notice be given to a Pariſh-Officer, who is to carry him before a Juſtice of the Peace; who upon Confeſſion of the Party, or Oath of one Witneſs, That the Offender had traded without a Licence produced, ſhall by Warrant levy *Twelve Pound.*

And becauſe ſome Abuſes were afterwards committed by Perſons letting out to Hire the Licences by them taken to trade as Hawkers; therefore another Law was made 3 and 4 *Ann. cap.* 4.

That every Perſon trading as an Hawker, *&c.* ſhall produce his Licence on Demand, or otherwiſe he ſhall incur the ſame Forfeiture as if he had traded without a Licence; and if any Perſon lend a

Licence to Hire, either the Lender or the Trader ſhall forfeit *Forty Pound*, and the Lender ſhall forfeit the Licence; One Moiety of the *Forty Pound* to the King, and other to the Informer, by Action of Debt, Bill, Plaint or Information, *&c.*

And to the ſame Act 'tis declared, That Traders in the Woolen and Linnen Manufactures, ſending their Goods to Markets and Fairs on Horſes, and ſelling the ſame by Wholeſale, neither they, or thoſe employed under them, ſhall he taken to be Hawkers.

The Officer muſt render the Overplus after Deduction for the Charge of Diſtraining, and out of the Sale of the Goods diſtrained, pay the Penalties and Forfeitures.

A Warrant to levy Twelve Pound *for Hawking without Licence.*

To the Conſtables, *&c.*

Kent. ſs. WHEREAS *Information hath been given unto me, one of his Majeſty's Juſtices of the Peace for the ſaid County, upon the Oath of* A. B. *of*, &c. *That* C. D. *of*, *&c. Labourer, did on the Twenty fourth Day of* Auguſt *Inſtant, trade without Licence in*, &c. *and carried about and expoſed to Sale three Pieces of Silks called* Ruſhy James, *he not being the Worker or Maker of ſuch Silks, nor Apprentice, Agent or Servant to ſuch real Workers or Makers of ſuch Silks he ſo carried abroad, and expoſed to Sale as aforeſaid, which the ſaid* C. D. *hath confeſs'd before me upon his Examination, contrary to a late Act of Parliament for Licenſing Hawkers and Pedlars*, &c. *For which ſaid Offence he the ſaid* C. D. *hath forfeited the Sum of* Twelve Pound, *the one Moiety thereof to the Informer, and the other Moiety to the Poor of the Pariſh*, &c. *where the ſaid Offence was committed: Theſe are therefore to authoriſe and require you, upon Sight hereof, to demand of the ſaid* C. D. *the ſaid Sum of* Twelve Pound, *and in Caſe he refuſe to pay the ſame, that then you levy the ſaid Sum of* Twelve Pound, *by Diſtreſs and Sale of the Goods, Wares and Merchandizes of the ſaid* C. D. *rendring to him the Overplus (if any be, reaſonable Charges for taking the ſaid Diſtreſs, being firſt deducted) to be employed to the Uſe abovementioned; and in Caſe of his Inability for Non-payment thereof, that then you forthwith bring the ſaid* C. D. *before me, or any other of his Majeſty's Juſtices of the Peace of the County aforeſaid, to be further dealt with as the Act directs: And hereof fail not. Given*, &c.

Hedge-breaking, and Fence-breaking, &c.

HEDGE-breaking being an Offence of which idle and diſorderly People are frequently guilty, and Gentlemen ſuffer thereby in many Reſpects, I ſhall take Notice of what may be neceſſary for the Prevention and Puniſhment of Offences of this Nature. And

And first by Statute 43 *Eliz. c.* 7. If any Perſon ſhall unlawfully break, cut and carry away any Hedges Pales or other Fences, or cut or Spoil any Woods or Underwoods ſtanding and growing, or cut and take away Corn growing, rob Orchards or take away Fruit Trees, and the Acceſſaries thereunto: For the firſt Offence he ſhall pay to the Perſon grieved, ſuch Damages as the Juſtice ſhall think fit; and if the Offender be not able to pay ſuch Damages, he ſhall be committed to the Conſtable to be whipped; and if the Conſtable neglect his Duty, he may be committed without Bail until he ſhall comply.

The Conviction muſt be within ſix Weeks after the Offence committed, by Confeſſion or the Oath of one Witneſs before one Juſtice;

And a Conſtable or any other may apprehend Perſons ſuſpected of ſtealing Bark, Broom, Gates, Hedges, Pales, Poles, Rails, Stiles, Trees growing, Underwood or other Wood, and by Warrant from one Juſtice may ſearch their Houſes, and if they find any of thoſe Things, they may carry the Perſon on whom found before a Juſtice of Peace; and if he cannot give a good Account how he came by the ſame, or in a convenient Time produce the Perſon of whom bought, or ſome Witneſs to prove the Sale on Oath, he ſhall over and above the Forfeitures by Stat. 43 *Eliz.* make ſuch Recompence as the Juſtice ſhall appoint, and pay a Sum not exceeding *Ten Shillings* for the Uſe of the Poor where the Offence was committed; and for Default thereof, he ſhall be ſent to the Houſe of Correction for any Time not exceeding a Month, or be whipped; the ſecond Offence, to be ſent to the Houſe of Correction for a Month, and be kept to hard Labour; and for the third Offence, to be adjudged an incorrigible Rogue. Stat. 15. *Car.* 2. *c.* 2.

If any Perſon ſhall be convicted of buying ſtolen Wood, one Juſtice may order ſuch a Buyer to pay treble the Value to him from whom taken, and on Non-payment may levy the ſame by Diſtreſs; and in Default thereof, may commit the Offender for one Month.

A Warrant to apprehend a Hedge-Breaker.

To the Conſtable, &c.

WHEREAS A. B. *of* &c. *hath this Day made Oath before me, That on,* &c. *laſt, he ſaw* C. D. *of* &c. *tear down, break and deſtroy the Hedges and Fences of,* &c. *in the Ground called,* &c. *within the Pariſh of,* &c. *aforeſaid, contrary to an Act of Parliament in that Caſe made: Theſe are therefore in his Majeſty's Name to command you to apprehend the ſaid* C. D. *(if within your Pariſh) and that you do bring him before me or ſome other Juſtice of the Peace to anſwer the Premiſes, and be dealt with according to Law. Given,* &c.

HIGH-WAYS.

PRIVATE Ways are to be repaired by the Village, and ſome Times by a particular Perſon; but publick Ways by the Pariſh, unleſs a particular Perſon was obliged by Cuſtom or Preſcription; and Clergy-Men are liable to all Charges impoſed by Act of Parliament, and in particular to repair High-Ways. 1 *Vent.* 273.

On the 26th Day of *December* every Year, unleſs that happen on the Sunday, and then on the Day following, after this Manner: *viz.*

The Pariſhioners being met, are to make a Liſt of a competent Number of Names of Men thus qualified:

1. They muſt have an Eſtate of *Ten Pound per Ann.* either in their own Right, or in the Right of their Wives.

2. Or they muſt be worth *One Hundred Pound* in perſonal Eſtate.

3. Or rent *Thirty Pound per Annum.*

If there are not any ſuch Perſons in the Pariſh, then a Liſt muſt be made of the moſt ſufficient Perſons.

The Liſt muſt be returned to two or more Juſtices of the Peace near the Diviſion in which the Pariſh lieth, at a ſpecial Seſſions to be held on the third Day of *January*, or within fifteen Days afterwards.

The Conſtables neglecting to return ſuch Liſt, do each of them forfeit *Twenty Shillings.*

Out of this Liſt ſo returned, the Juſtices at that Seſſions do appoint one or more to be Surveyors, *&c.* by an Order under their Hands and Seals.

The Perſon thus appointed, muſt within ſix Days afterwards have Notice thereof given unto him by the Conſtable, leaving a Copy of the Juſtice's Order at the Houſe of the Party, and then he muſt take upon him the Office.

But if he refuſe being ſo nominated and appointed, and ſerved with the Order, then he forfeits *Five Pound*, to be levied by Warrant from a Juſtice of the ſame Diviſion; or in Default thereof, from the Neighbouring Juſtices, upon Oath made, *&c.*

The Forfeiture being levied, one Moiety is to go to the Informer, and the other to repair the High Ways; and the Juſtices may appoint one or more Surveyors again, who upon Notice, muſt take upon him or them the Office, *&c.* under the ſame Penalty.

He muſt, within fourteen Days after the Acceptance of his Office, and ſo from Time to Time every four Months, view the Roads and Bridges, &c.

He muſt preſent upon Oath before ſome Juſtice, *&c.* ſuch Ways which are not in Repair, or he forfeits *Five Pound*, unleſs two Juſtices ſhall allow his Excuſe.

He

He must give publick Notice from Time to Time every four Months, what Default he finds: This Notice must be given in the Parish Church the next Sunday, after Sermon ended; and if not amended within thirty Days afterwards by those who ought to repair, &c. then the Surveyor must within other thirty Days next following amend the same.

He must give an Account upon Oath at a Special Sessions, of all Money that comes to his Hands, and how dispos'd, &c. and if any remains, he must deliver it to the next Surveyor, or forfeits double the Value of what the Justices shall judge in his Hands; to be levied by Warrant of two Justices, one Part to the Informer, &c.

If he neglects his Duty in any Thing, he is to forfeit *Forty Shillings*, one Moiety to the Informer, the other to amend the High-Ways; and this Forfeiture may be levied by a Warrant from one Justice: And by 6 *Annæ*, c. 29. the Penalty is increased to *Five Pound*. 22 *Car.* c. 12. *one Justice, one Witness.*

He is to appoint six Days for providing Materials to amend the Ways, giving Notice of the several Days by him appointed; at which Time all Persons liable must work, and the Ways must be amended before the Feast of St. *Luke*.

Every Man keeping a Horse-Team, must send out a Cart and two able Men; and if he keeps Oxen, then he must send them out, and a Wain with two Men, every Day so appointed by the Surveyor; and if he keeps both, then he must send that which will do best Service, or forfeits *Ten Shillings* for every Day wherein he makes Default.

If all the Carriages in the Parish shall not be thought necessary by the Surveyors, then the Person whose Carriage is spared must send out two able Men, or forfeits *Ten Shillings* for every Man not sent.

Every Housholder, Cottager and Labourer, must either work themselves, or hire one to work each of these six Days, or forfeits One Shilling and Six Pence per Day; and all of them must work eight Hours every Day. *Per Stat.* 23 *Car.* 2 c. 2.

If any Man hath a Plow-Land or Pasture in several Parishes, he shall be chargeable only in the Parish where he lives; but if he keeps in his Occupation several Plow-Lands or Pastures, &c. in several Parishes, he shall be chargeable in every Parish.

In such Place where Carts are not used, the Inhabitants must send Horses, according to the Custom of the Place, with able Persons, &c. under the like Penalty.

The Surveyor may complain to the next Justice, &c. who upon Oath made of the Default, may send his Warrant to levy the Forfeitures by Distress and Sale of Goods, *viz.*

	l.	*s.*	*d.*
On a Labourer neglecting --- ----	0	2	6
For every Man and Horse, &c. ----	0	4	0
For every Cart with two Men ---- ----	0	14	0

for every Day they shall neglect; which Penalties, when levied, must be employed towards the amending of the Ways.

A Parſon is not chargeable for his Glebe; but if they uſe other Land, 'tis otherwiſe.

Buſhes in High-Ways. Theſe muſt be cut down by the Owners of the Soil, within ten Days after Notice given by the Surveyors, on Pain of *Five Shillings* to be levied for every Neglect on the Goods of the Offender by Diſtreſs, *&c.* on Warrant of two Juſtices of the ſame Diviſion, or in Default thereof by any Neighbouring Juſtices; but there muſt be Oath made by one Witneſs; one Moiety of the Forfeiture is to the Informer, the other towards repairing of the Ways. 3 and 4 *W.* and *M. cap.* 12.

No Buſhes, Trees or Shrubs, ſhall grow or ſtand, or Bough or Branch over-hang a High-Way not twenty Foot broad. Offender forfeits *Five Shillings* to be levied and employed as aforeſaid.

Thoſe who pull up, cut or remove, any Poſt, Block, great Stone, Bank of Earth, or other Security of a Horſe-way or Cauſeway for Waggons, Carts, *&c.* forfeits for every Offence *Twenty Shillings*, 7 and 8 *Will.*

The Conviction is to be by Oath of one Witneſs, before one Juſtice of the Diviſion, or upon his own View, and 'tis to be levied by his Warrant by Diſtreſs and Sale, *&c.* one Moiety to the Surveyors to repair the Ways, the other to the Informer.

Of Annoyances in the High-Ways by Ditches, &c.

By the Statute of 5 *Eliz.* thoſe who have Lands adjoining to the Highway, in which Ditches ought to be, muſt ſcour them as often as there is Occaſion, and lay Trunks or Bridges where there are Cart-ways into any Ground, that the Water may have free Paſſage, upon pain to forfeit 12 *d.* per Rod; but by the Statute of 3 & 4 *W. & M.* if they neglect ten Days after Notice, the Forfeiture is 5 *s.* to be levied by Warrant of two Juſtices of the ſame Diviſion, *&c.* upon Oath made, *&c.* one Moiety to the Informer, the other to amend the Ways.

If in ſcouring the Ditches they lay the Soil in the Highway, and ſuffer it to lay there ſix Months, they forfeit 12 *d.* per Load; but by the Statute of 3 & 4 *W. & M.* if not carried away within ten Days after Notice, to be levied and employed as aforeſaid.

The Surveyors have Power to turn any Spring or Water-Courſe out of the Highways into thoſe Ditches; and where the Ditches already made are not ſufficient to carry away the Water, they have Power by 3 & 4 *W. & M.* to make new Ditches and Drains in and through the Lands adjoining, which they muſt keep ſcour'd; and for that Purpoſe, may with Workmen come upon the ſaid Lands, without being Treſpaſſers.

Perſons laying any Thing in the High-way not 20 Foot broad, forfeits 5 *s.* to be levied and employed as aforeſaid; and if Timber, Stone, Hay, Straw or Stubble, or other Matter for making Dung, or any other Pretence, ſhall be laid in any High-way, thoſe who poſſeſs Lands next adjoining may remove and diſpoſe thereof to their own Uſe.

Logs

Logs or Timber ſhould not be laid in the High-Way though there is a ſufficient Room for Travellers left.

All Matters concerning the High-Ways, muſt be determined in the County where they lie, and not elſewhere; and none ſhall be puniſh'd, unleſs proſecuted within ſix Months after the Offence is committed. The Party grieved may appeal from any Act done by the Juſtices to the Quarter-Seſſions, whoſe Order ſhall conclude all Parties, and on Preſentment, Indictment or Order, ſhall be removed by *Certiorari*. If any Action ſhould be commenced againſt thoſe who put that Act in Execution, they may plead the General Iſſue, and give the Act itſelf and the Special Matter in Evidence; and if the Plantiff be nonſuited, diſcontinue, or a Verdict againſt him, the Defendant ſhall have double Coſts.

By Statute 8 and 9 *W.* 3. *cap.* 16. For enlarging common High-ways, it is enacted, that the Juſtices of Peace of any County, City, *&c.* or the major Part of them (Five at leaſt) at their Quarter-Seſſions, may enlarge or widen any High-ways in their reſpective Counties, *&c.* ſo that the Ground to be taken into the ſaid High-ways do not exceed Eight Yards in Breadth, and that they do not pull down any Houſe, nor take away any Ground from any Garden, Orchard, Court or Yard.

For Satisfaction of the Owners, the ſaid Juſtices ſhall impanel a Jury, and Adminiſter an Oath to them, That they will aſſeſs ſuch Damages and Recompence to the Owners, or others intereſted in the Ground (not exceeding twenty five years Purchaſe) as they ſhall think reaſonable, *&c.* And upon Payment of the ſaid Money ſo awarded, or leaving it in the Hands of the Clerk of the Peace of the County, for the Uſe of the Owner, the Intereſt of the ſaid Owner ſhall be diveſted out of him, and the ſaid Ground ſhall be eſteemed a publick High-way to all Intents whatſoever.

And the ſaid Juſtices ſhall order Aſſeſſments to be made and levied upon all ſuch Perſons that ought to repair the ſaid High-way; and the Money thereby raiſed ſhall be imploy'd towards purchaſing the Land to enlarge the ſaid High-ways, and making Ditches and Fences. The ſaid Aſſeſſments to be levied by the Overſeers of the High-ways, by Diſtreſs and Sale of Goods, if not paid within Ten Days after demand.

No ſuch Aſſeſſment ſhall in one Year exceed the Rate of *Six Pence* in the Pound for Lands, nor *Six Pence* in the Pound for perſonal Eſtates.

The ſaid Juſtices, at the Requeſt of any Perſon for enlarging High-ways, ſhall, at their Quarter-Seſſions, iſſue out their Precepts to the Owners of Ground to be laid to the ſaid High-ways, to appear and ſhew Cauſe why the ſaid High-ways ſhould not be enlarged.

Juſtices of Peace at their reſpective ſpecial Seſſions, to be held by virtue of the Statute 3 and 4 *W.* & *M. cap.* 12. In ſuch Caſes

as they ſhall think neceſſary, ſhall direct their Precepts to the Surveyors of High-ways, where two or more Croſs-High-ways meet, requiring them to erect, where ſuch Ways join, a Stone or Poſt with an Inſcription directing to the next Market-Town to which each of the ſaid Croſs Ways lead. And in caſe the Surveyor or Surveyors neglect or refuſe ſo to do, for the Space of Three Months, every ſuch Offender ſhall forfeit *Ten Shillings*, to be levied by Warrant of one Juſtice, directed to the Conſtable, requiring him to diſtrain and ſell the Goods of ſuch Offender, and employ the Money to the ſaid Purpoſe.

It is not juſtifiable to ſtop one Way (which was bad) to lay out another (without Authority). 1 *Cro.* 266. *Pop.* 142.

An Action for ſtopping or incroaching upon an Highway, is not maintainable without particular Damage, and the uſual Way is by Indictment.

If any Perſon ſhall reſiſt a Surveyor or other Perſon employed to put the Acts in Execution relating to High-ways, or ſhall reſcue Goods deſtrained, one Juſtice upon View, or Conviction by the Oath of one Witneſs, may commit the Offender, if he refuſe to pay *Forty Shillings* to the Surveyor within ſeven Days after Notice of ſuch Conviction. Stat. 22 *Car.* 2. *c.* 12.

All publick Ways are to be repaired by the Pariſh, unleſs there be a Cuſtom or Preſcription for ſome particular Perſon to do it: *N. B.* No Ways are properly under the Cognizance of the Surveyors of the Highways, unleſs they are common Highways.

Perſons and Carriages are to be provided with Shovels, Spades, Pick-axes, and other Tools and Inſtruments neceſſary, and ſhall work eight Hours in the Day. Stat. 22. *Car.* 2. *c.* 12.

Juſtice of Peace neglecting or refuſing to do what is enjoined by the Acts for repairing of High-ways, ſhall forfeit *Five Pound*, one Moiety to the Proſecutor, and the other Moiety to be laid out in amending the High-ways where the Proſecutor lives, to be recovered by Action of Debt in any Court of Record. And all Proſecutions concerning the High-ways, muſt be commenced within ſix Months after the Offence is committed.

A Warrant againſt a Surveyor, for not putting the Laws in Execution.

Kent, *ſs.* To the Conſtable, *&c.*

WHEREAS it hath been duly proved before me, P. L. *Eſq;* &c. *That* E. F. *Surveyor of the High-ways of the Pariſh of* M. *in the ſaid County, did on the* Fifteenth *Day of* May *laſt, wilfully ſuffer a Waggon loaded with Goods and Wares, and not employ'd in and about Huſbandry,* (ut prius) *to be in the common High-Way, in the ſaid Pariſh of* M. *with ſeven Horſes, and hath hitherto neglected to put the Laws in Execution made for Repairing the High-ways; by Reaſon whereof he hath forfeited* Five Pound. *Theſe are therefore,* &c.

Concerning

Concerning Indictments about High-ways.

WHERE a Perſon by any Incloſure ſtraitens a High-way on both Sides, tho' the Pariſh repaired it before, yet now he is obliged to maintain it at his own Charge; but if he abates the Incloſure, and leaves the Way open as it was before, then the Pariſh is to repair it again. *Cro. Car.* 366. *Sand.* 160.

A High-way is that which leads from one Market-Town to another, and is to be repaired by common Right by the Pariſh where the Decay is, unleſs ſome other Perſon is bound by Preſcription or Cuſtom; and therefore *reparare debet* generally, without ſhewing how, is not good.

But if the Defendant pleads *Reparare non debet*, and 'tis ſo found, he ſhall be acquitted, tho' it doth not appear who ſhould repair; and the Reaſon may be, becauſe *de communi jure* the Pariſh is bound to repair their own High-ways, and therefore they are never allowed to plead Not guilty, and give in Evidence that another ought to repair by Preſcription or Tenure; for if they would diſcharge themſelves, they muſt plead it. *Sid.* 140. 1 *Vent.* 256.

A Common Way is that which leads from a Village or Town to the Pariſh-Church, or Fields; 'tis alſo called a private Way; and is to be repaired by the Village or Hamlet, and ſometimes by a private Perſon: If ſuch a Way be out of Repair, every Inhabitant may have an Action, but an Indictment will not lie. 1 *Vent.* 208.

But a Hamlet within a Pariſh cannot be charged generally to repair without Preſcription, &c. *Stiles* 163.

If the Inhabitants of a Pariſh are indicted for not repairing a Way, and they ſubmit to a Fine, and pay it: This is not enough, for Writs of *Diſtringas* ſhall be awarded *in Infinitum*, till 'tis repaired.

A Warrant to levy the Forfeiture for not ſending a Team and Workmen to work on the High-ways.

Rich. ſs. To the Conſtable of, *&c.*

WHEREAS A. B. *Surveyor of the Highways of and for the Pariſh of* &c. *in the County aforeſaid, hath this Day made Oath before us, That* C. D. *who keepeth a Horſe-Team and hath a Plow-land in the ſaid Pariſh of*, &c. *did refuſe to ſend any Team to work on the Repairing of the Highways on*, &c. *laſt paſt, one of the Days appointed for that Purpoſe, tho' he had due Notice given him by the ſaid* A. B. *contrary to an Act of Parliament in that Caſe made, whereby he hath forfeited the Sum of* Ten Shillings: *Theſe are therefore, in his Majeſty's Name, to command you to levy the ſaid Sum of* Ten Shillings, *by Diſtreſs and Sale of the Goods of the ſaid* C. D. *and when the ſame ſhall be ſo levied, that you do imploy it for and towards the Amending the High-ways in the ſaid Pariſh of*, &c. *Given*, &c.

A Warrant to levy the Forfeiture on a Surveyor, for not erecting a Poſt at Croſs-ways for Direction of Travellers.

Orange, ſs. To the Conſtables, &c.

WHEREAS the Poſt ſome Time ſince erected and ſet up in the High-way leading to, &c. at the Meeting of ſeveral Croſs-Ways therein, is decayed and conſumed, ſo as to be render'd uſeleſs, and E D. &c. *Surveyor of the Highways in the ſaid Pariſh of, &c. being order'd by us to erect, fix, and ſet up a new Poſt at the Meeting of the Croſs-Ways aforeſaid, with an Inſcription thereon in large Letters, ſetting forth the Name of the next Market-Town, to which each of the ſaid Croſs-Ways leads, according to the Act of Parliament in that Caſe made, hath neglected to do the ſame, whereby he hath forfeited the Sum of* Ten Shillings, *to be employed towards the Erecting and ſetting up ſuch Poſt: Theſe are therefore to require you to levy the ſaid Sum of,* &c.

A Warrant againſt a Surveyor not preſenting the State of the Ways at a Special Seſſions.

Kent, ſs. *To the Conſtable,* &c.

WHEREAS a Special Seſſions was held by the Juſtices of the Peace for the ſaid County, at *&c.* on *Monday* the 25th Day of *July* laſt paſt, at which Seſſions *E. F.* and *G. H.* Surveyors of the High-ways belonging to the Pariſh of, *&c.* were duly ſummoned; and whereas it hath been duly proved before us *P. L.* and *J. M.* Eſqrs, two of his Majeſty's Juſtices of the Peace of the County aforeſaid, that the ſaid *E. F.* and *G. H.* did neglect to appear at the ſaid Seſſions, and to preſent upon Oath the State of the High-ways belonging to the ſaid Pariſh, of which they were Surveyors, or what Offences and Neglects any Perſons were guilty of relating to the ſame, by Reaſon whereof he hath forfeited *Forty Shillings*: Theſe are therefore, *&c.*

A Warrant upon a Surveyor neglecting to view the Ways, and not preſent to a Juſtice what Condition they are in.

Kent, ſs. To the Conſtable, *&c.*

WHEREAS it appeareth unto us, E. L. *and* J. M. *Eſqrs, two of his Majeſty's Juſtices,* &c. *That* A. B. *of,* &c. *being lawfully nominated and appointed Surveyor of the High-ways in the Pariſh of,* &c. *for this preſent Year, hath neglected within Fourteen Days after his Acceptance of the ſaid Office, to view the Ways, Water-Courſes, Bridges and Cauſeways, which are to be repaired by the ſaid Pariſh, and to preſent upon Oath to ſome Juſtice of the Peace, in what Condition he found them, having for ſuch his Neglect, no reaſonable Excuſe allowed by two Juſtices of the Peace; ſo that he hath forfeited the Sum of* Five Pounds, *according to the Statute in that Caſe made and provided: Theſe are therefore,* &c.

A War-

A Warrant to levy the *Five Pounds*, for not taking upon him the Office of Surveyor.

Kent, ſs. *To the Conſtable, &c.*

WHEREAS it appeareth unto us, *&c.* That *A. B.* of *M.* in the ſaid County, was on the Fifteenth Day of *Auguſt* laſt paſt, lawfully nominated and appointed to be Surveyor of the High-ways, in and for the ſaid Pariſh, for the Year next enſuing; and that within Six Days after the ſaid Nomination and Appointment, he had due Notice thereof: And whereas *C. D.* of *M.* aforeſaid, hath now made Oath before us, That the ſaid *A. B.* hath refuſed to take upon him the ſaid Office, by Reaſon whereof he hath forfeited the Sum of *Five Pounds*; one Moiety thereof to the ſaid *C. D.* the Informer, and the other Moiety to go towards the Repairing the ſaid High-ways: Theſe are therefore in his Majeſty's Name, to command you forthwith to levy the ſaid Forfeiture of *Five Pounds*, by Diſtreſs and Sale of the Goods of the ſaid *A. B.* rendring to him the Overplus, if any be (neceſſary Charges of Diſtraining being firſt deducted:) And hereof fail not. Given under our Hands and Seals the 20th Day of *Auguſt*, &c.

Againſt a Surveyor refuſing to Account.

Dutcheſs, ſs. To the Conſtable of, *&c.*

WHEREAS it hath been duly proved upon Oath before us, P. L. *and* J. M. *two of his Majeſty's Juſtices of the Peace for the ſaid County, That* E. F. *of*, &c. *Surveyor of the High-ways in and for the Pariſh aforeſaid, hath neglected to give an Account upon Oath at any Special Seſſions, of all Money which hath come to his Hands, and which ought to be imployed in amending the High-ways, and how he hath diſpoſed thereof; ſo that for ſuch his Neglect he hath forfeited the Sum of* Forty Shillings; *one Moiety to the Informer, and the other to repair the High-ways in the ſaid Pariſh: Theſe are therefore*, &c.

Warrant to ſummon People that have not done their Duties on the High-ways.

Bed. ſs. *To the Conſtables of*, &c.

THESE are, in his Majeſty's Name, to require and authoriſe you, on Sight hereof, that you give perſonal Notice to all and every of the Perſons within mentioned, that they be and appear before us, two of his Majeſty's Juſtices of the Peace, in and for this County, on *Monday* next, by Eleven of the Clock, at the Houſe of Sir *W. S.* in *W.* to ſhew Cauſe why they ſhould not be ſeverally fined, according to the ſeveral Statutes in that Caſe made, for neglecting their Six Days Work on his Majeſty's High-ways, in the Pariſh of *N.* aforeſaid. Given under our Hands and Seals this 16th Day of *January*, 1749.

A War-

A Warrant againſt a Perſon for laying Timber, Stones, &c. in the High-ways.

Albany, ſs. *To the Conſtables*, &c.

WHEREAS *A. B.* hath this Day made Oath before us, *P. L.* and *J. M.* Eſqrs, two of his Majeſty's Juſtices, &c. That *C. D.* of &c. did within Six Months laſt paſt, lay Timber and Logs in the High-way leading from, &c. in the Pariſh of, &c. the ſaid Way not being Twenty Foot broad, ſo that the ſame was much obſtructed; by Reaſon whereof he hath forfeited *Five Shillings*; one Moiety to the ſaid *A. B.* who hath informed us of the ſaid Offence, the other Moiety towards amending the ſaid High-ways: Theſe are therefore, &c.

The like Warrant againſt any Owner of Land, who doth not cut down a Tree, Buſh or Shrub in the High-way, not Twenty Foot broad, within Ten Days after Notice given by the Surveyor.

An Appointment of a Surveyor of the High-ways, by Juſtices of the Peace.

At a Special Seſſions held for the High-ways, on &c. at, &c.

WE whoſe Names are hereunto ſubſcribed, being his Majeſty's Juſtices of the Peace for the County aforeſaid, do hereby appoint T. L. *of* D. *in the ſaid County, Malſter, (one of the Perſons mentioned in a Liſt this Day return'd to us, by* N. G. *Conſtable of* D. *aforeſaid,) Surveyor of the High-ways, in the ſaid Pariſh, for and during the ſpace of one whole Year, next enſuing the Date hereof. Given under our Hands and*, &c.

A Warrant of Diſtreſs for refuſing to pay the Surveyor's Rate.

Bed. ſs. *To the Surveyors of the Highways of the Pariſh of*, &c. *in the ſaid County, and to all other Perſons whom theſe may concern.*

WHEREAS Complaint upon Oath hath been made unto us, by *A. B.* and *C. D.* Surveyors of the High-ways of the Pariſh of, &c. in the ſaid County, That the ſeveral Perſons hereafter named, *to wit*, *J. K.* for refuſing to pay the Sum of *Six Shillings*, of lawful Money of *Great Britain*; *L. M.* alſo, for refuſing to pay the Sum of *Eight Shillings*, of lawful Money; and *N. O.* for refuſing likewiſe to pay the Sum of *Ten Shillings*, being aſſeſſed upon them ſeverally, for and towards the Repairing, Amending, and Inlarging the High-ways of and belonging to the ſaid Pariſh, to repair and amend according to the Statute in that Caſe made and provided; which ſaid Sums of Money, being legally demanded, the ſaid Perſons above-named, and

and every of them have, and do refuſe and neglect to pay the ſame: Theſe are therefore, in his Majeſty's Name, to command you, ſome or one of you, to demand again of the ſeveral and reſpective Perſons above-named, the ſeveral Sums following their ſeveral and reſpective Names; and in Caſe he, ſhe or they ſhall refuſe or neglect to pay the ſame, that then you forthwith levy the ſame by Diſtreſs and Sale of the ſeveral and reſpective Goods, of the ſeveral and reſpective Perſons ſo refuſing to pay the ſame, as aforeſaid, rendring to the Parties the Overplus (if any) and in Default of ſuch Diſtreſs, that you certify the ſame to us, to the End there may be ſuch further Proceeding touching the Premiſſes, as to Juſtice doth appertain. Hereof you are not to fail. Given, *&c.*

High-way Bridges.

Altho' ſtrictly ſpeaking, Bridges are not under the Cognizance of Surveyors of the Highways, yet in Regard they have ſo near a Relation thereunto, it may not be improper to add a few Things in this Place concerning them.

Bridges of common Right ought to be repaired by the Inhabitants of the whole County, Riding or Corporation within which they are ſituated, unleſs ſome particular Perſons are bound to repair by reaſon of Tenure of Lands, *&c. Cro. Car.* 365. And where it cannot be diſcovered who ought to make good the Repairs of Bridges, it muſt be preſented by the Grand Jury in the Quarter-Seſſions; and after their Inquiry and an Order of Seſſions upon it, four Juſtices, whereof one to be of the *Quorum*, may ſend for the Conſtables of every Pariſh, or two of the Inhabitants of each Pariſh, to appear before them at a fix'd Time and Place, to make a Tax, and then the Juſtices ſhall tax every Inhabitant in a reaſonable Sum, for the Reparation of the Bridge, *&c.* Alſo appoint Collectors of every Hundred to collect the Money, and diſtrain for the ſame; and Surveyors to ſee the Repairs done; both of whom are to be accountable to the Juſtices in Seſſions. *Stat.* 22. *H.* 8. *c.* 5.

By the Stat. 1 *Ann. c.* 18. Juſtices in Seſſions upon Preſentment made that a Bridge is out of Repair, may aſſeſs every Town, Pariſh, or Place, in Proportion towards the Repairs thereof, the Money aſſeſſed is to be levied by the Head-boroughs or Conſtables, *&c.* by Diſtreſs and Sale of Goods, if not paid in ten Days after demanded; and when levied, muſt be paid to the High Conſtables of Hundreds, who are to remit the ſame to Treaſurers, *&c.* appointed by the Juſtices to be employed according to their Order and Direction. And if any of the Officers neglect to aſſeſs, collect or pay the Money, they ſhall forfeit 40*s.* and Receivers paying Money without Order of Juſtices, ſhall forfeit 5*l.* Collectors, *&c.* of the Tax, to be allowed 3*d.* *per* Pound.

This

This Statute confirms the 22 *H.* 8. *c.* 5. in moſt Things, and on an Indictment for not repairing of Bridges, a Fine may be ſet by the Juſtices in Seſſions, on any Inhabitant of the County, being made Defendant to the Indictment, who ſhall have Contribution from the Reſt, *&c.* 6 *Mod. Rep.* 307.

If Bridges are within two Precincts, then the Inhabitants of each Precinct ought to pay their reſpective Parts towards the Repairs. *Roll. Abr.* 368.

If any Perſon hath Toll or other Profit for Paſſage over a Bridge, he ought to repair it; and if a Bridge was built at firſt to ſerve a private Purpoſe, and afterwards becomes neceſſary for the Publick, the Perſon who built it, and not the County, muſt repair it. 2 *Inſt.* 701. 1 *Salk.* 359. *Mod. Caſes* 191.

The Perſons who repair Bridges muſt likewiſe repair the Way for 300 Feet at each End of the Bridge. 2 *Co.* 2. and they may enter on the Lands contiguous, and lay Stone, Timber, and other Materials there for repairing of the ſaid Bridge, without being proſecuted by the Owners of ſuch Lands, becauſe 'tis for the Publick Good.

If one erect a Mill for his private Profit, and makes a new Cut for the Water to come to it, and a new Bridge over that Cut, where the King's Subjects paſs and repaſs, it muſt be repaired by thoſe who have the Mill, and not the County. 8 *E.* 3.

The ſafeſt Way for the Juſtices, is to do all Things which relate to Bridges, in the open Seſſions, as well where 'tis not known who ſhall repair, as where the Perſon obliged to repair, is known.

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. G.* Abridgement 94.

Juſtices of Peace where a decayed Bridge is, may award Proceſs into the County where the Party or Land chargeable is. *Dalt.* 56.

Grand Juries ought to find who are to repair Bridges.

Juſtices of Peace are to award Proceſs to get Bridges repaired. *Dalt.* 56.

A Bridge between two Counties is to be repaired between them. *Pepb.* 192. *Roll. Abr.* 368.

If a private Man build a Bridge which after becomes of publick Uſe, then that makes it a County-Bridge. *Black.* 74. 75.

By Stat. 14 *Car.* 2. *c.* 6. All Bridges ſhall have ſufficient Wall, or Poſts and Rails on each Side, four Foot high, at leaſt from Time to Time to be kept ſufficiently repaired.

The Taxation for Repair of Bridges ought not to be made by the Juſtices without the Conſent of the Conſtables or Inhabitants, nor by them without the Juſtices; and this Tax ought to be upon every Inhabitant in particular, and not to be ſet upon the Hundred, Pariſh, Town, &c. for then one or few might be diſtrained upon for the Whole. *Co.* 2 *Pt. Inſt. fol.* 704.

An Order of Seſſions for repairing a Bridge.

At the General Quarter-Seſſions of the Peace, held for the County, &c.

Eſſex, to wit. WHEREAS the Inhabitants of, &c. in the County aforeſaid, were at the laſt General Quarter-Seſſions held for the ſaid County, indicted for not repairing of a Bridge, called, &c. then and now in Decay: And whereas upon Trial of the Traverſe joined, and the County having Notice, it was then and there found that the ſaid Inhabitants ought not to repair the ſaid Bridge, and the Jury having preſented, that it cannot be made appear, that any particular Hundred or Pariſh, Lands or Tenements in the ſaid County of, &c. ought of Right to repair the ſame: It is therefore now ordered by this Court, and we do hereby, according to the Form of the Statute in that Caſe made and provided, order and direct, that the ſaid Bridge ſhall be well and ſufficiently repaired by the Inhabitants of the County of, &c. within which the ſaid Bridge ſtandeth, and that the Juſtices of the Peace within their ſeveral Diviſions, do take Care of the raiſing Monies for that Purpoſe. In Witneſs, &c.

A Warrant to the Conſtable, &c. to make a Tax for the Repairs of a Bridge, purſuant to the foregoing Order.

Eſſex, ſſ. To the Conſtable, &c.

WHEREAS at the General Quarter-Seſſions of the Peace held for the County aforeſaid, at, &c. on, &c. laſt paſt, the Grand Jury preſented the Bridge, called, &c. in the Pariſh of, &c. in the ſaid County, to be in Decay and out of Repair, and the ſaid Decays and Reparations were then and there ordered to be amended, and made good at the Charge of the County: Theſe are therefore, in his Majeſty's Name, to command you the ſaid Conſtable and Inhabitants aforeſaid, that you do immediately upon the Receipt of this Precept, make a Taxation on all and every the Inhabitants of the Hundred or Diviſion of, &c. aforeſaid, for the raiſing the Sum of, &c. to be applied towards the Repairing of the Bridge aforeſaid, and that you do bring the ſaid Tax fairly written and ſubſcribed by you, or ſome of you, unto us at the Houſe of, &c. on, &c. next, for our Approbation, and that we may further proceed therein as to Juſtice doth belong. Given, &c.

Homicide. *See Coroners.*

MANSLAUGHTER or *Homicide*, is the killing a Man upon a ſudden Provocation, without any Malice, and in the Heat of Blood.

By this Definition it appeareth, that in Manſlaughter,

1, There muſt be no deliberate Act, but the falling out muſt be ſudden.

2, The

2, The Act muſt be unlawful; for if lawful, then 'tis Chance-medly, and it muſt be without an Intention of any perſonal Wrong; for if the Intent is ill, 'tis Murder.

A ſudden falling out is, *viz.* If two Men fight, and one of them breaks his Sword, and a Stranger lends him another, with which he kills his Adverſary; 'tis Manſlaughter in both.

To fight, and part preſently; meet, and one killed; this is a continued Affray, and therefore Manſlaughter.

Malice between two; the Deceaſed challenges the other, who refuſed to meet, but ſaid he ſhould go to ſuch a Place; the Deceaſed meets him, and was killed; Manſlaughter. *H. P. C.* 48.

Entring a Houſe with Force; thoſe who are turned out of Poſſeſſion come to ſet it on Fire, and one within ſhoots and kills another without Doors; 'tis Man-ſlaughter, becauſe the Entry was unlawful. *H. P. C.* 56.

A Servant draws his Sword in Defence of his Maſter, and in the Affray the Maſter is killed; 'tis Man-ſlaughter in the Servant. *Sid.* 254.

A ſudden Provocation, and Death enſuing, doth ſo far extenuate the Crime as to make it Manſlaughter.

As an Huſband killing another committing Adultery with his Wife. *Raym.* 212.

A Priſoner in Execution for Debt eſcaping, and the Keeper coming to the Place where he is, kills him either in Purſuit or reſiſting; 'tis Manſlaughter. 1 *Roll. Rep.* 189. 2 *Cro.* 296.

Unlawful Acts where Death enſues, are, *viz.* playing at Foils, throwing Stones, ſhooting at Deer in another Man's Park, Forcible Entry, and ejecting another, and ſuch like, are unlawful, but without any malicious Intention to kill, and therefore Man-ſlaughter. *Allen, Rep.* 12.

Bailiffs coming to ſerve an Execution, and the Debtor ſhuts his Door, which they break open, and one is killed, 'tis Manſlaughter, becauſe the breaking of the Door was unlawful.

The Offender has the Benefit of the Clergy the firſt Time, and forfeits his Goods and Chattels.

If a Man is in Execution for Debt, and eſcapes, and the Goaler hearing where he is, attempts to take him, and he reſiſting is killed by the Goaler; 'tis Manſlaughter. 1 *Roll. Rep.* 189.

Chance-medley; or, by Misfortune.

THIS is where a Man is killed by another caſually, when he is doing any Thing which is lawful, and without any Intent to hurt:

As ſhooting at a Bird, which is a lawful Act, and killing a Man; the Father or Maſter correcting a Son or Servant, and Death enſuing.

A

A House was building thirty Foot from any common High-way, and one of the Workmen being about to throw a Piece of Timber out of the House, called aloud, *Stand clear*; the Timber fell upon one of the Labourers, and killed him: This was held to be *per Infortunium*, for he was doing nothing but what was lawful and usual to be done; and he could have no ill Intention, because he gave Notice what he was about to do: But if this had been in the Streets in *London*, it had been Man-slaughter, because of the continual passing of the People; for in such Case it shall be presumed, that his Intention was to do some Mischief.

In this Case the Special Matter must be found, that the Court may judge whether the Killing was *per Infortunium*; and therefore 'tis not sufficient to find it generally.

My Lord *Coke* tells us, There is no express Judgment in Chance-medley; but the Offender forfeits his Goods, and hath a Pardon of Course.

This was anciently by *Certiorari* out of Chancery, to remove the Record; which being certified, the Lord Chancellor issues forth a Pardon: But now 'tis done by Certificate of the Judge or Justices, *&c.*

The Form of which Writ is thus:

BECAUSE we have understood by the Record of our well-beloved and faithful *T. K.* and *L. M.* Esqrs; our Justices for the Goal-Delivery for the County of *R.* assign'd, That *A. B.* taken and detain'd in the Goal aforesaid, for the Death of *D. E.* whereupon he was indicted, and found that he hath slain *D. E.* by Misfortune; by which the said *A. B.* to our Goal aforesaid, is sent there to expect our Grace; we being with Pity mov'd, have pardon'd the said *A. B.* the Suit of our Peace, which to us appertaineth for the Death aforesaid, and him to our firm Peace thereof have restored: So, nevertheless that he stands right in our Court, if any against him will speak of the Death abovesaid. In Testimony, *&c.*

Homicide upon Necessity.

IN the Execution of the Offenders, it must be by a proper and lawful Officer; as the Sheriff, and not by a Stranger; for then 'tis Felony.

2. The Judgment must be given by one who had a proper Jurisdiction to try the Cause; for if a Justice of Peace give Judgment in Treason, the Execution is Murder, both in him and in the Officer: If in Trespass he gives Judgment of Death, 'tis Felony in him, but not in the Officer.

3. The Execution must be pursuant to the Judgment: See *Posted* in Judgment.

In Advancement of Justice in Cases criminal: As if a Man indicted for Felony, is killed by an Officer, whom he resists, having a Warrant to apprehend him.

Or if a Priſoner is killed by an Officer, carrying him to Goal, and endeavouring to eſcape after a Felony actually committed.

Or if a Priſoner is killed by a Goaler, the Priſoner aſſaulting him.

For if a Felon by Reſiſtance or Flight, cannot be taken without killing, he who kills him muſt be acquitted without Forfeiture of Goods, becauſe every Man is warranted by Law to apprehend him; but then there muſt be a Felony actually done; which Circumſtance is not required where a Man hath a Warrant to take a Felon. 3 *I.* 221.

In Caſes Civil.

Reſiſting an Officer, who hath any legal Proceſs, and killed by him.

Upon Not-Guilty pleaded, the ſpecial Matter muſt be given in Evidence; and it being found for him, he is to be acquitted without Forfeiture or Pardon.

But in all theſe Caſes, the Neceſſity muſt be unavoidable, and there muſt not be any Colour of Malice.

Homicide is juſtifiable, and no Forfeiture.

In Defence of Houſe or Goods: As if I kill a Man who ſets my Houſe on Fire; or a Thief who ſteals my Goods, or comes to rob me.

If a Woman kill a Man that endeavoureth to raviſh her: But if I kill a Man claiming a Title to my Houſe, and endeavouring to enter, 'tis Manſlaughter.

Se Defendendo. This *Homicide* is excuſable, but the Goods are forfeited.

But then it muſt be done only upon an inevitable Neceſſity, and he muſt give back as far as he can without endangering his own Life.

And the mortal Wound muſt be given after the Party retires to the Wall; for if before, 'tis Manſlaughter.

Caſual Death.

This is when a Man is ſlain otherwiſe than by the Hands of another; as by a Fall, by a Horſe or Cart, *&c.*

'Tis the proper Office of a Coroner to enquire of ſuch Death, which he is to do by Jury, *&c.*

Any Thing which is the Cauſe of ſuch Death, is forfeited to the King, but not till found by Matter of Record; and this Forfeiture ſhall have Relation from the Time of the Stroke given; ſo that if the Owner ſell the Goods after that Time, and before the Inquiſition taken, the Property is not bound, but the King ſhall be entitled to it.

Deodand.

My Lord *Coke* defines this to be when any moveable Thing which is inanimate, or a Beaſt animate, cauſeth the untimely Death of a *Reaſonable Creature*, without the Will, Offence, or Fault of *himſelf*; but it muſt be on the Land, and not on the Sea.

This being found by Inquiſition, is forfeited to the King, as being *Precium Sanguinis*, to be diſtributed in Works of Charity, to appeale the Wrath of God.

If the Party ſlain *by a Fall* is under 14 Years of Age, then no *Deodand* is due; but if he was kill'd *by an Ox or an Horſe*, &c. that is a *Deodand*.

A Man ringing a Bell, was ſtrangled with the Rope; it was a Queſtion, Whether the Bell ſhould be a *Deodand* or not; becauſe, as 'twas objected, it was faſtened to the Freehold, and given to God before? There was no Judgment given; but two Judges were of Opinion, That it was not a *Deodand*. 1 *Levinz.* 136. Two Men riding over the *Trent*, were drowned by the Violence of the Water; their Horſes were not *Deodands*, becauſe the Men were drowned by the Violence of the Stream, and not carried by their Horſes out of Depth. 2 *Roll. Rep.* 23. 2 *Cro.* 483. *Poph.* 136.

HORSES.

IN order to preſerve the Breeding of ſtrong Horſes, a Law was made, 32 *H.* 8. *cap.* 12. prohibiting Perſons to put Stone-horſes above two Years old, and under Fifteen Hands high (every Hand being four Inches) into Forreſts or Commons where Mares are kept, upon Pain of forfeiting the Horſe; after this Manner, *viz.*

The Horſe muſt be brought to the next Pound, by the Keeper of the Ground, by the Conſtable, or Head-borough of the next Pariſh, and muſt be meaſured by him in the Preſence of three other ſufficient Men; and if found under the Statute, he who ſeized him, may take him to his own Uſe.

Refuſing to meaſure, or to be preſent at the Meaſuring, Forfeiture is 40*s.* apiece for each Offence; one Moiety to the King, the other to the Proſecutor.

Juſtices in Seſſions may hear and determine Offences againſt this Act, and Stewards in Leets may take Preſentments only, but muſt certify them to the next Seſſions, upon Pain of 40*s.*

Scabbed or infected Horſes ſhall not be put in common Fields, on Pain to forfeit 10*s.* to the Lord of the Leet.

But now by 22 *Car.* 2. *cap.* 13. any Horſe may be exported, paying 5*s.* at the Cuſtom-Houſe.

The Property of ſtolen Horſes ſhall not be altered.

1. If not rid, or ſtand open in the Fair one Hour. This my Lord *Coke* tells us is in Affirmance of the Common Law.

2. All Parties to the Contract muſt be preſent with the Horſe, and before the Book-keeper.

3. Their Names muſt be enter'd in the Book, and their Dwellings, and the Colour and Mark of the Horſe.

Juſtices in Seſſions have Power to hear and determine Offences againſt this Law.

But Horſe-ſtealing ſtill increaſing, by Reaſon the Thief could ſell them in Fairs and Markets, purſuant to the aforeſaid Act, to Horſe-Courſers, and at a great Diſtance from the Owners; therefore, to preſerve the Property ſtill in them, another Law was made. 31 *Eliz. cap.* 12.

1. That no Sale ſhall be made in Fairs, unleſs the Toll-taker or Keeper know the Seller, or unleſs he bring ſome credible Perſon who knoweth him. 13 *Eliz. cap.* 12.

2. The Names, Sirnames, Myſtery and Dwelling, of both of them, and the Price of the Horſe ſold, muſt be enter'd in the Book.

3. The Book-keeper muſt give the Buyer a Note of theſe Particulars ſubſcribed by him, if required, paying *Eight Pence* for the ſame.

4. He who ſells without being known to the Book-keeper, or without bringing a Voucher; and he who voucheth without knowing the Seller, and the Book-keeper making Entry without knowing either, forfeits each of them *Five Pound*. One Moiety to the King, the other to the Proſecutor, and the Sale is void. 1 *Lut.*

Now though the Sale be in all Circumſtances purſuant to this Act, yet the Property is not bound, if the right Owner claim within ſix Months after 'tis ſtolen: Which he muſt do in this Manner;

If the Horſe is found in a Town corporate, then he muſt claim him before the Mayor, or chief Officer; if in the County at large, then before a Juſtice of Peace.

The Proof muſt be by two Witneſſes upon Oath, who muſt depoſe before ſuch Mayor, Chief Officer or Judge, within forty Days after the Horſe is found, that the Property is in the Perſon claiming, *&c.* and that the Horſe was ſtole from him within ſix Months before the Claim.

Upon this Proof, the Party ſhall have his Horſe, paying the Buyer what he ſhall depoſe he gave for the ſame.

Clergy taken away from Acceſſaries before and after the Fact.

Selling a Horſe by a falſe Name, making the Sale void.

A Warrant againſt a Perſon for ſtealing a Horſe.

WHEREAS A. B. *of*, &c. *hath this Day made Complaint unto me, that on or about*, &c. *laſt paſt, he loſt (or had ſtoln from him) a Bay Gelding, mark'd*, &c. *out of his Ground, called*, &c. *in the Pariſh of*, &c. *And that* C. D. *of your Pariſh hath at this Time, or lately had the ſaid Gelding in his Poſſeſſion, which he is able to prove: Theſe are therefore in his Majeſty's Name to command you to apprehend the ſaid* C. D. *and to bring him before me or ſome other of his Majeſty's Juſtices of the Peace, to make appear how he came by the ſaid Gelding, and of whom he bought the ſame; and to be further dealt with according to Law. Given*, &c.

Houſes

Houſes of Habitation.

THESE are privileged by the Law in ſeveral Reſpects, *viz.*

They are Caſtles for the Defence of the Inhabitants.

They protect the Perſons of Men from any Arreſts on *Meſne* Proceſs at the Suit of any Subject.

A Houſe may be defended by Force againſt Thieves or Robbers; and if killed 'tis not Felony.

But notwithſtanding theſe Priviledges, it may be broke open in theſe Caſes following; the Perſon firſt ſignifying the Occaſion of his coming, and requiring the opening of the Doors, and being refuſed.

1. In Treaſon, Felony, or Suſpicion thereof.

2. To apprehend any Perſon who hath dangerouſly wounded another, being freſhly purſued.

3. An Affray being in a Houſe, the Conſtable may break it open to keep the Peace.

4. Upon a Forcible Entry or Detainer found by an Inquiſition.

5. To apprehend any Perſon upon a *Capias Utlegatum* on Fine or upon Proceſs of Excommunication, or upon a Warrant of the Peace, or Good Behaviour.

6. Upon a Recovery in a real Action, the Sheriff may break it open to deliver Poſſeſſion.

7. And generally in any Caſe where the King is Party, or hath any Intereſt, for no Man's Houſe ſhall protect him againſt the King.

Houſe of Correction.

THE Statutes concerning Houſes of Correction are 39 *Eliz. c.* 4. and 7 *Jac.* 1. *c.* 4. The firſt of theſe Laws gives Power to the Juſtices in Seſſions, for the erecting one or more Houſe or Houſes of Correction in every County, at the Charge of the County; and for the Maintenance and Government of the ſame, and for the Puniſhment of Offenders committed thither, 39 *El. c.* 4. This Statute at firſt was temporary, but was continued by 3 *Car.* 1. By 7 *Jac.* 1. *c.* 4. 'tis enacted, that in every County there ſhall be a Houſe of Correction, built with all Conveniencies for the ſetting of Rogues and idle People to work, or every Juſtice ſhall forfeit *Five Pound*, one Moiety to the Proſecutor, and the other towards building the Houſe; and theſe Houſes, when built or purchaſed, ſhall be conveyed to Perſons appointed by Juſtices in Seſſions in Truſt to be employed, for the keeping, imploying and correcting Perſons

Perſons ſent thither; and Juſtices in Seſſions are to appoint Governors or Maſters of ſuch Houſes of Correction, and their Salaries, which are to be paid quarterly by the Treaſurer out of the County Stock. *Ibidem.*

Thoſe Governors are to ſet the Perſons ſent, on work, and moderately to correct them by whipping, or fettering them if unruly, and are to yield a true Account every Quarter Seſſions of Perſons committed to their Cuſtodies, and if they ſuffer any to eſcape, the Juſtice may fine them at Diſcretion, which Fine is to be paid to the Treaſurer of the County Stock.

The Houſe of Correction is for the puniſhing of the Poor who refuſe to work, who are to be there whip'd and ſet to work. 2 *Bulſt.* 358.

And any Perſon who lives extravagantly, having no viſible Eſtate to ſupport himſelf, may be ſent to the Houſe of Correction, and ſet at work there, but not be whipped, and may be continued there until he give the Juſtices Satisfaction in Reſpect to his living. *Sid.* 281.

The Money to erect Work-houſes, *&c.* is to be raiſed by a Tax on the Inhabitants, and on all Lands, *&c.* and ſo likewiſe is the Money needful for the maintaining of the Poor in the ſaid Work-houſes, ſo as the ſame exceed not what hath been uſually paid for Maintenance of the Poor.

Rogues, Vagabonds, *&c.* may be ſent by one Juſtice to the Houſe of Correction, there to be kept to hard Labour, with moderate whipping, but ſhall not be chargeable to the County for any Allowance, either at their bringing in, or going out, or during their Abode there, but ſhall have ſo much Allowance, as they ſhall deſerve by their own Labour.

A Commitment of a Perſon to the Houſe of Correction.

To the Keeper of the Houſe of Correction, &c.

RECEIVE into your Cuſtody the Body of *A. B.* an idle and diſorderly Perſon, as appears upon Oath (or, as appears by his own Confeſſion, as the Caſe is) and keep him to hard Labour for the Space of ten Days from the Date hereof. Given, *&c.*

Commitment of an idle Perſon to the Houſe of Correction.

WHEREAS Complaint hath been made unto me by A. B. *Overſeer of the Poor of the Pariſh of,* &c. *that* C. D. *of your Pariſh, is an idle and diſorderly Perſon, and refuſes to be imployed in any honeſt Way to get himſelf a Livelihood, altho' he hath had Work aſſigned him by the ſaid* A. B. *and he is capable to do the ſame; whereby he is likely to become chargeable to the ſaid Pariſh of,* &c. *I therefore hereby ſend you the Body of the ſaid* C. D. *and do hereby require you to receive the ſaid* C. D. *into your Cuſtody, and him ſafely to keep at hard Labour, and to give him ſuch Puniſhment as the Acts of Parliament direct, until he ſhall be legally diſcharged.* Given, &c.

HUE-

HUE-AND-CRY.

THIS is a Purſuit of any Perſon, after a Felony committed, and flying for the ſame.

'Tis to be made immediately after the Felony done, from Town to Town, and from County to County, by Horſemen and Footmen; and of this there are two Sorts, *viz.*

1. *Hue-and-Cry by the Common Law*; which is, where a Felony is committed, or any Perſon wounded; the Party grieved, or any other in his Behalf, may reſort to the Conſtable of the next Town, and acquaint him therewithal, deſcribing the Party, and telling him the Way he is gone; who thereupon is to raiſe the Town, and to give the next Conſtable Notice, and he the next, and ſo on to the Sea Side: And this my Lord *Coke* ſays, was the Law before the Conqueſt.

And thoſe who neglect to make Hue-and-cry, or do not purſue it when made, ſhall be fined and impriſoned.

2. *Hue-and-cry by Force of Statutes*, are many, but chiefly upon the Statutes of Robberies.

As by the Statute of *Winton*, the whole Hundred is made liable in which a Robbery is committed; but now by 27 *Eliz. c.* 13. the Inhabitants of any Hundred where Hue-and-Cry is made; and if they ſhall neglect to purſue, muſt anſwer one Moiety of ſuch Damages which ſhall be recovered againſt the other Hundred.

The Statute of *Ed.* 1. extends only to Robberies done *to the Perſon*, for it was made for the Safety of Travellers; and therefore, if a Houſe ſhould be robbed in the Day-Time, and the Felons eſcape, and *Hue-and-Cry* is made, and they are not taken; the Hundred ſhall not be anſwerable for the Reaſon above-mentioned.

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. *Dalt.* 314.

If the Party that was robbed, ſhall himſelf take any one of the Thieves after Hue-and-Cry made, this ſhall excuſe the Hundred.

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 Amercement is by Force of the Statutes of *Wincheſter*.

The Perſon robbed ſhould give Notice as ſoon as he can. *Noy.* 155.

He uſually goes to a Juſtice of Peace, and is examined after this Manner.

The

The Examination of A. B. *of*, &c. *taken upon Oath before* P. L. *Esq; one of his Majesty's Justices of the Peace for the County of* &c. *the* 14*th Day of* January, 1749.

THE Examinant deposeth, That on Tuesday the -----Day of this Instant *June*, he was assaulted in the High-way leading from, *&c.* at or near a Place called, *&c.* about Ten of the Clock in the Morning of the same Day, by three Men on Horse-back, who seized this Examinant, and carried him out of the Road to a By-place adjoyning, and robbed of, *&c.* And farther saith, That he is since informed that the said High-way and By-place are both in the Parish of *M.* and within the Hundred of, *&c.* in the said County, and that he did not then, or yet doth know either of the Persons who committed the said Robbery.

A Warrant for a Hue-and-Cry.

To all Constables, and other Officers, as well in the said County of *Kent*, as others to whom the Execution shall belong.

Kent, *ss.* *WHEREAS Complaint hath been made unto me upon Oath, That three Persons (here describe their Age, Colour, Apparel, Horses, &c.) did on the ---- Day of this Instant* August, *assault and take from* A. B. *of*, &c. *Fifty Pounds*, &c. *and that they are since fled for the same, and not yet apprehended: These are therefore to command you forthwith to make diligent Search within your Precincts for the said Persons, and to make Hue-and-Cry after them from Town to Town, and from County to County, and that as well by Horse-Men as Foot-men, according to Law; and that if you shall find them, or either of them, that then you bring them before some one of his Majesty's Justices of the Peace for the County where he or they shall be taken, to be dealt withal according to Law. And hereof fail not*, &c.

An Hue-and-Cry upon the Escape of a Prisoner from the Constable.

Kent, ss. *To the Constable, and other Officers, as well within the said County as elsewhere within his Majesty's Dominions, to whom the Execution hereof doth or may concern.*

WHEREAS *A. B.* Constable of the Hundred of *M.* within the said County, having Yesterday (together with two Precepts) delivered unto him the Body of *C. D* of *&c.* before charged with the Suspicion of his felonious taking of one Gelding, to be by him the Constable and other Officers conveyed to the Goal for the said County at *M.* in the County aforesaid, hath this Day (as the said Constable hath upon his Complaint informed me) made a felonious Escape from him: These are therefore in his Majesty's Name, to require you, and every of you, to make diligent search within your several Precincts for the said *C. D. being a Person about* three Years

Years of Age, of a middle Stature, ſlender Body, long black curled Hair, having on his Body a ſhort coloured cloſe Coat, light grey Breeches and Stockings, a narrow brim'd Hat: And alſo that you the ſaid reſpective Officers do 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 *C. D.* that then you do convey him before ſome Juſtice of the Peace, within the County where he ſhall be taken, by him to be dealt withal according to Law. Hereof fail not at your Perils. Given under, *&c.*

Note, *When Hue-and-Cry is levied upon a* Robbery or other Felony, *the Officer of the Town where the Felony was done, muſt ſend to every other Village that is, and not go to the Village that is next only, as it ſeemeth; for if the* Hue-and-Cry *ſhould not be quite round, the Thief would ſeldom be taken.* Dalt.

Hue-and-Cry raiſed without a Cauſe is a Breach of the Peace.

And if it be made falſly, and the Perſon enter into a Houſe, though with a Conſtable, and bind and rob the Maſter in the Night, 'tis Burglary.

To charge the Hundred with a Robbery, theſe Things muſt be done:

1. The Perſon robbed muſt with all convenient Speed, give Notice of the Robbery to ſome Inhabitant near the Place where he was robbed.

2. He muſt be examined upon Oath within Twenty Days next before he brings his Action, by one Juſtice dwelling near the Hundred where the Robbery was done, whether he knew the Robbers, or either of them; and if he did know them, then he ſhall be bound before the Juſtice to proſecute them.

3. The Hundred is not chargeable if any of the Offenders are taken, tho' after the Twenty Days limited by the Statute of 28 *Ed.* 3. *cap.* 11. for the taking them. *Sid.* 11.

4. The Action muſt be brought within a Year after the Robbery done.

After Recovery and Execution of Damages, it may be levied on one Perſon; but then upon Complaint, *&c.* two Juſtices of the Hundred *Quorum unus, &c.* may take in Proportion the Towns, Villages, Pariſhes and Hamlets of the ſaid Hundred, to make an equal Contribution to relieve the Perſons againſt whom Execution was taken. After ſuch Taxation, the Conſtables and Headboroughs of every Pariſh in the ſaid Hundred ſhall aſſeſs the Inhabitants according to their Abilities, to pay the Sum taxed or laid by the Juſtices upon their reſpective Pariſhes.

Conſtable, upon Refuſal of any Inhabitant to pay the Aſſeſſment, may diſtrain and ſell, rendring the Overplus, and after it is levied, ſhall within Ten Days deliver it to the Juſtices, or one of them, and the Juſtices muſt pay it to the proper Perſons.

Like Taxation for a Contribution of Moiety out of a Hundred where any Default was in Purſuit, *&c.* to reimburſe the Hundred where the Robbery was done.

INDICT-

INDICTMENT.

IS the Verdict of a Jury charged to enquire into the Offence, &c. Treaſons, Felonies, Robberies, Murder, &c. done on the Seas, or beyond Seas, may be tried in any Place appointed for that Purpoſe by the King's Commiſſion. *H. P. C.* 204. 35 *H.* 8. *cap.* 2.

A Robbery in *Middleſex*, and the Thief is taken with the Goods in *Suſſex*, he may be indicted for the Felony there; but for the Robbery, it muſt be in *Middleſex*.

For an Offence at Common Law, which is *contra Pacem*, an Indictment will lie at Seſſions; ſo for Fraud or Deceit, as for, ſelling deceitful Goods, or by falſe Weights and Meaſures; and tho' there are particular Statutes relating to this Matter, yet that doth not alter the Caſe, for the Difference is this; That where an Offence at Common Law is made, ſo likewiſe by any Statute, and a Puniſhment appointed by that Statute, yet the Offender is indictable, as it is an Offence at Common Law; but where a Statute creates a new Offence, and inflicts a Puniſhment, that muſt be purſued, and no other.

And therefore where one was indicted for Uſury, in taking more than *Six Pound* for the Loan of *One Hundred Pound*, and concluded *contra formam Statuti*, tho' it appeared plainly to be corrupt; yet becauſe it was not expreſly ſet forth that it was by corrupt Lending, the Indictment was quaſhed. 11 *Rep.* 58.

For the Form of Indictments in Caſes of Affray, Forcible Entry, &c. I have here 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 the Indictments of Forcible 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.

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.

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 Treſpaſſes, 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.*

Alſo

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 Miſ-recital 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: *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.) *Cromp.* 104.

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. *Plow.* 1. & 79. *Lamb.* 485. *Co. L.* 98. *b.*

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. *Plo.* 84. 122. and therefore ſix principal Things are requiſite in all Preſentments before the Juſtices of Peace, *viz.*

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. *Lamb.* 470. *Dyer* 99.

2. The Time, *ſc.* the Day and Year when the Offence was done

3. The Place, *ſc.* the Town and County where it was done, as at *B.* in the County of *C.*

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, or Penal Statute, *&c.*

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.

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. *Cook* 119. *Plo.* 84.

An Indictment for an Affray.

THE Jurors for our Sovereign Lord the King, *upon their Oaths, do preſent*, That *A. B.* of *(ſuch a Place) (in ſuch a County, Carpenter) or whatever his Addition be*, and *C. D. (of ſuch a Place)* &c. on the Tenth Day of *April*, in the 22d Year of the Reign of our ſaid Sovereign Lord the King, *(or of his preſent Majeſty)* at *Briſtol*, in the County aforeſaid, with Force and Arms, *(that is to ſay)* armed with Swords, and other warlike Inſtruments, and unlawfully aſſembled together (by Turns) made an Aſſault and an Affray, to the Terror and Diſturbance of diverſe Subjects of our ſaid Sovereign Lord the King, then being there, and to the evil and pernicious Example of the liege People of our ſaid Sovereign Lord the King, and againſt the Peace of our ſaid Sovereign Lord the King, his Crown and Dignity.

The Form of an Indictment for Aſſault.

THE *Grand Inqueſt for our Lord the King, upon their reſpective Oaths and Affirmations, do preſent*, That *A. B.* late of the County of *Bucks*, Labourer, the Twenty-fourth Day of *May*, in the Year of the Reign of our Lord GEORGE the Second, by the Grace of GOD King of *Great-Britain, France* and *Ireland*, Defender of the Faith, &c. the twenty third, with Force and Arms, *&c.* at the Townſhip of *Briſtol*, in the County aforeſaid, in and upon one *C. D.* in the Peace of God, and of our Lord the King, then and there being, an Aſſault did make, and him did beat, wound and evilly entreat; ſo that of his Life it was greatly diſpaired, and other Harms to him then and there did, to the great Damage of the ſaid *C. D.* againſt the Peace of our ſaid Lord the King, his Crown and Dignity.

An Indictment for Forcible Entry.

Eſſex, *ſs.* *THE Jurors*, &c. *do preſent that* J. O. *and* J. S. *of ſuch a Place, there being taken and aſſociated to others, Malefactors and Diſturbers of the Peace of our ſaid Sovereign Lord the King, and every of them armed in an hoſtile Manner, whoſe Names the ſaid Jurors are altogether ignorant of, on the Ninth Day of* January, *in the* twenty third *Year of the Reign of our Sovereign Lord* George *the Second*, &c. *at* H. *in the County aforeſaid, with Force and Arms, (that is to ſay) with Staves, Swords, Guns, Stones, and other offenſive Weapons, entered into one Meſſuage, with the Appurtenances in* H. *aforeſaid, upon the quiet and peaceable Poſſeſſion of one* R. N. *of which ſaid Meſſuage the ſaid* R. N. *then was and now is poſſeſſed for the Term of ſeven Years then to come and unexpired; and the ſaid* J. O. *and* J. S. *and others, Malefactors aforeſaid, with Force and Arms ejected, expelled and amoved the ſaid* R. N. *from his Poſſeſſion aforeſaid, and unlawfully, and with main Force have and each of them hath with-held the ſaid* R. N. *ſo driven out thereof, againſt the Peace of our ſaid Sovereign Lord the King, and againſt the Form of the Statute in ſuch Caſe made and provided*, &c.

Againſt

Againſt a Conſtable for an Eſcape.

Eſſex, ſſ. THE Jurors, *&c. do preſent*, That whereas one *A. B.* late of *K.* in the County aforeſaid, Huſbandman, was taken and arreſted for Stealing the Horſe of *R. B.* and afterwards, that is to ſay, on the 30th Day of *April*, in the Twentieth Year of the Reign of our ſaid Sovereign Lord the King, by *J. S.* Eſq; one of the Juſtices of our ſaid Sovereign Lord the King aſſigned to keep the Peace in the ſaid County, was committed in Cuſtody of *R. G.* then Conſtable of the Vill of *K.* aforeſaid, to be carried to the Goal in the County aforeſaid, and that the ſaid *R. G.* then and there had the ſaid *A. B.* in his Cuſtody for the Felony aforeſaid, and afterwards on the ſaid 30th Day of *April*, in the Year aforeſaid, at *L.* aforeſaid, in the County aforeſaid, voluntarily and felonioufly permitted the ſaid *A. B.* to go at large from the Cuſtody of him the ſaid *R. G.* againſt the Peace of our ſaid Sovereign Lord the King, his Crown and Dignity.

An Indictment for keeping a Gaming-Houſe.

Eſſex, ſſ. THE Jurors, *&c. do preſent*, That *E. F.* of *H.* in the ſaid County, Shoemaker, on the 4th Day of *February* in the eighth Year of the Reign, *&c.* and at divers other Days and Times before the Day of this Inquiſition, kept and now doth keep a common Inn at *H.* in the County aforeſaid, and there permitted divers ſuſpected Perſons to play at Cards and Dice, as well in the Day as in the Night-Time, after due and lawful Hours, to the Grievance of the Inhabitants there, and to the ill Example of others, Subjects of our ſaid Sovereign Lord the King, and againſt the Form of the Statute in ſuch Caſe made and provided, and againſt the Peace of our Sovereign Lord the King, his Crown and Dignity, *&c.*

An Indictment for a Nuſance in the High-Way.

Eſſex, ſſ. THE Jurors, *&c. do preſent*, That *R. C.* of *H.* in the County aforeſaid, Butcher, on the 7th Day of *March*, in the Ninth Year of the Reign of our Sovereign Lord, *&c.* and at divers Days and Times as well before as after, at *H.* aforeſaid, in the ſaid County, in a certain Place there near the publick Street, called *B.* and alſo near ſeveral Dwelling-Houſes of ſeveral liege People, Subjects of our ſaid Sovereign Lord the King, dwelling there, put and placed a great Quantity of Mud, Entrails and other Filthineſs, by Reaſon whereof, and by the unwholſome Smells and Stinks ariſing therefrom, the Air during all that Time became corrupted and infected to the common Nuſance of all the liege Subjects of our ſaid Sovereign Lord the King, paſſing by, in, and thro' the Way aforeſaid, to the ill Example of all other ſuch like Offenders, and againſt the Peace of our ſaid Sovereign Lord the King, his Crown and Dignity, *&c.*

An

An Indictment for not Repairing Highways.

Suſſex, *to wit,* THE *Jurors*, &c. *That a Common Highway in the Pariſh of* H. *in the ſaid County, containing two Rods in Length, and one Rod in Breadth, on the* 23*d Day of* March *in the twenty ſecond Year of the Reign*, &c. *was and ſtill is in great Decay, for Default of due Repair and Amendment of the ſame; ſo that the Subjects of our ſaid Lord the King, paſſing or travelling through or along that Way, cannot paſs through the ſame, to the great Damage and common Nuſance of all the Liege Subjects of our ſaid Lord the King, paſſing through that Way; and that* R. B. *of* H. *aforeſaid, Gent. ought by Reaſon of the Tenure of his Lands and Tenements adjoining near there, to repair and amend the ſaid Highway, when and ſo often as ſhould be neceſſary, againſt the Peace of our ſaid Sovereign Lord the King, his Crown and Dignity.*

Indictment againſt a Horſe-ſtealer, and his Acceſſary after the Fact.

Suſſex, to wit. THE Jurors, *&c.* That *J. O.* late of *H.* in the ſaid County, Labourer, on the 25th Day of *May*, in the twenty ninth Year, *&c.* with Force and Arms at *H.* aforeſaid, in the ſaid County, did feloniouſly take and lead away a certain Gelding, of a black Colour, of the Price of ten Pounds, being the Goods and Chattels of one *M. V.* then and there found, againſt the Peace of our ſaid Lord the now King, his Crown and Dignity; and that *T. O.* late of *H.* aforeſaid in the ſaid County, Labourer, knowing that the ſaid *J. O.* at *H.* aforeſaid, had done and committed the ſaid Felony in Manner and Form aforeſaid, on the ſame Day and Year above mentioned, at *H.* aforeſaid in the ſaid County, did feloniouſly aid, comfort and receive him the ſaid *J. O.* after the ſaid Felony was ſo committed by him the ſaid *J. O.* as aforeſaid againſt the Peace of our ſaid Lord the King, his Crown and Dignity.

The Form of an Indictment for Stealing.

THE Grand Inqueſt for our Lord the King, upon their reſpective Oaths, and Affirmations, do preſent, That *E. F.* late of the County of *Middleſex*, Labourer, the Twenty-fourth Day of *January*, in the Year of the Reign of our Lord GEORGE the Second, by the Grace of GOD King of *Great-Britain*, *France* and *Ireland*, Defender of the Faith, *&c.* the 23d, with Force and Arms, *&c.* at the Townſhip of *Woodbridge*, in the County aforeſaid, one Silver Spoon of the Value of *Fifteen Shillings*, of the Goods and Chattles of one *Q. R.* then and there being found, then and there did feloniouſly ſteal, take and carry away, againſt an Act of General Aſſembly of this Province, in that Caſe made and provided; as alſo againſt the Peace of our ſaid Lord the King, his Crown and Dignity, *&c.*

N. B. *If any Thing ſtolen*, viz. *A Hog, or Sheep, or live Creature, name the Price of it, inſtead of Value.*

In-

Indictment; Proceſs thereon.

AFTER an Indictment is found by the Jury for any Treſpaſs upon a Penal Statute, if the Defendant doth not come in the next Seſſions, a *Venire Facias* may be awarded in the Name of the King, directed to the Sheriff, and *Teſte* by the Juſtice; This is only for an Appearance; the Form is thus:

Venire Facias.

Middx. to wit, GEORGE the Second, by the Grace of God of *Great-Britain*, *France* and *Ireland*, King, Defender of the Faith, *&c.* To the Sheriff of *Middleſex*, Greeting: We command you, that you do not omit by reaſon of any Liberty within your Bailiwick, but that you enter therein, and cauſe *J. O.* of *H.* in your County, Labourer, to come before *J. P.* and *G. G.* Eſqrs; two of our Juſtices, aſſigned to keep our Peace in the ſaid County, and alſo to hear and determine divers Felonies, Treſpaſſes and other Miſdeeds committed in the ſaid County, at *S.* in your County, on the 30th of *July* next enſuing, to anſwer us of divers Articles preſented, concerning him the ſaid *J. O.* and do you then have there this Precept. Witneſs *J. P.* Eſq: at *S.* the 15th Day of *June*, in the twenty ſecond Year of our Reign.

If the Sheriff return the Defendant ſummoned, and yet he doth not appear at the Return of the *Venire Facias*, then you muſt ſue forth a *Diſtringas* againſt him; the Form of which is as followeth:

Middx. to wit, GEORGE the Second, by the Grace of God of *Great-Britain*, *France* and *Ireland*, King, Defender of the Faith, *&c.* To the Sheriff of *Middleſex*, Greeting: We command you, that you do not omit by reaſon of any Liberty within your Bailiwick, but that you enter therein, and deſtrain *J. O.* of *H.* in your County, Yeoman, by all his Lands and Tenements, and that you anſwer for the Iſſues of the ſame to us, ſo that you have his Body before the Keepers of our Peace, *&c.* to anſwer, *&c.* Witneſs, *&c.*

And ſo a Diſtreſs infinite till Appearance.

But if the Sheriff return *Nihil habit* (that the Defendant hath nothing) then you muſt ſue forth a *Capias* againſt the Defendant, the Form whereof is as followeth:

Suſſex, to wit, GEORGE the Second, by the Grace of God, of *Great-Britain*, *France* and *Ireland*, King, Defender of the Faith, *&c.* To the Sheriff of *Suſſex*, Greeting: We command you, that

that you do not omit by reaſon of any Liberty within your Bailiwick, but that you enter therein, and take *J. O.* of *H.* in your County, Yeoman, if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that you may have his Body before the Keepers of our Peace, and alſo our Juſtices aſſigned to hear and determine divers Felonies, Treſpaſſes, and other Miſdeeds committed at *L.* in your County, on Thurſday the 9th Day of *July* next enſuing, to anſwer us of divers Treſpaſſes, Contempts and Offences, whereof he ſtands indicted; and do you then have there this Writ. Witneſs *J. P.* and *G. G.* Eſqrs; at *L.* &c.

If the Sheriff return *Non eſt Inventus*, &c. (that the Defendant is not found in his Bailiwick) then you muſt have an *Alias*, and ſo a *Pluries*, and then an Exigent, the Form whereof followeth:

Middx. GEORGE the Second, by the Grace of God of *Great-Britain, France*, and *Ireland*, King, Defender of the Faith, &c. To the Sheriff of *Middleſex*, Greeting: We command you, that you cauſe to be exacted *J. O.* of *H.* in your County, Yeoman, until, according to the Law and Cuſtom of our Kingdom of *England*, he is outlawed, if he ſhould not appear; and if he ſhould appear, then do you take him, and ſafely keep him, ſo that you may have his Body before our Juſtices aſſigned to keep our Peace in the ſaid County, and alſo to hear and determine divers Felonies, Treſpaſſes, and other Miſdeeds committed in your ſaid County, at the General Seſſions of the Peace, to be held next after the Feaſt of *St. Thomas the Martyr* next enſuing, whereſoever it ſhould happen to be held in the ſaid County, to anſwer us of divers Treſpaſſes, Contempts and Offences whereof he ſtands indicted, and do you then have there this Writ. Witneſs *J. P.* Eſq; at *L.* the firſt Day of *May* in the 22d Year of our Reign.

The Return.

AT which Day, *R. F.* Eſq; Sheriff of the County aforeſaid returned, that at his County, held at *L.* on the fourth Day of *July*, in the 22d Year of the Reign, &c. the within written *A. B.* was firſt exacted, and ſo at four other Counties then next enſuing there held, till the ſaid *A. B.* was five Times exacted, and did not appear; therefore he is outlawed.

This Outlawry muſt be certified into the King's Bench, becauſe the Juſtices of Peace cannot award a *Capias Utlagatum*.

But the Juſtices out of Seſſions may award a *Superſedeas* to ſtay any of the Proceedings aforeſaid, before the Outlawry is certified, the Form whereof is as followeth:

Suſſex, GEORGE the Second, by the Grace of God of *Great-Britain, France* and *Ireland*, King, Defender of the Faith, &c. To the Sheriff of *Suſſex*, Greeting: Becauſe *J. O.* of *H.* did come before the Keepers of our Peace, and our Juſtices aſſigned

to

to hear and determine divers Felonies, Trespasses, and other Misdeeds committed in your County at *L.* on Thursday, *&c.* and hath found sufficient Security for his Appearance at the next General Sessions of the Peace for the County of *Sussex* aforesaid; therefore we command you, that you entirely cease from any further exacting and outlawing, taking, or in any Manner troubling the said *J. O.* upon Account of the said Trespasses, Contempts, and other Offences, whereof he stands indicted; and after what Manner you shall have executed this our Precept, do you make appear to four Justices aforesaid, at *L.* aforesaid, on Thursday, *&c.* and do you then have there this Writ. Witness *T. P.* and *G. G.* Esqrs; at *L.* aforesaid, the 12th Day of May, in the 22d Year of our Reign.

TRAVERSE.

THIS is the most antient Way of trying the Fact; All Indictments may be traversed; that is, you may take Issue upon the Matter, or deny the chief Point in the Indictment.

This Traverse is to be tried by a Jury at a General Quarter-Sessions, except in Riots and Forcible Entries.

By the Statute of 11 *Will.* the Clerk of the Peace shall have no more than 2*l.* for drawing an Indictment, upon Pain to forfeit 5*l.* to the Party grieved; if he draw it defective, shall make a new one without Fee, under the same Penalty.

Judgment: In High-Treason.

IN all Cases (except counterfeiting of Coin) that the Offender shall be drawn to the Gallows, and there hanged by the Neck and cut down alive, his Entrails taken out and burnt, his Head cut off, his Body quartered, and his Head and Quarters hanged up: So 'tis for uttering such Money, knowing it to be so. *Cro. Car.* 383. So 'tis for clipping. *Dyer* 230, B. But for counterfeiting Money 'tis to be drawn and hanged. In both Cases, the Judgment for a Woman is to be drawn and burnt.

Counterfeiting in this Case, is meant counterfeiting by coining; for that is esteemed an inferior sort of Treason, in Respect to such which concerned the King, and in *Drawing* and *Hanging*, but without *Quartering*, is the Judgment for *coining*; then by the same Reason it must be so for *clipping*; for that seems a lesser Degree of the same Species of Treason.

In *Petty Treason*: For a Man, 'tis to be drawn and hanged; for a Woman, drawn and burned.

In *Felony*: The Offender is to be hanged till dead; and 'tis commonly ſaid, this cannot be altered to beheading.

In *Petty-Larceny*: To be whipt, and forfeiture of Goods.

In *Death, ſe Defendendo, or by Chance-medly*: There is no expreſs Judgment, but the Goods are forfeited.

In *Miſpriſion of Treaſon*: Forfeiture of Lands during Life, of Goods, and perpetual Impriſonment.

But the Goods of theſe Offenders are not to be ſeized before an Indictment found, or removed before Attainder.

Peculiar Puniſhments are appointed by divers Statutes for ſeveral Offences, and in ſuch Caſes the Juſtices cannot mitigate; and therefore 'tis not warrantable to admit an Offender indicted on a penal Law, to ſubmit with a Proteſtation of, *Not Guilty*.

As to what relates to Executions, 'tis uſually ſaid, That in Treaſon the King may remit all other Parts of the Sentence, except cutting off the Head; but in *Felonies*, the Judgment muſt be executed in the Method preſcribed by Law; and therefore, if in ſuch Caſe the King ſhould order a Criminal to be beheaded, when Judgment is to be hanged, it would be Murder in the Sheriff and his Officers, and they muſt ſuffer for it without Pardon.

JURORS and JURIES.

JURY, *Jurata*, may be derived from the Latin *Jurare*, to ſwear; and ſignifies either Twenty-four or Twelve Men, ſworn to enquire of the Matter of Fact, and declare the Truth upon ſuch Evidence as ſhall be delivered them, touching the Matter in Queſtion.

The Grand Jury conſiſts generally of Twenty-four grave and ſubſtantial Gentlemen, or of the better ſort of Yeomen, choſen indifferently by the Sheriff out of the whole County, to conſider of all the Bills of Indictment preferred to the Court, which they either approve by Writing on them *Billa vera*, or diſallow by indorſing *Ignoramus*.

And the Petit Jury conſiſts of Twelve Men at leaſt, and are empannelled as well upon criminal as upon civil Cauſes: Thoſe that paſs upon Offences of Life and Death, do bring in their Verdict either *Guilty* or *Not Guilty*, whereupon the Priſoner, if he be found Guilty, is ſaid to be convicted, and ſo afterwards receiveth his Judgment and Condemnation: Or if Not guilty, acquitted and ſet free.

All Aliens, Apothecaries, Phyſicians, Clergy-men, Perſons indicted or attainted for any Crime, Conſpirators, Non Compos-Mentis, Butchers, Infants under 14 Years of Age, are excepted from ſerving on Juries, by 6 and 7 *Will.* 3. 1 *Annæ*.

By the Statute of 2 *Will. cap.* 38. by which they were ordered to ſummon in one Aſſize, Twenty-four, and no more.

But

But it hath been adjudged, That this Statute extends only to Jurors returned in civil Cases, and not for Trials of Criminals; for in such Cases the Sheriff might be commanded by the Court to return as many as they please; and 'tis usual to return Sixty, because of the Challenges. *Keil.* 16.

If there are not enough of the principal Pannel, the Sheriff must return the *Tales* out of some other Pannel of Jurors then attending; and if such *Tales-men* withdraw, the Judge may fine them. 7 and 8 *Will.* 3.

Any Freeholder or Copyholder, who is the King's liege Subject, and returned by the proper Officer, may be a Juror.

In *Michaelmas* Sessions, the Constable shall return to the Justices a List of the Names and Abodes of Persons who are qualified to serve, between 21 and 70 Years of Age, a Duplicate of which List the Justices shall order the Clerk of the Peace to deliver to the Sheriff before *January* following.

This List must be entred in a Book, and kept amongst the Records of the Sessions, and none to be impannelled whose Name is not entred in the List. 7 & 8 *W. cap.* 32.

And because the Constables, Head-boroughs and Tything-men, were negligent in returning such Lists; therefore, by another Act, the Justices, every Year at Midsummer Sessions, shall issue out their Warrants, at least under the Heads of Two of them, directed to the High-Constables of each Hundred, requiring them to issue out their Precepts to their respective Constables, Headboroughs, &c. That they should meet the High-Constable within 14 Days after the Date of such Precept, at some convenient Place within the Hundred, there to prepare a List as aforesaid; which List they must sign, and at the Michaelmas Sessions following, deliver it into Court. 3 & 4 *Anne.*

The High-Constable not issuing out such Precept to his Petty Constable, or Headborough, forfeits *Ten Pounds.*

The Petty-Constable or Headborough not meeting according to the Precept, and failing to prepare a List, and to return it as aforesaid, forfeits *Five Pounds.*

The Offenders are to be prosecuted at the Sessions, but there is no Direction how, or to whom the Forfeitures shall be applied.

Jurors must be summoned at least Six Days before the Sessions, by shewing a Warrant under the Seal of the Sheriff's Office. But if not at Home, then a Note left by the Officer at the Dwelling-house with any Person inhabiting there, is sufficient.

If summonded otherwise than as aforesaid, the Sheriff forfeits *Twenty Pounds* to the Party grieved, to be recovered in the Courts at *Westminster.*

None shall be returned but once in four Years, the City of *York* and Town of *Kingston upon Hull*, excepted.

The Grand Inquest must consist of Forty eight Freeholders and no more, each having *Eighty Pounds* per Annum.

There shall not be above Forty Persons returned at the Sessions of the Peace for *Yorkshire*. 7 and 8 *W. cap.* 32.

There may be more than Twelve, and 'tis best to have an odd Number; and if twelve agree, 'tis conclusive to the rest.

They ought not to have a Keeper, nor to be without Victuals, but may be adjourned to give their Verdict.

If they discover their Secrets, they must be fined; and if they make a favourable Presentment, they may be committed, and fined.

Justices of Peace may make an Alteration in the Pannel after 'tis returned, if they see Cause, and may remove a Juror after he is sworn. 3 *H.* 8. *cap.* 12.

Regularly they cannot inquire into any Thing but what ariseth in the County for which they are returned; and therefore if a Stroke be given in one County, and the Death happen in another, the Party could not be indicted where the Person died: But this is now remedied by the Statute of 2 and 3 *Ed.* 6. *cap.* 24.

So likewise the Law in Criminal Cases is now altered by other Statutes, as in Confederacies, Felonies, Murders, Robberies and Treasons done on the Sea; the Offender shall be tried where the King by his Commission, shall appoint. 28. *H.* 8. *cap.* 15.

So in Treasons and Misprisions of Treasons done out of the Land, the Offenders shall be tried in the *King's Bench* by a *Middlesex* Jury, or by the King's Commission in any County by a Jury of that County. 35 *H.* 8. *cap.* 2.

If the Grand-Inquest conceal any Thing which they ought to present, the Justices of Peace may impannel an Inquest to enquire of such Concealment, and fine them. 3 *H.* 7. *cap.* 1.

If a Jury-Man will keep his Fellows without giving any Reason, or will withdraw from them, he may be committed and fined, because he is sworn well and truly to try the Issue; and therefore to be obstinate without Cause, or depart is a Misdemeanour.

But if he differs in Judgment from the rest, tho' his Dissent be not as reasonable as the Opinion of those who agree, yet he cannot be fined, tho' he keep the rest for a Time from giving their Verdict.

For Misdemeanours they may be fined, but not barely for going against the Direction of the Court.

In Cases of Life or Member, if they cannot agree of their Verdict at the Assizes, they must be carried the Circuit, till they do agree, 1 *Vent.* 97.

If they eat or drink before or after they are agreed of their Verdict, if before they bring it in, they are to be fined; only with this Difference, That if they eat at their own Charge, the Verdict shall stand; but if at the Charge of the Party, it shall be set aside. 1 *Leon.* 133. *Dyer* 137.

Some

Some of them have been fined for having Figs and Pippins in their Pockets, though they did not eat them. 1 *Leon* 133. *Moor* 599.

If after they are gone from the Bar, one of the Jury calls a Witneſs, who was ſworn, and had given his Evidence in Court, and deſires him to repeat it again, which he did; this is a Miſdemeanour, and the Verdict ſhall be ſet aſide. *Cro. Eliz.* 189.

An Attorney was turned over the Bar, for giving Direction to the Sheriff what Perſons he would have returned of a Jury. *Moor* 882.

Act 10 *Annæ* reviv'd, for exempting of Apothecaries from ſerving the Offices of Conſtable, Scavenger, and other Pariſh and Ward Officers, and from ſerving upon Juries.

JUSTICES of PEACE.

JUSTICES of the Peace were created 36 *Ed.* 3. *cap.* 12. But in the Space of threeſcore Years their Number ſo increaſed, that *Anno* 12. *R.* 2. *cap.* 12. a Law was made, pohibiting that there ſhould be more than Six in every County, as at the Beginning of their Conſtitution; and their Number two Years afterward increaſed to Eight.

They are now Judges of Record, and have a larger Power than the Conſervators had, becauſe they could not commit the Offenders for a Breach of the Peace; but the Juſtices may ſend Warrants to bring Delinquents before them to be examined, and may alſo commit where they ſee Cauſe.

This Law is not abrogated at this Day, but the Number of Juſtices is greatly increaſed in every County, which made Mr. *Lambard*, above One hundred Years ſince, complain of the exceſſive Number; and after him Sir *Henry Spelman* takes Notice, that there are above Threeſcore in each County.

'Tis true, in *Wales* there were but Eight in a County; they were confined to that Number by a Clauſe in the Statute of 34 and 35 *H.* 8. but by a late Act of 5 *Will.* and *M.* that Clauſe is repealed.

Therefore this Author would have the Number reduced to the old Standard, *viz.* That in each County there ſhould be Eight Honorary Juſtices, conſtituted of Men of the beſt Quality therein, who ſhould not be obliged conſtantly to attend the Service any farther than their Zeal for Juſtice, and Love for their Country, ſhall incline them; and eight acting Juſtices who ſhould be fit for Buſineſs, who ſhould conſtantly apply themſelves to this Attendance, but be entitled to a Reward for their Pains, and be ſubject to Penalties upon any Neglect, without a reaſonable Excuſe: and that without Five, no Seſſions ſhould be held.

Among

Among the Petitions made at a Parliament held at *York*, 8 *Ed.* 3. this was one, *viz.* That all Juſtices of the Peace were to have certain Fees for their Attendance; the Petition was again renewed, 36 *Ed.* 3. and the King anſwered, He would provide therefore: But what that Fee was, doth not appear. *Hill.* 12. *c.* 2. it was enacted, That they ſhould have *Four Shillings per Diem* for every Day they ſate in Quarter Seſſions; and ſince, by particular Statutes, they are to have alſo Part of the Forfeitures upon Conviction of Offenders againſt theſe Laws; and by the Statute of Labourers, they are to have *Five Shillings per Diem* for every Day they ſhall ſit in Execution of that Act above three Days. *Cett. Abr. fol.* 15, 93. *Wages* 12. *R.* 2. *cap.* 10. 19. *H.* 7. 5. *Eliz. cap.* 4.

And ſuch Care was then taken to reward thoſe Magiſtrates, that it was provided by a Statute, *Anno* 14. *R.* 2. that the Names of the Juſtices, and the Days of their Sitting, ſhould be written in the Indentures of Eſtreats of every Seſſions; one Part whereof was to remain with the Sheriff, that he might know to whom the Wages ſhould be paid; and the others with the Barons of the *Exchequer*, that the Sheriff might have Allowance made, *&c.* in paſſing the Accompts; and if he neglected or refuſed to pay the Wages allowed by Law, an Action of Debt would lie againſt him.

Their Qualifications are deſcribed by ſeveral Statutes, *viz.*

They muſt be Men of the beſt Reputation, the moſt prevalent Men in the County, as they were formerly called, together with ſome Lawyers; they muſt be ſubſtantial Perſons, dwelling alſo in the County; they muſt be Men of good Governance, and muſt not be Steward to any Lord, or deſire this Office; and they are not qualified unleſs they have *Twenty Pounds per Annum*, except Men of the Law. 18 *Ed.* 3. 2. 34. *Ed.* 3. 1. 2. *H.* 5. 4. 18. *H.* 6. 11. 12. *R.* 2. 10.

And therefore an Indictment was brought againſt One, becauſe he acted as a Juſtice of Peace, not having *Twenty Pounds per Annum*, *contra Pacem*, &c. but this Indictment was quaſhed, becauſe the Time of his acting was not laid, *&c.* for he might have had *Twenty Pounds per Annum* then, tho' not afterwards. *Roll. Rep.* 2 *Part.* 247.

In ſome Caſes Juſtices Power is Miniſterial, *(viz.)* On a *Supplicavit* out of *B. R.* for taking Surety of the Peace, on the Statute of *Northampton* for a Forcible Entry, and on a *Certiorari*.

But in moſt other Caſes relating to his Offices, he is a Judge of Record, for none but ſuch can take a Recognizance for the Peace.

By the Statute of 18 *Ed.* 3. *cap.* 2. he hath Power to hear and determine Felonies and Treſpaſſes, and to inflict Puniſhment, *&c.*

He hath the like Power by 34 *Ed.* 3. *cap.* 1. and likewiſe by *R.* 2. *cap.* 10. he hath Power to proceed to the Deliverance of Thieves and Felons.

Now, though theſe Statutes do enlarge their Power, yet becauſe by a ſubſequent Law, *viz.* 1 and 2 *Phil.* and *Mar. cap.* 13. they

are

are to certify the Examinations in *Homicide* and Felony, to the Juſtices of Goal-Delivery, therefore the Seſſions do not proceed to determine great Felonies; but for Petit-Larceny, and other ſmall Felonies, they uſually try Offenders, or they may proceed in any Caſe where a Felony is by any Statute limitted to be heard before them.

And generally in all Caſes they may take the Examinations, and commit the Offenders, and bind over the Proſecutors to the Aſſizes, and certify their Proceedings.

Where he hath a Juriſdiction, his Warrant is not to be diſputed by any Conſtable, who may be indicted for not executing it. 2 *Roll, Rep.* 78.

In ſome Caſes, as in *Force, Riots, Preſentments of Highways*, his ſingle Teſtimony is of greater Authority than an Indictment of a Jury.

But in his own Caſe he is not Judge, and ought not to execute his Office, unleſs he is aſſaulted, and then he may commit the Offender: He may likewiſe record a Forcible Entry upon his own Poſſeſſion.

He ſhall not be puniſhed for any Thing done by him in Seſſions. When he juſtifieth the Fact done by him as a Juſtice of Peace, he need not ſet forth his Commiſſion; becauſe he is a Judge of Record, and his Commiſſion remaineth with the *Cuſtos Rotulorum*.

If any Man abuſeth him, an Indictment will lie againſt the Offender; that is, if the Abuſe be in any Thing relating to his Office; as where an Order was affirmed upon an Appeal, and the Party in Anger ſaid, *If I cannot have Juſtice here, I will have it elſewhere*; he was indicted for his Contempt, and fined by the Juſtices *Five Pounds*, and committed for Non-payment; and this was held lawful. 'Tis true, Juſtice *Twiſden* was of a contrary Opinion, *viz.* That the Words were not ſpoken in Contempt, but by Way of Appeal to another Court, and did not accuſe the Seſſions of Injuſtice; but this is a ſtrained Conſtruction of a plain Sentence.

And as they are favoured by the Law in Execution of their Office, ſo they are puniſhed for any Irregularities.

As for Inſtance: An Information was brought againſt a Juſtice of Peace for compounding Recognizances, and not returning them to the Seſſions, and for taking *Twenty Shillings* for every unlicenſed Ale-houſe, and converting it to his own Uſe: He was fined 1000 Marks, and impriſoned during the King's Pleaſure; was to find Sureties for his good Behaviour for a Year, and to acknowledge his Offence at the next Aſſizes. *Sid.* 192.

But he may perſwade an Agreement between the Parties for ſmall Treſpaſſes, but not where the King is to have a Fine. *Noy*, 103.

He may ſend his Warrant to apprehend any Perſon *accuſed* of Felony, though the *Accuſation* ſhould be falſe, but not unleſs accuſed, 3 *Leon* 187. *Cro. Eliz.* 130.

One

One Juſtice, *&c.* cannot commit another for a Breach of the Peace; the Seſſions may.

They cannot hold Cognizance of Pleas upon Penal Statutes, without an expreſs Power given to them by thoſe Acts; and without ſuch Authority, the Indictment, if taken, will be void.

But his Power is determined by the Death of the King, by a Diſcharge under the Great Seal, by a *Superſedeas*, by granting a new Commiſſion; by Acceſſion of another Office, as being made Sheriff or Coroner.

Landlord and Tenant.

BY the Act 11 *Geo.* 2. for the more effectual ſecuring the Payment of Rents, and preventing Frauds by Tenants, 'tis enacted, That if any Tenant for Life, Years, at Will, Sufferance, *&c.* fraudulently conveys away his Goods from the Premiſſes, to prevent the Landlord's Diſtreſs, that the Landlord within thirty Days may follow the Goods and ſeize them as a Diſtreſs, and diſpoſe of them as if they had been actually diſtrained on the Premiſſes, unleſs they are ſold for a valuable Conſideration to a Perſon not privy to the Fraud.

Tenant fraudulently removing, and every Perſon wilfully and knowingly aſſiſting him in removing or concealing ſuch Goods, ſhall forfeit double the Value of the Goods ſo removed and concealed, to be recovered by Action of Debt, *&c.*

If the Goods don't exceed the Value of *Fifty Pounds*, then the Landlord, his Bailiff, Servant or Agent may exhibit a Complaint in Writing againſt the Offenders, before two or more Juſtices of the Peace of the ſame County, Riding or Diviſion of ſuch County, reſiding near the Place whence ſuch Goods and Chattels were removed, or near the Place where the ſame were found, not being intereſted in the Lands or Tenements from whence they were removed.

And then Power is given them not to ſummon the Parties concern'd, to examine the Fact and all proper Witneſſes upon Oath; if Quakers, upon their Affirmation; and in a ſummary Way to determine whether the Parties are guilty of the Offence with which they are charged, to inquire of the Value of the Goods reſpectively fraudulently carried off and concealed; and upon full Proof of the Offence, by Order under their Hands and Seals to adjudge the Offenders to pay double the Value of the Goods to the Landlord, *&c.* at ſuch Time as the Juſtices ſhall appoint.

If the Offenders, having Notice of the Order, refuſe or neglect to do it, they are to levy it by Warrant of Diſtreſs and Sale of their Goods and Chattels; for Want of Diſtreſs the Offenders to be committed

to

to the Houſe of Correction, to be kept to hard Labour without Bail or Mainprize for ſix Months, unleſs the Money order'd to be paid ſhall be ſooner ſatisfied.

Appeal is given from the Order of the two Juſtices to the Juſtices of the Peace at their next General or Quarter Seſſions, who are to hear and determine ſuch Appeal, and give ſuch Coſts to either Party as they ſhall think reaſonable.

'Tis likewiſe provided, that where the Party appealing ſhall enter into a Recognizance with one or two ſufficient Surety or Sureties in double the Sum order'd to be paid, conditioned to appear at the General or Quarter Seſſions, the Order of the two Juſtices ſhall not be executed againſt him in the mean Time.

By the ſame Act Landlords are empower'd, with the Aſſiſtance of a Conſtable or other Peace-Officer, *&c.* to break open any Houſe, Barn, Stable, Out-houſe, Yard, Cloſe, or Place in which ſuch Goods are locked up and ſecured to prevent their being diſtrained in the Day-time, and to ſeize, *&c.* ſuch Goods, *&c.* as if they had been in an open Field or Place: In Caſe of a Dwelling-houſe, Oath being firſt made before ſome Juſtice of Peace, of a reaſonable Ground to ſuſpect that ſuch Goods or Chattels are therein.

By the ſame Act there is a Proviſion for the Landlords when the Tenants deſert the Premiſſes. If any Tenant holding any Lands, *&c.* at a Rack-rent, or when the Rent reſerved ſhall be full three Fourths of the yearly Value of the demiſed Premiſſes, who ſhall be in Arrear for one Years Rent, ſhall deſert the demiſed Premiſſes, and leave them uncultivitated or unoccupied, ſo that no ſufficient Diſtreſs can be had to countervail the Arrears of Rent; Two of the Juſtices of the Peace of the County, *&c.* not intereſted in the demiſed Premiſſes, at the Requeſt of the Leſſor, his Bailiff or Receiver, ſhall go upon and view the ſame, and affix on the moſt notorious Part of the Premiſſes, Notice in Writing what Day (at the Diſtance of fourteen Days at leaſt) they will return to take a ſecond View; and if the Tenant or ſome Perſon on his Behalf ſhall not appear on the ſecond View, and pay the Rent in Arrear, or there ſhall not be ſufficient Diſtreſs on the Premiſſes, then the Juſtices may put the Landlord into Poſſeſſion of the demiſed Premiſſes, and the Leaſe to ſuch Tenant, as to the Demiſe therein contain'd only, ſhall from thenceforth become void.

Such Proceedings are examinable in a ſummary Way by the next Juſtice of Aſſize of the reſpective Counties where the Premiſſes lie, if they lie in *London* or *Middleſex*, by the Judges of King's Bench or Common Pleas; if in the Counties Palatine, before the Judges thereof; if in *Wales*, before the Court of Grand Seſſions, who are reſpectively impower'd to order Reſtitution to the Tenant with Expences and Coſts to be paid by the Landlord, if they ſhall ſee Cauſe for the ſame; and if they affirm the Juſtices Acts, to award Coſts, not exceeding *Five Pounds* for the frivolous Appeal.

LARCENY

LARCENY PETTY.

'TIS a Felonious taking and carrying away the perſonal Goods of another, not from his Perſon, nor out of his Houſe, and not exceeding the Value of *Twelve Pence*.

In this Definition, theſe Things are to be conſidered, 1. Who may be guilty of this Offence. 2. What ſhall be accounted a Felonious Taking, and where. 3. What ſhall be a Carrying away. 4. What are the Perſonal Goods of another, and what not. 5. The Value.

As to the Firſt, Infants under Fourteen, and married Woman, may be guilty, *&c.* but if a *Feme Covert* taketh the Goods of the Huſband, and delivereth them to another, 'tis not Felony in the Receiver.

'Tis likewiſe an Excuſe to her, if ſhe commit Felony by the Command of her Huſband, if both are in the ſame Felonious Act; but 'tis no Excuſe in a Servant by the Order of the Maſter.

To make it Felony, There muſt be an actual Taking, and therefore the Indictment is always *quod Felonice cepit & aſportavit* or *abduxit*; for if it be *quod abduxit* only, 'tis naught; and therefore if Goods are found, and afterwards converted *animo furandi*, 'tis not Felony.

If a Man hath the Poſſeſſion of Goods by Delivery, as a Carrier, who imbezels them, 'tis no Felony, unleſs the Privity be determined; that is, if by Agreement the Goods were to be carried to ſuch a Place, which he doth not; or if they are brought thither, and afterwards the Carrier takes them, *animo furandi*.

But in ſome Caſes, tho' the Party hath the Goods by Delivery, yet 'tis Felony to go away with them; as if a Shop-keeper delivers Goods to a Perſon pretending to buy them, and he runneth away with them, 'tis Felony; for the Goods were not properly out of the Poſſeſſion of the Owner by his Delivery, but by compleating the Contract which was then began; and the running away ſhews the Intention of the Party, by coming into the Shop, *viz.* to get the Goods into his Poſſeſſion, *animo furandi*.

But Felony may be committed by a Perſon who hath the Charge or Uſe of a Thing, as a Shepherd of his Sheep; or a Gueſt, of Plate brought for his Uſe in an Inn.

It may be committed by making Uſe of the Proceſs of the Law to obtain Goods, *viz.* By obtaining a Replevin where a Man hath no Property, and by that Means get a Horſe deliver'd to him, this is a felonious Taking; ſo by getting Goods out of an Houſe upon an Ejectment, where he hath no Title. *Sid.* 254.

A Guest removes Goods out of his Chamber, and is taken before he gets out of the Inn; or taking an Horse with an Intent to steal, but is apprehended before he can get out of the Ground where he was departing. *This is a Carrying-away.*

A Man who hath a Property only *pro Tempore*, as a Bailiff, if Goods are taken away from him, 'tis Felony.

Stealing a Bond is Felony, because 'tis a Thing in Action.

Taking Fish in a Trunk or Pond, is Felony, because they are deprived in these Places of their natural Liberty; so taking Swans kept in a Pond or private River.

Things which have been *feræ Naturæ*, if made tame, are personal Goods; as Conies, Deer, Partridges, Pheasants; and 'tis Felony to steal them, knowing them to be the same.

So where a Man hath a Property, *ratione Impotentiæ*, in Things which are wild in their Nature, as young Hawks, or Partridges in their Nests; 'tis Felony to steal the same.

So 'tis to take Things which are *domite Naturæ*; as Ducks, Hens, Turkeys, *&c.* Horses, Colts, *&c.*

To steal the Shrowd of a Person buried, is Felony; for 'tis *bona Executorum: Quere.*

Wrecks, Waifs, and Estrays before Seizure, Fish in a River, Conies in a Warren, for a Man hath no Property in them, but *ratione loci.*

Corn or Grass growing, Apples growing, taking Lead off a Church.

Things of a base Nature, as Dogs, Foxes, Monkeys, Parrots, Ferrets; these and such like are not personal Goods, and so no Felony to take them.

If the Indictment be for taking Goods to the Value of 10*s.* and the Jury find only to the Value of 10*d.* 'tis Petty-Larceny.

If several small Matters are taken from the same Person at several Times, and all amounting to more than 12*d.* they may be put into one Indictment, and the Offender being found guilty, shall have Judgment of Death.

The Judgment in this Offence is to be whipped, and forfeits his Goods.

Who are not Felons. A Wife stealing by Compulsion of her Husband; otherwise if not constrained; but if she commit Murder by her Husband's Consent, 'tis Felony.

They steal Goods together, 'tis Felony in the Husband alone; but if she steal her Husband's Goods, or receive him, being a Felon, she is not guilty as a Felon in one Case, or as Accessary in the other.

LEATHER.

PERSONS exercising the Myſtery of a Tanner, not having ſerved 7 Years as an Apprentice, or hired Servant, except the Widow or Children of a Tanner, and having been brought up in that Profeſſion 4 Years, Cutters or Workers of Leather-Tanning; forfeit all the Leather they tan, or the Value.

Over-liming his Hides, or uſing any Thing but the Bark of Aſh or Oak, Tap-Wort, Malt-Meal, Lime, Culver-Dung or Hen-Dung; or ſuffers them to be frozen, or parched with Fire or Sun, or tans rotten Hides; forfeits every Hide ſo tanned and put to Sale, or the full Value.

Raiſing Hides for Sole Leather by any Mixture, forfeits the ſame.

Haſtening the Tanning of Leather by unkind Heats with hot Wooze, or otherwiſe, forfeits 10*l.* and to ſtand in the Pillory three Days in the next Market-Town.

Currying Hide or Skin inſufficiently tann'd and dry'd, or out of his own Houſe in ſome Market-Town, or gaſhing or ſpoiling them, forfeits 6*ſ.* 8*d.* each, beſides the Value, and double Damage to the Party grieved.

Uſing the Art of a Tanner, Shoemaker or Butcher, or other who uſeth Cutting of Leather, forfeits for every Hide or Skin he cutteth, 6*ſ.* 8*d.*

Refuſing to curry Leather within 8 Days in Summer, and 16 in Winter, after he takes it in Hand, forfeits for every Hide not curried, 10*ſ.*

Not currying his Leather ſufficiently, forfeits the Value.

For every Hide not ſealed and ſearched, forfeits 6*ſ.* 8*d.*

Leather tanned and curried. Putting to Sale tanned Leather red and unwrought, but in Fair and Market, unleſs ſearched and ſealed before; or offering to ſell any ſuch Leather, forfeits for every Dozen of Calf or Sheep Skins, 3*ſ.* 4*d.* and for every Hide 6*ſ.* 8*d.* beſides the Hides, *&c.* or the full Value.

Inſufficiently tann'd or dry'd, and put to Sale, forfeit the Whole.

Selling tann'd Leather in *London*, before it is ſearched and ſealed, or ſelling tann'd Leather (red or unwrought) before it be regiſtred; buying any tann'd Leather before it be ſearched and ſealed, or carrying it out of the Fair or Market before it be regiſtred, forfeits the ſame, or the Value.

Oppoſing Searchers and Sealers, Forfeiture 5*l.*

Artificers (uſing tann'd and curried Leather) putting into his Wares Leather inſufficiently tann'd and curried, forfeits the Wares or Value.

And ſuch Artificers ſelling any where but in open Shop, Fair or Market, where due Search may be made, forfeits Wares, and 10*ſ.* for every Offence.

And

And buying forfeited Wares to ſell them again, forfeits 3*l.* 4*d.* for every Parcel.

Perſons in *London*, or within three Miles, putting Leather to be curried to any but Freemen of the Curriers Company, forfeits the ſame.

In *London*, putting into made Wares any curried Leather before it be ſearched and ſealed, forfeits 6*ſ.* 8*d.* a Hide or Skin, and the Valne of the ſame.

Shoemakers, not making their Boots and Shoes of good Leather, nor ſewing them well, and ſelling them on Sunday, forfeits for every Offence 3*ſ.* 4*d.* and the Value of the Wares ſold.

All the above Forfeitures to be divided; one Third to the King, one to the Proſecutor, and the other to the City, Borough, or Lord of the Liberty where the Offence is.

By 9 *Annæ*, all Mayors, *&c.* and other Perſons whatſoever, are duly to execute and comply with the ſaid Statute.

And by the ſame Statute, any Butcher or other Perſon, willfully or negligently gaſhing Hides or Calf Skins, and offering the ſame to Sale, forfeits 2*ſ.* 6*d. per* Hide, and 1*ſ. per* Skin; one Moiety to the Poor, the other to the Informer.

Two Juſtices to ſummon the Party accuſed, and the Witneſſes on either Side; and the Party appearing, or not, to examine Witneſſes upon Oath, and determine.

All Collar-Makers, Glovers, Bridle-cutters, and others who taw, or make Leather in Oil, Allom, or Salt, or Meal, or cut and make the ſame into Wares, are Tawers and Dreſſers within this Act, and ſubject to the Forfeitures.

LODGERS.

TAKING away with an Intent to ſteal and imbezzel any Bedding, Furniture or Chattels, which by Agreement they are to uſe with their Lodging, 'tis Felony. 3 and 4 *W.* & *M.* continued by 4 and 5 *W.* & *M. cap.* 24.

LORD's-DAY.

THE Obſervation of this Day is not only a Divine Command, but a very wiſe and politick Conſtitution; for it gives Countenance to Chriſtianity, and keeps bad Men from growing worſe.

The Prophanation of this Day doth generally ariſe from, 1. Covetouſneſs: Or, 2. Licentiouſneſs.

Sect. 1.

Shoemakers. *First*, From a covetous Desire of Gain, as per Stat. 1 *Jac.* 1. *cap.* 11. Shoemaker putting Boots or Shoes to Sale, forfeits *Three Shillings and Four Pence*, and the Goods: Then by the Statute of 3 *Car.* 1. *cap.* 1. Carriers, Drovers, Waggoners, travelling on that Day, such are prohibited, under the Penalty of *Twenty Shillings* for every Offence.

The Proof must be before one Justice by two Witnesses upon Oath, or by Confession of the Party, unless the Fact was done in View of the Justice.

Prosecution within six Months after the Offence.

These Forfeitures are recoverable by Distress on a Warrant, or by Bill or Information in Sessions, to the Use of the Poor where taken.

Carriers. But though the Carriers, &c. Driving is through several Parishes, yet there shall be but one Forfeiture for one Day.

By 29 *Car.* 3. *cap.* 7. the Conviction is made more easie; and by this Statute, publick and private Duties of Piety are enjoined, all worldly Business is prohibited (except Works of Necessity and Charity) and all above the Age of fourteen Years offending in the Premisses, forfeits *Five Shillings* to the Use of the Poor; but the Justice may reward the Informer out of the Penalties, so that it doth not exceed the third Part.

Drovers, or their Servants coming to their Inns on that Day, forfeit *Twenty Shillings* for every Offence. The Prosecution must be within Ten Days after the Offence. The Proof by one Witness upon Oath before one Justice, and if the Offender is not able to pay the Forfeiture, he must be put in the Stocks for two Hours.

Secondly, Irreligious Licentiousness, *per* 1 *Car.* 1. *cap.* 1.

Meeting together out of their own Parish for any Sports or Pastimes, they forfeit *Three Shillings and Four Pence* each. Prosecution must be within a Month, &c. Proof by one Witness before one Justice, or Confession of the Party. Forfeiture is for the Poor of the Parish where the Offence is committed, and to be levied by Distress on a Warrant, &c. and in Default thereof the Offender is to be put in the Stocks for three Hours.

Any Process served on this Day, except for Breach of the Peace, Felony or Treason, is void, and the Person serving the same must answer Damages, as if he had done it without a Warrant. 29 *Car.* 2. *cap.* 7.

But this Statute doth not extend to dressing of Meat in Inns, Cooks Shops, or Victualling-Houses.

All the Laws for frequenting of Divine Service on this Day, are still in Force, notwithstanding the Statute of 1 *W.* and *M.* *cap.* 18, unless Persons go to some Congregation tolerated by that Act.

A Warrant to levy the Forfeiture of ſuch who uſe Sports on that Day.

Kent, *ſs.* *To the Conſtable,* &c.

WHEREAS *A. B.* of, *&c. C. D.* of, *&c.* and *E. F.* of, *&c.* have been lawfully convicted before me upon Oath, That they, and each of them, did on the Eighteenth Day of *November* laſt paſt, being the Lord's Day, meet and were preſent with a Concourſe of other People out of their own Pariſhes, for Sports and Paſtimes, *viz.* to play at Foot-ball (*or as the Caſe is*) contrary to the Laws in that Caſe made and provided, by Reaſon whereof each of the Perſons before-mentioned have forfeited *Three Shillings and Four Pence* for the Uſe of the Poor of your Pariſh: *Theſe are therefore* in his Majeſty's Name to command you forthwith to levy the reſpective Sums of *Three Shillings and Four Pence* on the reſpective Goods and Chattels of the ſeveral Offenders before-mentioned, by Diſtreſs and Sale thereof, rendring to them the Overplus, if any; and in Caſe no ſuch Diſtreſs can be had, that then you cauſe the ſaid Perſon or Perſons, wanting ſuch Diſtreſs, to be ſet publickly in the Stocks for the Space of three Hours. Given under my Hand and Seal, *&c.*

To levy the Penalty on Perſons travelling on that Day, &c.

Kent, ſs. To the Conſtable, *&c.*

WHEREAS *it hath been duly proved before me, That* A. B. *of,* &c. *being a common Carrier, did on the Eighth Day of* May *laſt, being the Lord's-Day, travel with his Horſes into, and through your ſaid Pariſh of,* &c. *contrary to the Statute in that Caſe made and provided, by Reaſon whereof he hath forfeited* Twenty Shillings, *to the Uſe of the Poor of the ſaid Pariſh:* Theſe are therefore, &c. *to command you forthwith to levy the ſaid Sum of* Twenty Shillings, *on the Goods and Chattels of the ſaid* A. B. *by Diſtreſs and Sale thereof, rendring to him the Overplus; and that you ſee it employ'd to the Uſe of your ſaid Pariſh, as by Law it ought. Given under,* &c.

3 *Car.* 1 *cap.* 1. One Juſtice *ut prius,* but by the Oath of Two Witneſſes. Proſecution muſt be within ſix Months; but *per* 29 *Car.* 2. *c.* 7. Ten Days.

To levy *Five Shillings* on thoſe that uſe a Trade on that Day.

Kent, *ſs.* *To the Conſtables and Churchwardens of,* &c.

WHEREAS *A. B.* of the Pariſh of *&c.* Barber, ſtandeth convicted before me *P. L.* Eſq; one of his Majeſty's Juſtices of the Peace for the ſaid County, upon the Oath of *C. D.* of, *&c.* Labourer, for exerciſing his Trade or ordinary Calling upon *Sunday* the twenty ninth Day of *Auguſt* Inſtant, in his Houſe ſituate in, *&c.* For which ſaid Offence he hath forfeited the Sum of *Five Shillings*

Shillings to the Uſe of the Poor of the ſaid Pariſh, according to the Form of the Statute in that Caſe made and provided. *Theſe are therefore* in his Majeſty's Name, to command you upon Sight hereof, to demand of the ſaid *A. B.* the ſaid Sum of *Five Shillings*. And if he ſhall refuſe to pay the ſame, that then you forthwith levy the ſame by Diſtreſs and Sale of his Goods for the Uſe aforeſaid, rendring to him the Overplus (if any be.) And in Default of ſuch Diſtreſs, That then you ſet him publickly in the Stocks by the Space of Two whole Hours. Hereof fail not at your Peril. Given under my Hand and Seal this 31ſt Day of *Auguſt*, 1744.

To levy the Penalty for expoſing Goods to Sale, &c.

Kent, ſs. *To the Conſtable*, &c.

WHEREAS it hath been duly proved upon Oath before me, That *A. B.* of, *&c.* did on *Sunday* the 29th Day of *Auguſt* laſt paſt, expoſe Apples, *&c.* to Sale at, *&c.* contrary to the Law in that Caſe made and provided, whereby he hath forfeited the ſaid Goods to the Uſe of the Poor of the ſaid Pariſh, *&c. Theſe are therefore*, &c. to require you forthwith to ſeize the ſaid Goods ſo put to Sale as aforeſaid, and that you ſell the ſame, and employ the Money ariſing by ſuch Sale to the Uſe of the Poor of your ſaid Pariſh, as by Law it ought: And hereof fail not at your Peril. Given, *&c.*

But crying and ſelling of Milk, and Works of Neceſſity and Charity, are excepted.

A Liſence to go by Water.

Kent, ſſ. *WHEREAS* A. B. C. D. E. F. *the Bearers hereof, have made it appear before me, that they have urgent Occaſions to paſs on the next Lord's-Day, from* A. *to* B. *by Water, and to return again the ſame Day: All Conſtables, Church-wardens, and other his Majeſty's Officers, are therefore required to permit the ſaid Gentlemen to paſs without Interruption. Given under*, &c. *J. C.*

A Liſence to Travel on the *Lord's-Day.*

Kent, ſſ. *WHEREAS* A. B. *of* C. &c. *where he now dwelleth, having informed me that he hath a Brother living at* C. *in the County of* H. *where he lieth now ſick, and he hath a Deſire to ſee him*: Know Ye, *That for this Cauſe I do hereby liſence him to travel upon the next* Lord's-Day, *the direct Way to his Brother's: Willing and requiring you, not to moleſt or hinder him for the ſame, ſo that he behave himſelf orderly in his Travel. Given under my Hand*, &c.

Markets

Markets and Fairs.

THESE are either by Grant or Preſcription; and if held otherwiſe, they are unlawful. 2 *Sand.* 74.

Now, becauſe it may be neceſſary to know how far the Property of a Thing is diveſted by Sale in Market Overt; therefore it is to be conſidered, that in *London*, every Day except Sunday, is a Market Overt, and the Sale in Shops there for a valuable Conſideration, is good. But then it muſt be ſuch Goods which are proper to the Trade of him in whoſe Shop 'tis ſold; as Plate to a Goldſmith, *&c.* And it muſt be ſold openly in the Shop, and not in a ſecret Manner; and the Buyer muſt not know that the Goods are ſtolen.

In the Country, where Things are ſold in diſtinct Places in a Market or Fair, the Goods muſt be ſold in the uſual Place appointed for the Sale thereof, otherwiſe the Property is not altered. *Moor* 300.

If I deliver Goods to another to keep for me, or if I pawn them, and he ſells them in a Market, the Property is ſtill in me. *Hob.* 79.

Sale upon a Sunday, tho' in a Market or Fair, ſhall not alter the Property.

A Fair muſt be kept no longer than the Grant or Uſe by Cuſtom will warrant for what is warrantable; and Goods ſo ſold after the Expiration of the Time, as Merchandize, *&c.* the Seller ſhall forfeit to the King double the Value of what is ſold, and the Proſecutor ſhall have the fourth Part. The Fair muſt be duly proclaimed by the Sheriff, or Lord of the Fair, and the Time it is to continue mentioned, the Place or Ground appointed, ſet out, and Care taken that there be no Riots or Diſturbance, but an orderly keeping of it during the Time it laſts.

Where there is a Beaſt Fair, for Horſes, Mares, Geldings, and other Cattle, they muſt have their appointed Places, that thoſe that reſort thither may have a Certainty where to find them. And one ſufficient Perſon, or more, muſt be appointed to take Toll, and keep the ſame Place from Ten in the Forenoon, every Day till Sunſet, during the Time of the Fair or Market, upon Pain to forfeit for every Default *Forty Shillings*. And in Tolling, the Party thereto appointed muſt have before him the Parties Bargaining, upon his Tolling any Horſe, Mare, *&c.* And muſt write in his Book the Chriſtian Names, and Sir Names of all the Parties; alſo their Dwelling-places, with the Colours and ſome particular Marks of the Horſe or Mare, *&c.* ſo ſold or bargained for, on Penalty to forfeit for every Default *Forty Shillings*, and is to have one credible Perſon known to him to vouch the Horſe or Mare, *&c.* and teſtify his Knowledge of the Seller, and his Name and Place of Abode muſt be entered with the others in the Book, with the Colour, Mark, or Price of the Horſe or Mare ſold or exchanged, and the Buyer

requiring it, may have a Note in Writing out of the Book, Reciting the Contract, and Toll-man's Hand thereto, for which he may take Two Pence.

If any Toll-keeper ſuffer a Sale to paſs without a Voucher, unleſs he well know the Party, and every Party making a falſe Teſtimony, or Avouchment, or every Seller unknown, not bringing a Voucher, and cauſing the ſame to be entred, forfeits *Five Pounds*, one Moiety to the King, and the other to the Proſecutor, and the Sale of the ſaid Horſe, *&c.* to be void. Yet notwithſtanding ſuch vouching, the Owner of a Stolen Horſe, *&c.* ſo ſold, his Executors or Adminiſtrators, claiming him within ſix Months after the Stealing, may redeem at the Price he was ſold for, making Proof that it is his, and that it was ſtolen, by two ſufficient Witneſſes before a Juſtice of the County where he is found, or the Head Officer or Magiſtrate of a Corporation, and the Price to be ſuch, as the Buyer upon Oath ſhall teſtify before the Juſtice, he paid for him; and if the Stolen Horſe be not ſold in open Fair or Market, and lawfully toll'd, the Right is in the Owner from whom he was ſtole, and he may ſeize or replevy him in any Place where he finds him.

If any Perſon buy Oxen, Goats, Sheep, Calves, Heifers, Lambs, *&c.* alive, he ſhall not ſell them again alive till he has kept them in his Paſture by the Space of five Weeks.

As for Meaſure, there ſhall be only the *Wincheſter* Buſhel, and no other Buſhel, and that to contain eight Gallons; and who ſo ſells by any other, according to the *22 Car. 2. chap.* 8. forfeits *Forty Shillings*. And upon the Clerk of the Market's refuſing to ſeal ſuch Meaſure as ſhall be full gauged, he forfeits for the firſt Offence *Five Pounds*, for the ſecond *Ten Pounds*: Or if the King's Clerk of his Market of his Houſe, exact, or take more Fees than his due, that is, above one Penny for ſealing a Buſhel, a Half-penny for half a Buſhel, and one Farthing for Meaſures of leſs Proportion, he incurs, and ſhall undergo the Penalty in the Statute, *Caroli* 1.

A Braſs Buſhel is to be chained to a Poſt, or publick Place in the Market Place, at the Charge of the Perſon taking Toll for the publick Uſe of Meaſuring, upon Penalty of forfeiting of *Five Pounds*. *22 Caroli 2. chap.* 8.

Whoſoever ſhall ſell or buy Corn without meaſuring, being thereunto required, ſo ſelling or buying it in Sacks, or Bags, or in any other Thing, ſhall forfeit the ſaid Corn, or the Value thereof to the Party making his Complaint of this Offence againſt the Statute, 22 and 23 *Caroli 2. chap.* 12. And upon Complaint, the Defendant, by the Oath of one or more Witneſſes before a Juſtice of the Peace, muſt prove that he or they did buy or ſell according to the Statute of 22 and 23 *Car.* 2. or elſe pay the Forfeitures by the latter directed, which upon Warrant may be levied by Diſtreſs and Sale of Goods; the Warrant to be given under the Hand and Seal of one or more Juſtices, before whom ſuch Conviction ſhall be, one half to the Poor of the Pariſh where the Offence is committed, and the other to the Informer. *Ibid.*

Miſde-

Misdemeanors. *See* Good Behaviour.

A general Warrant for the same, returnable before a particular Justice.

One Justice. To the Constable, &c.

THESE are (in his Majesty's Name) to command you, That you do cause A. B. *of* C. *to come before me, to answer unto such Matters of Misdemeanor as (on his Majesty's Behalf) shall be objected against him, by* D. E. *for assaulting, beating and bruising him without Provocation, as he hath made Oath; and farther, to do and receive as to Justice doth appertain. Hereof fail not at your Perils. Given under my Hand and Seal,* &c. Or Thus:

THESE are to will and require you, and (in His Majesty's Name) straightly to charge and command you, and either of you, that immediately upon the Sight hereof (or upon Thursday *next at Two of the Clock in the Afternoon) you bring* A. B. *of your said Town, Barber, before me, to answer to such Matters of Misdemeanor as (on his Majesty's Behalf) shall be objected against him, by* D. B. *for assaulting and beating him, as he hath made Oath; And hereof fail not at your Perils. Given under,* &c.

One sent a Challenge by another to fight; they were both indicted for Misdemeanour, and fined *One Hundred Pounds* apiece, and committed for a Month without Bail, and were to make a publick Recantation as the Court should direct, and to be of the Good Behaviour for 7 Years. *Sid.* 186.

A Man and his Wife disagreeing, she applied herself to one *Golding* a Parson, and offered him *Forty Shillings* to whip her Husband. The Parson undertook it, and came to the House in Woman's Cloaths, and to the Chamber where her Husband was, and endeavoured to whip him with a Rod; in striving they were both hurt; and the Parson run away from the Husband, who died in a little Time after this Scuffle; and this being proved, the Wife and the Parson were each of them fined *Five Hundred Pounds. Popb.* 129.

Sir *G. S.* was indicted at Common Law for a Misdemeanour, viz. For shewing himself naked in a Balcony in *Covent-Garden*: He confess'd the Indictment, was fined 2000 Marks, and to be committed for a Week without Bail, and to be of the Good Behaviour for three Years. *Sid.* 168.

Another was indicted for Seducing an Apprentice to a Bawdy-House, and causing him to spend his Master's Money. *Sid.* 208.

Another for intending to kill the Master of the Rolls, and offering a Person *One Hundred Pound* to do it: He was fined 1000 Marks, to be imprisoned three Months without Bail, and to be of Good Behaviour during Life. *Sid.* 231.

Another for reading a Release to an illiterate Man in other Words than it was written; which he sealed.

Miſpriſion of Treaſon. *See* Treaſon.

MISPRISION of Treaſon, is, where one knoweth that another hath committed Treaſon or Felony, but was not conſenting to it, and yet conceals the Offender.

If he knoweth of the Treaſon *before* 'tis committed, and aſſents to it, then he is a principal Traitor.

So if he receive and comfort a Traitor, knowing him to be ſo.

Concealing Treaſon, was Treaſon by the Common Law; but now by the Statute of 1 and 2 *Mar. cap.* 10, 'tis declared to be Miſpriſion.

Forging Foreign Money, is Miſpriſion of Treaſon. 14 *Eliz. cap.* 3.

The Judgment, in Miſpriſion of Treaſon, is Forfeiture of Goods forever; Forfeiture of Profits of Land during Life, and Impriſonment during Life.

By the Common Law, concealing a Felony, or procuring the Concealment, or compounding it, was Miſpriſion of Felony.

But if a Man knows that a Felony is committed, and taketh his Goods again, 'tis no Offence, unleſs he taketh them, or other Amends, not to proſecute; and then 'tis called *Theft-bote*, which is an Offence more than a Miſpriſion of Felony, becauſe 'tis more than a Concealment of the Felon.

But the Puniſhment is the ſame in both Caſes, *viz.* Fine and Impriſonment, if in a common Perſon; if in an Officer, Fine; and tho' paid, Commitment for a Year.

Other Miſpriſions, *viz.* A Grand Juror, diſcovering the Perſons indicted, or Evidence; puniſhable by Fine and Impriſonment.

Any Perſon aſſaulting a Judge, the like Puniſhment.

Abuſing a Juror for giving a Verdict againſt the Offender, the like Puniſhment.

Reſcuing a Priſoner from the Bar of *B. R.* loſes his Right Hand, Goods, &c. Profits of Lands during Life, and perpetual Impriſonment.

Striking, during the Sitting the Courts at *Weſtminſter* in Preſence of the Court, or drawing a Weapon, the like Puniſhment.

Drawing a Weapon in Preſence of thoſe Courts, or before the Judge of Aſſize, upon any Judge or Juſtice, tho' no Stroke given, the like Puniſhment.

Striking in the Preſence of the King, if Blood is drawn, Loſs of Right Hand, and perpetual Impriſonment, *per* 32 *H.* 8. *cap.* 12.

Tho' Juſtices of Peace are not impower'd by their Commiſſion, or by any Statutes, to hear and determine theſe Offences; yet ſince 'tis againſt the Peace, they may cauſe the Offenders to be taken, and two Juſtices may take Informations upon Oath againſt ſuch Perſons, and put it into Writing, and bind the Witneſſes into a Recognizance to proſecute and give Evidence at the Aſſizes, &c.

Money

MONEY.

IF any refuſe lawful Money in Payment, he may be compelled by the Officer of the Place to receive it, and be committed or puniſhed as he thinks fit; and if an Officer refuſe it, a Juſtice may puniſh him at Diſcretion. 19 *H.* 7. *cap.* 5.

MITTIMUS.

MITTIMUS muſt be to the Common Goal, by 23 *H.* 8. *cap.* 2. It muſt be under Seal. It muſt contain the Cauſe of Commitment. It muſt have an apt Concluſion, (*viz.* There to remain till delivered by due Courſe of Law;) or elſe the Warrant is void.

A Mittimus for Whores.

Kent, *ſs.* To the Keeper, *&c.*

WHEREAS *the Perſons here under-named are of Evil Fame, and are accuſed for reſorting to Houſes, reputed Houſes of common Bawdry: Theſe are therefore, in his Majeſty's Name, to charge and command you, That preſently upon ſight hereof, you receive and take them into your Cuſtody, and them ſafe to keep until they ſhall be thence diſcharged by due Courſe of Law. Hereof fail you not. Given under my Hand and Seal this,* &c.

MURDER.

IS the Killing a Perſon within the Realm upon *Malice Fore-thought*, the Death enſuing within a Year and a Day. *H. P. C. Fol.* 53.

But this Crime is aggravated by the Quality and Condition of the Perſon who commits it; as where a *Maid-Servant* and a *Stranger* conſpired to rob the *Miſtreſs*, and in the Night-time the Servant let the other into the Houſe, and lighted him to her Miſtreſſes Bed, where he killed her, the Servant neither doing or ſaying any Thing, but only held the Candle: This is Murder in the *Stranger*, and Petty-Treaſon in the *Servant*. *Moor* 91. *Dyer* 128.

So where the Wife and her Servant conſpired to kill the Huſband, and appointed both Time and Place, and the Servant alone in the Abſence of the Wife, killed him; this is Petit-Treaſon in both: But if he had been killed by a Stranger, the Wife ſhould be hanged, and not burnt, becauſe ſhe cannot be guilty of Petit-Treaſon where the Principal is only guilty of Murder.

This

This Offence was always puniſhed with the Death of the Offender.

The Place where the Stroke was given muſt be ſet forth in the Indictment; and therefore it is not ſufficient to ſay, That he aſſaulted the Perſon, and that he gave him a mortal Wound, without ſhewing *in what Place*. 1 *Bulſt.* 203.

Two of my Lord *Dorſet*'s Servants quarrelling at the Fire, went out and fought in the Park, *juxta Knowl*, and one was killed; for which the other was indicted, but it did not ſet forth in what Place or County the Park was, neither was the Word *percuſſit* in the Indictment, but *dedid vulnus*; and for theſe Reaſons it was quaſhed. 1 *Bulſt.* 12.

So when it was *percuſſit cum gladio*, but did not ſay, *Felonice*. *Cro. Eliz.* 193.

The Stroke was laid to be *ſuper ſiniſtram partem Lateris*, and did not ſhew in what Part; and this was held certain enough, becauſe 'tis well underſtood what is meant by the Word *Latus*; but where it was *cum pugione in ſiniſta parte collis percuſſit*, this was held ill, for it ſhould have been *Colli*.

So where the Stroke was alledged to be given at *D.* whereof the Plaintiff died at *S.* & *ſic apud D.* he killed him; this is impoſſible. *Noy* 45.

Then as to the *Day* the Indictment was, That the Defendant aſſaulted the Perſon on the 12th Day of *February* at *Oxford*, *adtunc & ibid. dans ei* a mortal Wound, &c. and that he languiſhed from the 12th *uſque ad* 13 *Feb.* on which 13th Day he died; and ſo the ſaid *R. C.* on the 13th Day did kill him; This is impoſſible, becauſe the Word *uſque* excludes the 13th Day. 1 *Bulſt.* 203.

But where it was, that on the 22d of *Januarii*, &c. *percuſſet* the Perſon at *B. dans ei plagem mortalem*, &c. of which he died the 23d of *Feb.* following, and ſo he murdered him, *die* &c. *præd'* that muſt refer to the Day laſt mentioned; for otherwiſe there being two Days mentioned, it would be incertain to which it ſhould relate, *viz.* either to the Day of the Stroke, or Death. *Cro. Eliz.* 739.

But to return to the Word *(Murder)* as above defined, we may examine, *viz.* 1. What is a Killing.

And this may be by ſeveral Means, as by laying a ſick Man in the Cold; hiding an Infant under Leaves of Trees, which is afterwards deſtroyed by Vermin; ſtirring up a Dog, or any other Beaſt accuſtomed to bite or do Miſchief, knowing it to be ſuch.

The Perſon killed, muſt be *in rerum Naturæ*; for if a Woman take Poiſon to deſtroy the Child within her, being Quick, 'tis not Felony, but a great Miſpriſion, unleſs born, and afterwards dies through this Occaſion.

Adviſing to deſtroy it before born, and afterwards 'tis born and deſtroyed, the Adviſer is Acceſſary.

3. If a Perſon be wounded, and dye beyond Sea, the Offender cannot be puniſhed at common Law, but may before the Conſtable and Marſhal.

Wounded,

Wounded, and dying upon the Sea, before the Admiral of *England*, by Virtue of the Statute of 22 *H.* 8. *cap.* 13.

Striking on the Sea, and dying, *infra Corpus Comitatus*, is an Offence which my Lord *Hales* tells us, is not punishable. *H. P. C. fol.* 54. and yet 'tis not denied, but that the Killing shall have Relation to the Death, and not to the Stroke. 4 *Rep.* 41.

Striking in one County, and the Person dieth in another, the Trial shall be where he died.

But accessary in one County to a Murder done in another, when the Principal is convicted, and that is certified, may be tried in the County where Accessary. *H. P. C.* 54.

Malice Implied, may be collected several Ways, *viz.* by willful Poisoning; by riding into a Fair with an unruly Horse, knowing him to be so, on Purpose to do Mischief, and Death ensues. *Moor* 754. Throwing a Stone over an House against a Multitude of People, These and such like are unlawful Acts; and it appears plainly, that the Person had an evil Intention of doing Hurt to some Body, tho' not against any Person in particular; and this implies Malice.

A Smith struck his Servant with an Iron Bar, and killed him: So if a Father correct his Son, or a School-Master his Scholar, with such Instruments as may probably kill them, and Death ensues, 'tis Murder.

So if a Smith runs a hot Iron into his Servant's Belly, or a Mother kicks and stamps on her Child's Belly, and Death ensues: In all these Cases 'tis Murder, and the Law supplieth the Malice in Persons who are guilty.

But in a late Case, we are told, This is Express Malice, *viz.* If a Man assaults another with a dangerous Weapon, but without any Provocation, 'tis express Malice from the Nature of the Fact, which is cruel.

Killing with such a Provocation as will extenuate the Killing from Murder to Manslaughter, must be where there is some actual Violence or Striking; for Words alone are no Manner of Provocation, though they are never so opprobrious, nor any affronting Gestures, though never so reproachful.

But if angry Words pass between two Persons, and then one pulls the other by the Nose, or fillips him with his Finger, and the Person thus assaulted kills the other with a Sword, this is but Manslaughter, because the Peace was broken by the Deceased, and with a great Affront to him upon whom he made the Assault.

And here it may not be improper to mention *Mawgridge*'s Case: He threw a Bottle at Mr. *Cope*, which struck him on the Head, and immediately drew his Sword and gave him a mortal Wound, but between the Time of drawing the Sword and giving the Wound, Mr. *Cope* threw another Bottle at *Mawgridge*, with which he broke his Head, but Mr. *Cope* had no Sword drawn, and never spoke a Word afterwards: This was adjudged Murder, for it was out of Malice

Malice prepenſed; for the throwing the firſt Bottle was with Deſign to do Miſchief, and the Drawing his Sword was to proſecute that Deſign; and though Mr. *Cope* threw another Bottle at *Mansridge* before the Wound was given, that will not alter the Caſe, for it was juſtifiable in him, and in his own Defence.

If two Men fall out, and give each foul Words, and a third Perſon ſtrikes one of them and kills him, this is Murder.

So if *A.* aſſaults *B.* without any Provocation, and draws his Sword and runs at him, and then *B.* draws his Sword in his own Defence, and is killed by *A.* 'tis Murder.

But if two Men fight, and another Perſon coming to aſſiſt one of them, killeth the other, this is *Manſlaughter*, becauſe there was an actual fighting and ſtriving with Violence between the other two.

Yet if a Man is unduly arreſted or deprived of his Liberty, and makes no Reſiſtance, and another reſcuing him, kills a Man, this is Murder, for Injuries muſt not be redreſſed by Force. *Keeling* 60, 61.

If one who is wounded neglects his Cure, or lives diſorderly; yet if he die of thoſe Wounds, 'tis Murder or Manſlaughter, as the Caſe ſhall appear upon the Evidence againſt the Criminal, becauſe the Wounds were the principal Cauſe of the Death which enſued. *Keeling* 26.

Stabbed without Weapon drawn. 1 *Jac. cap.* 8.

Five Years after the making this Statute it was held, That if the Perſon killed had a *Stick* in his Hand, it ſhall be accounted *a Weapon drawn*.

And ſince that Time there have been many nice Expoſitions of this Law; the Words are, *viz.* Stabbing another that hath not *then* any Weapon drawn, or that hath not *then firſt ſtricken* the Party which ſtabs, and the Perſon dying within ſix Months then next following, this is Murder, and without *Clergy*. There is a *Proviſo*, That the Act ſhall not extend to one who kills another *Se Defendendo*, or by Misfortune; nor to one who in keeping the Peace, or chaſtiſing his Servant or Child, ſhall unwillingly commit Manſlaughter.

Anno 9. *Car.* 1. One *Byard* ſtruck *Ward*, who ſtruck again, and then *Byard* ſtabbed the other with a Knife; the Queſtion was, Whether he ſhould have his *Clergy*, becauſe he was ſtruck by the other before he ſtabbed him? And adjudged he ſhould not, becauſe the Words *firſt ſtricken* in the Statute, ſhall be conſtrued the very firſt Stroke given by the Party ſlain at the Beginning of the Quarrel and not any Stroke before the Stab.

So where two quarrel, one throws a Pot at the other, which miſſing him, the other drew his Sword and killed him; and being indicted on the Statute of Stabbing, the Matter was found ſpecially, and the Doubt did ariſe upon the Words of the Statute, *viz.* He that ſtabs another, not having a Weapon *then drawn*, &c. whether the Particle *then* ſhould relate to the Beginning of the Quarrel, or to the Time of the Stroke given? And by the better Opinion, it

was

was held to extend to the Quarrel; for if in fighting one lets his Sword fall, or throws it at another, and is *then* killed; 'tis plain he had not *then* a Weapon, *viz.* at the Time of the Wound given; but yet, because it was once drawn during the Quarrel, the Prisoner shall not be excluded his Clergy. 3 *Levintz* 255. 4 *Rep.* 51. 9 *Rep.* 66.

Anno 15 *Car.* One *David Williams*, walking on St. *David's* Day with a Leek in his Hat, was jeered by a Porter, and thereupon *Williams* threw a Hammer out of *Marbury's* Shop at the Porter, with an Intention to hit him; but he missed the Porter and struck *Marbury*, of which he died: The Question was, Whether this was within the Statute of Stabbing, for *Marbury* had no *Weapon drawn*? And adjudged, that it was not. There is no Reason given for this Judgment by Justice *Jones*, who reports the Case; but I suppose it might be, because *Williams* had no Anger or Displeasure against *Marbury*, and so was within the *Proviso* of the Statute, which exempts any killing by *Misfortune*, as this seemed to be. *Jones* 432.

But it seems *Williams* was not indicted for Murder, but for Manslaughter, on the Statute of Stabbing; if he had been indicted for Murder, he ought to have been found guilty, for the Provocation was not so great as to excite him to kill another. *Keeling* 133.

If the Indictment is that *R.* stabbed the Person, and that *P.* and *H.* were present and abetting, and they are all found guilty. *R.* shall be hanged, but the other Persons shall have their Clergy, for if it can be known who gave the Stab, then tho' in Judgment of Law all those who were present and abetting are Principals, yet the Statute being penal, ought to be extended only to him *who actually stabbed* the other. *Allen* 44.

A Constable killed, or any assisting him in Execution of his Office, the like of any other Magistrates.

This is Murder, but then they must know he was Constable, and coming to keep the Peace, and for that Purpose he ought to command them in the King's Name to keep the Peace, otherwise 'tis but Manslaughter in him that kills him.

Officer kill'd in the Execution of a lawful Warrant, tho' he doth not shew it, being demanded, and though there is a Mistake or Error in the Process, but then he must be doing what is warranted by Law, for if he open a Window to arrest, *&c.* and is killed, 'tis only Manslaughter. *March* 3. 1 *Cro.* 132, 183. 4 *Rep.* 91. *Cro. Car.* 386, 537.

An Officer had a Warrant to arrest Sir *H. Ferrers*, Knight, but he was a *Baronet*, and never Knighted, and the Officer was killed in executing his Warrant; This was held to be Manslaughter, because he had no Authority to arrest the Baronet, and so his Warrant was illegal. *Cro. Car.* 378.

All who are present and assisting a Person arrested, knowing of the Arrest, are principal Murderers if the Officer is killed. *Ibid.* 100.

A Collector of the Chimney-Money diſtrained a Silver Cup; the Maid-Servant, in the Abſence of the Maſter, hinder'd him from going out, for which he beat her againſt the Poſt and killed her; this was held to be *Manſlaughter*. 1 *Vent.* 216.

Several came to rob a Park, one kills the Keeper, 'tis Murder in the other, if in the ſame Park, 'tho' at a Diſtance when the Fact was done, becauſe their Entry was unlawful, and from thence Malice may be implied. *Palm* 35. *Jones* 429. 2 *Roll. Rep.* 120, *Moor* 86.

Several Owlers had loaded Wool to tranſport it, the King's Officers oppoſed them in the Night, one of the Owlers ſhot out of a Fuzee, and killed one of his own Company; this was held by all the Judges to be no Murder.

For it was not found that he diſcharged the Gun againſt the King's Officers, tho' it might be reaſonably intended he did, becauſe he was armed, and in Proſecution of an unlawful Act in which he was obſtructed; and in ſuch Caſe, if he had killed one of his own Party, though by Accident, it had been Murder in him, but not in the reſt, unleſs they knew his Deſign was to kill the Man.

One aſſaults another with an Intention to rob him, and being reſiſted, kills the Perſon he aſſaulted, 'its Murder.

If a Goaler by hard Uſage, kills a Priſoner, the like Offence. And executing Marſhal Law in Time of Peace, it's Murder.

Malice may be collected out of Circumſtances, ſhewing the Temper of the Perſon killing.

As if two fight in a Tavern, and are parted, and one of them alledgeth the Inconveniency of the Place to fight in, and they appoint another Place to fight preſently, where one is killed; it's *Murder*, becauſe Reaſon had ſo far the Maſtery of his Paſſion, as to judge of the Conveniency of the Place. *Sid.* 277. 1 *Bulſt.* 86. 2 *Bulſt.* 171.

If two fall out in the Morning, and fight in the Afternoon, and one is killed, 'tis *Murder*; for there being Time to allay the ſudden Heat, the ſecond Meeting muſt be *Malice*.

But ſome Provocations are ſo violent, that they mitigate the Crime; As where two Boys fought near their Fathers Houſe, and one being Bloody, complain'd to his Father, who was then a Mile off, but he went and beat the Boy, ſo that he died; It is not Murder. *Godb.* 182. 2 *Cro.* 296.

So where the Huſband found another in the Act of Adultery with his Wife. 1 *Vent.* 158.

Malice Expreſs, may appear in the Principal; As, if a Man commits a Reſolution to do an unlawful Act, as to rob an Orchard, and Death enſueth, 'tis *Murder*.

Malice between two, they fight, 'tho' the Deceaſed give the firſt Stroke, 'tis Murder in the other. 1 *Bulſt.* 86. 3 *Bulſt.* 171. 172. 1 *Roll. Rep.* 360.

If the Deceaſed challengeth another, who refuſeth to fight, but afterwards upon Importunity meeteth and kills him, 'tis Murder.

All who are preſent and aſſiſting, are Principals. *Sid.* 160.

If they are not preſent, yet if they come to do an unlawful Act, and are in the ſame Houſe or Place, though at a Diſtance, 'tis Murder in them.

Tho' Death not intended, if the Act be deliberate and malicious, and Death enſueth, 'tis Murder: As the Keeper of a Park finding a Boy ſtealing of Wood, tied him to a Horſe's Tail, which in running away killed the Boy; this was Murder, becauſe a deliberate Act. *Cro. Car. Helloway's* Caſe 131. *Jones* 198. *Palm.* 547.

Malice between two, the one ſtriketh at the other, and killeth a third Perſon, 'tis Murder; but if no Malice between them, 'tis Manſlaughter.

Malice between two, and the one aſſaulting the other, kills his Servant coming to his Defence, Murder. *Dyer* 128. *b.*

One buys Poiſon to kill another, and a third Perſon eats it and dies, Murder. *Plowd. Com.* 473, 476.

Two or more come to do an unlawful Act, one of them kills a Man, 'tis Murder in both, if abetting or ready to abet, tho' but looking on.

But then the Abettor muſt know the malicious Deſign of the other, and the killing muſt be in Purſuance of that unlawful Act, and not collatoral to it.

And not only ſo, but it muſt be done deliberately; for if 'tis upon a ſudden Affray, and Death enſues, 'tis but Manſlaughter.

Beſides, the unlawful Act ought to be ſuch which tends to the Hurt of another, either immediately, or by Conſequence: as if Perſons aſſemble in a riotous Manner with offenſive Weapons, and one is killed, 'tis Murder.

Two having Malice, fight, the Servant of one of them not knowing the Malice, &c. killeth the other: this is Murder in the Maſter, and Manſlaughter in the Servant.

One commands another to kill a third Perſon with a Gun, he kills him, not by ſhooting, but with a Sword; 'tis Murder in the Perſon commanding.

But if by Miſtake he kills another Perſon, 'tis Murder in him killing, and the Perſon commanding is not ſo much as Acceſſary to it.

If one command another only to beat a third Perſon, and upon this Beating, Death enſueth, 'tis *Murder* in the Perſon commanded, to which he who commands is likewiſe Acceſſary, becauſe Death enſued upon that unlawful Act of Beating.

In the War with *France*, Mr. *Manſell* ſeized ſome *French* Goods at Sea, and brought them home; and one *Herbert* pretending to be Deputy Admiral, came with Force to Mr. *Manſell's* Houſe, and aſſaulted thoſe who kept Poſſeſſion of the Goods; a Gentlewoman came to the Door without any Weapon, and was killed with a Stone,

which

which was thrown by Mr. *Herbert*'s Servant at another; and it was held, that this was Murder in Mr. *Herbert*, and all his Company, for the Person was killed in Defence of the Possession of the House, and that made it Murder, tho' there was no Malice prepensed. Serjeant *Moor*, who reports this Case, says, That the Person killed was Aunt to both the Gentlemen, and persuaded them to be Friends. *Moor* 87. *Dyer* 128. *b.*

The Judgment in Murder must be the common and ordinary Judgment allowed by Law; and it cannot be, that the Offender shall be hanged in Chains, tho' for a notorious Murder; as for stabbing the Duke of *Buckingham* by *E.* but when he is dead, the Body is at the King's Disposal. *Het.* 126.

By the Statute of 24 *H.* 8. *c.* 5. 'tis enacted, That if any Person should be indicted for the Death of another *attempting* to murder, rob, or commit Burglary, and 'tis so found by Verdict, he shall forfeit no Lands or Goods, but shall be acquitted.

A Man in the Night-Time *attempted* to break open the Door of a Dwelling-House, and one who was only a Lodger would have dissuaded him from it; who thereupon broke the Windows, and thrust his Rapier at the Lodger, who with a Spit wounded the Rogue in the Eye, of which Wound he died: This was held not to be Felony, but excusable by this Statute, though it was done by a Lodger, and not by the Master of the House, in Defence of his Possession. *Cro. Car.* 544.

I shall add but one Case more to this Title, because 'tis a very strange one, *viz.* Husband and Wife had lived many Years together, and became very poor; the Man told his Wife, he was weary of living, and that he would kill himself; the Woman replied, She would die with him: Thereupon he desired her to buy some Ratsbane, and they would put it into Ale, and drink it together: She bought it, and put it into the Cup, and both drank. The Wife considering what she had done, took Sallad-Oyl and expelled the Poison by vomiting, and recovered, and the Man died. The Question was, Whether this was Murder in the Wife? I do not find it was resolved. *Moor* 754.

By a Statute made in the Reign of King *James*, 'tis declared, That where a Bastard-Child shall be *concealed*, it shall be taken to be murdered; so that by this Statute, *Concealment* of the Birth of a Bastard is made the Crime. Now, if a Woman is with Child of a Bastard, and going well to Bed, is taken with travailing Pains in the Night, and knocks for some Body to assist her, but is delivered without any Help, and then puts the Child in a Trunk, and conceals it for a Day; if there was no Sign of any Hurt upon the Body of the Child, 'tis not Murder within that Statute, because at first there was no Intent to *conceal* it; and there being no visible Sign of Hurt, it shall be intended the Child was dead-born; but if there had been an Intent to conceal it, then 'tis Murder, tho' the Child was not born alive.

A Condition of a Recognizance to prefer a Bill of Indictment, and to give Evidence at the next General Goal-Delivery, alias Aſſizes, to both Juries in Caſe of Murder.

Vide Title Recognizance.

THE Condition of this Recognizance is ſuch, *That if the above-bound* W. B. *do perſonally appear before His Majeſty's Juſtices of Goal-Delivery, at the next General Goal-Delivery to be holden for the within-named County of* Kent, *and do then and there prefer, or cauſe to be preferred, a Bill of Indictment againſt* A. B. C. D. E. F. G. H. *and* J. K. *for the Murder of* L. M. *Gent. deceaſed, wherewith the ſaid* A. B. *and* C. D. *are chargeable before the within-named Juſtice, and with Suſpicion whereof the ſaid* E. F. G. H. J. K. *are alſo charged before the Juſtice aforeſaid, and do alſo then and there give ſuch Evidence as he knoweth concerning the Murder aforeſaid, as well to the Jurors as ſhall inquire thereof for our Sovereign Lord the King, as alſo to the Jurors that ſhall paſs upon the Trial of the ſaid* A. B. C. D. E. F. G. H. J. K. *or any of them for the ſame: Then this Recognizance ſhall be void, or elſe it ſhall ſtand in full Force and Virtue.*

A Condition to prefer a Bill, and give Evidence at Aſſizes.

THE Condition of this Recognizance is ſuch, That if the above-bounden *A. B.* do perſonally appear before his Majeſty's Juſtices aſſigned to keep the Peace in the above-named County of *C.* at the next General Seſſions of the Peace to be holden for the ſaid County, at the Caſtle of *C.* in the County aforeſaid, and do then and there prefer, or cauſe to be preferred, one or more Bill or Bills of Indictment, againſt *M. W.* of, *&c.* and do then and there alſo give ſuch Evidence as he knoweth concerning the ſame, againſt the ſaid *M. W.* to the Jurors that ſhall inquire thereof on the Behalf of our Lord the King that now is; That then this Recognizance ſhall be void, and of no Effect, or elſe it ſhall ſtand in full Force.

An Indictment for Murder with a Sword.

Suſſex, to wit, THE Jurors, *&c.* That *J. O.* late of *H.* in the ſaid County, Yeoman, not having God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil, on the 6th Day of *Auguſt*, in the 9th Year of the Reign, *&c.* about ſeven of the Clock in the Evening of the ſame Day, at *H.* aforeſaid in the ſaid County, by Force and Arms, did make an Aſſault in and upon one *T. P.* then and there being in the Peace of God, and of our ſaid Sovereign Lord the King, and that the ſaid *J. O.* at *H.* aforeſaid, in the ſaid County, did feloniouſly, wilfully, and of his Malice forethought, ſtrike and wound the ſaid *T. P.* with a Sword, of the Value of *Three Shillings*, which the ſaid *J. O.* had and held then and

‡ *If the Word (there) had been omitted, the Indictment would have been ill. Hett.* 35.

and ‡ there drawn in his Right Hand, and did feloniously, and of his Malice forethought at *H.* aforesaid, in the said County, give to the said *T. P.* one mortal Wound with the Sword aforesaid, in and upon the right Part of his Thigh, of the Length of three Inches, and of the Depth of two Inches, of which said mortal Wound the said *T. P.* at *H.* aforesaid in the said County † languished, and languishing lived from the said 6th Day of *August* in the Year abovementioned, to the 9th Day of *August* in the Year abovementioned, the said *T. P.* at *H.* aforesaid, in the said County, died of that mortal Wound; and so the said Jurors upon their Oath aforesaid say, that the said *J. O.* on the said 9th Day of *August*, in the Year above-mentioned, at *H.* aforesaid, in the said County, did feloniously, wilfully, and of his Malice forethought, kill and murder the said *T. P.* in the Manner and Form aforesaid, against the Peace of our said Sovereign Lord the King, his Crown and Dignity."

† *If he died presently, then say, instantly died.*

Stat. 2 *Geo.* 2. c. 21. For the preventing of any Failure of Justice, and taking away all Doubts concerning the Trial of Murders in the Cases after-mentioned, it is enacted, That where any Person after the 24th of *June*, 1729, shall be feloniously stricken or poisoned upon the Sea, or at any Place out of *England*, and shall die of the same Stroke or Poisoning in *England*; or where any Person shall be feloniously stricken or poisoned at any Place within *England*, and shall die of such Stroke or Poisoning upon the Sea, or at any Place out of *England*; in either of the said Cases, an Indictment thereof found by Jurors of the County in that Part of *England*, in which such Death, Stroke or Poisoning shall happen respectively, whether it be found before any Coroner, upon View of such dead Body, or before the Justices of the Peace, or other Justices or Commissioners, who shall have Authority to enquire of Murders, shall be as good and effectual in the Law, as well against the Principals in such Murder, as the Accessaries thereto, as if such felonious Stroke or Poisoning, and Death thereby ensuing, and the Offence of such Accessaries had happened in the same County, where such Indictment shall be found; and also any superior Court, shall proceed on the same in all Points, as well against the Principals in any such Murder, as the Accessaries thereto, as they might or ought to do, in case such felonious Stroke or Poisoning, and Death thereby ensuing, and the Offence of such Accessaries had happen'd in the same County, where such Indictment shall be found; and every such Offender, as well Principal as Accessary, shall answer unto their Arraignments, and have the like Defences, Advantages and Exceptions, (except Challenges for the Hundred) and shall receive the like Trial, Judgment, Order and Execution, and suffer such Forfeitures, Pains and Penalties as they ought

to

to do, if ſuch felonious Stroke or Poiſoning, and Death thereby enſuing, and the Offence of ſuch Acceſſaries had happen'd in the ſame County, where ſuch Indictment ſhall be found.

NIGHT WALKERS.

IF ſuſpected to be of ill Fame, may be apprehended, *viz.* Such who ſleep by Day, and haunt Baudy-Houſes at Night, or keep ſuſpicious Company; thoſe may be compelled to find Sureties for good Behaviour. 13 *H.* 7. *cap.* 10. *Popham.* 208. *Latch* 199.

They may be indicted at the Seſſions. *Poph.* 268. *Beald.* 199.

NUSANCE.

MEN may meet in a peaceable Manner, and with proper Inſtruments to remove a Nuſance, but not in greater Numbers than are needful for that Purpoſe.

Upon an Indictment for a Nuſance, the Court never admits the Perſon to a ſmall Fine till 'tis removed, and Affidavit made thereof, or elſe certified by two Juſtices; neither ought the Defendant to take any Exceptions to the Indictment, till he hath pleaded to it.

An Indictment for a Nuſance in a Horſeway, was quaſh'd; becauſe it ought to have been the King's Highway, or the Highway. *Mich.* 29 *El. B. R. Cro. El.* 63. *Co. Litt.* 56. *a.*

'Tis a Nuſance to erect a Gate croſs a Highway, tho' the Gate is eaſy to be opened, any Man may break it or cut it. *Cro. Car.* 185. *Cro. Car.* 133. *Jones's Reports* 221. *Jones* and *Harwood.* So 'tis to erect a Dam on his own Land and Part of it on another's Land; and therefore the other Perſon may pull his Part down tho' the Owner's Part fall.

In Indictments for Nuſances, the Place in which the Nuſance complain'd of was done, is to be expreſs'd.

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 other that will ſue; the other Moiety to the King, to be ſued for in any Court of Record. *Dalt.*

Alehouſes, Bawdy-houſes, and Brew-houſes; Annoyances in Bridges, Highways and Rivers; Eves-Droppers, Gaming-houſes, Scolds common. All theſe are publick Nuſances, 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.

OATHS

OATHS.

AN Oath is an Affirmation or Denial of any Thing before one or more, who have Authority to give the same for the Advancement of Truth and Right; calling God to Witness that the Testimony is true; and 'tis called a Corporal Oath, because he toucheth the Scripture with his Hand.

There were four Sorts of Oaths required of Subjects, to testify their Allegiance to the King.

The First was an Oath at Common Law, taken in the Court-Leet.

The Second was by Act of Parliament, 28 *H.* 8. *cap.* 7. which concerned the Supremacy.

The Third was *per* Stat. 1 *Eliz. cap.* 1. which altered the Oath of Supremacy.

The Fourth was the Oath of Allegiance, *per* Stat. 6 and 7. *Jac.* and upon this last Act the Lord *Vaux* was indicted, he refusing to take the Oath, and being convicted on his own Confession, had Judgment of *Præmunire*.

If an Oath be taken before a Magistrate who hath no Authority to administer, 'tis void; but if 'tis voluntary and false, the Offender was punished formerly in the *Star-Chamber*; and if 'tis in a spiritual Matter, *viz.* If a Woman swear to marry a Man, and doth not, she may be punished in the Ecclesiastical Court, *pro lesione Fidei*. *Cro. Eliz.* 469. *Knight* verf. *Rostworth*.

Peers are sworn as Witnesses, in *Juramentum probationis*: But when they are Defendants, they answer upon their Honour. *Jones* 154. the Earl of *Lincoln*'s Case.

The Oaths of Allegiance and Supremacy were injoined by 1 *Eliz.* and 3 *Jac.* but are now abrogated by the Statute of 1 *Will. & Mar. cap.* 8. and these following Oaths injoined, *viz.*

I *A. B. do* sincerely Promise and Swear, That I will be faithful, and bear true Allegiance to his Majesty King GEORGE. *So help me God.*

I *A. B. do Swear, That I do from my Heart abhor, detest and abjure, as impious and heretical, that damnable Doctrine and Position, that Princes excommunicated or deprived by the Pope, or any Authority of the See of* Rome, *may be deposed or murdered 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, Preeminence or Authority, Ecclesiastical or Spiritual, within this Realm.* So help me God.

Two or more Justices, (*Quorum unus*) may send Warrants to Constables to summon any above Eighteen Years to take the said Oaths; which being lawfully tendered, and refused, the Offender may

may be committed to Goal, for three Months, without Bail, unleſs he pay *Forty Shillings*, or any leſſer Sum the Perſon tendring ſhall think fit, to the Uſe of the Poor where the Offender did laſt reſide.

If after the End of Three Months, he ſtill refuſe, he ſhall be committed for Six Months, unleſs he pay *Five Pounds*, and under *Ten Pounds*; and muſt be bound with two Sureties to be of the good Behaviour, and to appear at next Aſſizes, and there the Oath ſhall be tendred again in open Court; and if he refuſe, *&c.* ſhall be incapable of any Office, and be of good Behaviour till he take the Oaths.

And if he refuſe to ſubſcribe the Declaration mentioned in the Statute of 30 *Car.* 2. *cap.* 1. ſhall be taken to be a Popiſh Recuſant.

The Declaration in the Statute of 30 Car. 2. Cap. 1.

I A. D. *do ſolemnly and ſincerely, in the Preſence of God, profeſs, teſtify and declare, That I do believe, that in the Sacrament of the Lord's 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 from this Declaration, or any Part thereof, altho' the Pope, or any other Perſon or Perſons, or Power whatſoever, ſhould diſpence with, or annul the ſame, or declare that it was null and void from the Beginning.*

[*Note*, That before a Magiſtrate, or other Officer, enters upon his Office, he firſt takes the Oaths of the 1ſt of *Wm. & Mary, cap.* 8. as before ſet down; and then he ſubſcribes this Declaration, 30 *Car.* 2. *Cap.* 1.

By 7 & 8 *Will. cap.* 27. If after 1 May 1696, any refuſe to take the ſaid Oaths when tendred, or to appear when ſummoned, ſhall be liable to the Penalties of Popiſh Recuſants Convict.

Shall not give a Vote at the Election of Members for Parliament.

The Perſon tendring, may mitigate the Penalty of *Forty Shillings*, *per* 1 *Will.*

By 7 & 8 *Will.* upon Refuſal to ſwear, or to appear upon Summons, the Juſtice muſt enter in Parchment the Names and Abode of

the Perſons, &c. with the Time of the Tender, and certify it to the Aſſizes or Seſſions, who may certify it to the *Exchequer*, who may iſſue Proceſs againſt Goods and Lands of the Offender.

By the ſame Statute, 'tis a *Præmunire* for any Lawyer to practiſe after 25th of May 1696, not having before taken the Oaths, and made and ſubſcribed the Declaration. 25 *Car.* 2. *Cap.* 2.

I A. B. *do declare, That I do believe that 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.*

Lords Spiritual and Temporal muſt not ſit nor vote before they take the ſaid Oaths, and make and ſubſcribe the Declaration mentioned. 30 *Car.* 2. *Cap.* 1 *W. & M.*

Two Juſtices out of the Seſſions may tender thoſe Oaths to any Perſon of 18 Years of Age or upwards, which ſtands convicted or indicted of *Recuſancy*, or to thoſe who have not received the Sacrament twice in the Year before, &c. 3 *Jac. cap.* 4.

And now by a late Statute 'tis provided, That any two Juſtices of the Peace (*Quorum unus*) may ſummon before them ſuch Perſons whom they ſhall ſuſpect to be diſaffected to the Government, and may tender the following Oath to him; and if he refuſe to take it, then he muſt certify his Chriſtian and Sir-Name, and Place of Abode, to the next Quarter Seſſions, there to be recorded; which Record the Clerk of the Peace ſhall certify, either to the Court of *Chancery* or *King's Bench*, and there likewiſe to be recorded; and if the Perſon ſo refuſing ſhall not at the next Term or Seſſions, after ſuch Refuſal, appear in that Court where the Certificate ſhall be returned, and take and ſubſcribe the ſaid Oath, he ſhall be adjudged a Popiſh Recuſant Convict, and ſhall forfeit ſuch Penalties as ſuch a Recuſant ought to do.

Two Juſtices may ſummon any Perſon to appear at a Day and Time appointed to take the Oaths, (the Summons to be left at his Dwelling-houſe) and he not appearing, and Oath made of the Summons, the Juſtices ſhall certify it to the Seſſions; and if he doth not appear then and take the Oaths, his Name ſhall be read, and he ſhall be taken to be a Popiſh Recuſant Convict, and it ſhall be certified by the Clerk of the Peace into Chancery. See the Statutes of 2 *Geo.* 2. *c.* 31. § 3. 9 *Geo.* 2. *c.* 26. § 3. Every Perſon admitted into Office Civil or Military, is to take the Oaths within ſix Months, &c.

The Oath to be taken by every Perſon who ſhall be admitted to any Office, Civil or Military.

I A. B. *do truly and ſincerely acknowledge, profeſs, teſtify and declare in my Conſcience, before God and the World, That our Sovereign Lord King* George *the ſecond, is lawful and rightful King of this Realm, and of all other his Majeſty's Dominions, and Countries thereunto belonging.*

A Cer-

A Certificate for one who hath taken the Oaths, and ſubſcribed the Declaration, 1 *W.* & *M. cap.* 8.

THESE *are to certify, That* A. B. *of the Pariſh of,* &c. *in the County aforeſaid, Eſq; came before his Majeſty's Juſtices of the Peace at the Seſſions held at* N. *on Wedneſday,* &c. *and then and there before the ſaid Juſtices at the ſaid Seſſions, did take the Oaths mentioned in a Statute made in the firſt Year of the Reign of the late K.* William *and Q.* Mary, *entitled,* An Act for the abrogating the Oaths of Allegiance and Supremacy, and appointing other Oaths; *and did likewiſe then and there make and ſubſcribe the Declaration mentioned in a Statute made in the* 25th *Year of the Reign of the late K.* Charles *the Second, entitled,* An Act for preventing Dangers which may happen from Popiſh Recuſants; *and that what he did then and there concerning the Premiſſes is regiſtred according to the Direction of the Act firſt above-mentioned.* Signed, *&c.* Dated, *&c.*

A Mittimus for refuſing, *&c.* and not paying the 40*s.*

To the Keeper, &c.

WE *H. P.* and *W. N.* two of his Majeſty's Juſtices of the Peace for the County aforeſaid, whereof one is of the *Quorum,* do by Virtue of our Warrant, commit to your Cuſtody the Body of *A. B.* of *D.* for refuſing to take the Oaths mentioned in a Statute made in the firſt Year of the Reign of the late K. *William* and Q. *Mary,* entitled, *An Act for abrogating,* &c. which ſaid Oaths were lawfully tendered to the ſaid *A. B.* and for that he hath refuſed to pay the Sum of *Forty Shillings* to the Poor of the Pariſh of *H.* where the ſaid *A. B.* did laſt reſide, according as appointed by the ſaid Act, requiring you the ſaid Keeper to receive the ſaid *A. B.* into your Cuſtody, and him ſafely to keep without Bail or Mainprize for the Space of three Months; and for your ſo doing this ſhall be your Warrant. Given under our Hands and Seals, *&c.*

Diſſenters are bound to take the Oaths above-mentioned, and to ſubſcribe the Declaration mentioned 30 *Car.* 2.

Juſtices in Seſſions are to tender and adminiſter the Oaths to Perſons who ſhall offer themſelves.

Thoſe Diſſenters who ſcruple taking any Oaths, muſt make and ſubſcribe a Declaration of Fidelity, and likewiſe a Profeſſion of their Belief. 1 *W. &c. cap.* 18.

The Declaration of Fidelity.

I *A. B.* do ſincerely promiſe, and ſolemnly declare before God and the World, That I will be true and faithful to King *George* IId. and I do ſolemnly profeſs and declare, That I do from my Heart abhor, deteſt and renounce, as impious and heretical, that damnable Doctrine and Poſition, that Princes excommunicated or deprived by the Pope, or any Authority of the See of *Rome,* may be depoſed or murdered 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 Power, Juriſdiction, Superiority, Pre-eminence or Authority, Eccleſiaſtical or Spiritual, within this Realm.

The Profeſſion of Belief.

I *A. B.* do profeſs Faith in God the Father, and in Jeſus Chriſt the Eternal Son, the true God, and the holy Spirit, one God bleſſed for evermore; and to acknowledge the holy Scriptures of the Old and New Teſtament to be given by Divine Inſpiration.

They muſt likewiſe make and ſubſcribe the Declaration mentioned in the Statute of 30 *Car.* 2. *cap.* 1.

Any Juſtice of Peace may at any Time, require a Diſſenter to make and ſubſcribe Declarations, and to take the Oaths or Declarations of Fidelity, (if he ſcruple the taking any Oath.)

Upon Refuſal, may commit him to Priſon, without Bail, and certify his Name in the next Seſſions, where he reſides.

If the Perſon committed ſhall, upon a ſecond Tender at the Seſſions, refuſe, *&c.* it ſhall be recorded, and he ſhall be then taken for a Popiſh Recuſant Convict.

1. *The Oath of a Bailiff or Under-Sheriff.*

I *A. B.* do ſwear, That I will not uſe or exerciſe the Office of a Bailiff, or Under-Sheriff of *D.* corruptly during the Time I ſhall remain therein; Neither will I accept, receive, or take, by any Colour, Means or Device whatſoever, or conſent to the taking any Manner of Fee or Reward of any Perſon for impanelling or returning any Inqueſt, Jury or Tales, in any Court of Record for the King, or between Party and Party, above *Two Shillings*, or the Value thereof, or ſuch Fees as are allowed and appointed for the ſame by the Laws or Ordinances of-----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.*

The Penalty is to be divided between the King and Proſecutor; and Juſtices in Seſſions have Power to hear and determine, and to award Proceſs.

2. *Oath of a Conſtable who attendeth on a Jury.*

YOU ſhall well and truly keep together every Perſon ſworn of this Jury, in ſome convenient Place, without Meat, Drink, Fire, Candle, or Lodging: You ſhall not ſuffer any Perſon whatſoever to ſpeak to them, or any of them; neither ſhall you your ſelf ſpeak to them, until ſuch Time as they be agreed of their Verdict, unleſs it be to aſk them if they be agreed of their Verdict. *So help you God.*

3. *Of a Clerk of the Peace in Seſſions, before he enters upon his Office.* 1 W. & M. *cap.* 21.

I A. B. *do Swear, That I have not, neither will I pay any Sum or Sums of Money, or other Reward whatſoever, or given any Bond or other Aſſurance to pay any Money, Fee or Profit, directly or indirectly, to any Perſon or Perſons, for nominating or appointing me Clerk of the Peace of* Middleſex. So help me God.

4. *The Oath of the Church-Wardens.*

YOU ſhall execute the Office of a Church-Warden, in the Pariſh of *W.* where you are choſen for this enſuing Year, according to your Skill and Diſcretion in his Majeſty's Laws, *&c So help you God.*

5. *The Oath of a High-Conſtable, when he delivers in his Preſentments.*

YOU *ſhall true Preſentment make to the Grand Inqueſt, of all Offences and Miſdemeanours done or committed within your Hundred, and which are in any wiſe come to your Knowledge, and belonging to you to preſent, without any Concealment.* So help you God.

6. *The Oath of a Petty-Conſtable.*

YOU ſhall Swear, well and truly to execute the Office of a Conſtable, for the Pariſh of *N.* for the Year next enſuing, and until another ſhall be ſworn in your Room, or until you ſhall be lawfully diſcharged from the ſaid Office. *So help you God.*

7. *The Oath of a Coroner.*

YOU *ſhall Swear, That you will truly ſerve the King and his People, in the Office of a Coroner, and as one of his Majeſty's Coroners of this County of* H. *and therein you ſhall diligently and truly do all Things appertaining to your ſaid Office, according to the beſt of your Knowledge and Power, both for the King's Profit, and the good of the Inhabitants within the ſaid County, taking ſuch Fees as you ought by Law.* So help you God.

8. *To a Witneſs upon his Examination.*

YOU ſhall true Anſwer make to all ſuch Meaſures as ſhall be demanded of you concerning, *&c.* You ſhall ſpeak the Truth, the whole Truth, and nothing but the Truth. *So help you God.*

9. *An Information againſt a Criminal.*

THE Information which you ſhall give on the Behalf of our Sovereign Lord the King againſt *J. G.* of, *&c.* ſhall be the Truth, the whole Truth, and nothing but the Truth, *So help you God.*

10. *The*

10. *The Oath of a Grand Inquest.*

YOU ſhall diligently inquire, and true Preſentment make, of all ſuch Matters, Articles and Things, as ſhall be given you in Charge, as alſo of all other Matters and Things as ſhall come to your Knowledge, touching this preſent Service; His Majeſty's Counſel, your Fellows, and your own, you ſhall keep ſecret: You ſhall preſent no Perſon for Envy, Hatred or Malice; neither ſhall you leave any one unpreſented for Fear, Favour, or Affection, Reward, or Hopes thereof, but in all Things, you ſhall preſent the Truth, the whole Truth, and nothing but the Truth, to the beſt of your Knowedge. *So help you God.*

The Reſt of the Jury by Three.

THE ſame Oath, which *J. L.* your Foreman hath taken on his Behalf, you and every of you ſhall well and truly obſerve and keep on your Parts. *So help you God.*

11. *Jury of the Crown Side.*

YOU ſhall well and truly try, and true Deliverance make between our Sovereign Lord the King and the Priſoner at the Bar, whom you ſhall have in Charge, and a true Verdict give according to your Evidence. *So help you God.*

12. *Jury of* Niſi prius.

YOU ſhall well and truly try this Iſſue of *Niſi prius* between the Parties, according to your Evidence. *So help you God.*

13. *Jury of* Matrons.

YOU the Fore-woman of this Jury ſhall ſwear, That you ſhall ſearch the Priſoner at the Bar, whether ſhe be quick with Child of a living Child; and thereof a true Verdict give according to the beſt of your Judgment. *So help you God.*

14. *Jury on a Traverſe.*

YOU ſhall well and truly try this Iſſue of Traverſe between our Sovereign Lord the King and *J. O.* for a Treſpaſs, whereof he ſtands indicted, according to your Evidence. *So help you God.*

15. *The Oath of a Juſtice of Peace.*

YOU ſhall ſwear, That as a Juſtice of the Peace for the County of *S.* in all the Articles of the King's Commiſſion to you directed, you ſhall do equal Right to the Poor and Rich, after your Cunning, Wit and Power, and after the Laws and Cuſtoms of this Realm, and Statutes thereof made; you ſhall not be of Council with any Perſon in any Quarrel depending before you; and that you 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, you ſhall cauſe

cause to be entred without Concealment or Imbezeling, and truly send them to the King's Exchequer: You shall not let for Gift, or other Cause, but well and truly you shall do the Office of a 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 limitted by the Statute: You shall not direct, nor cause to be directed, any Warrant (by you to be made) to the Parties, but you shall direct them to the Constables of the said County, or other the King's Officers or Ministers, or other indifferent Persons, to do Execution thereof. *So help you God.*

16. *The Oath of an Under-Sheriff.*

I W. W. do swear, That I will well and truly serve the King's Majesty in the Office of Under Sheriff of the County of S. and promote his Majesty's Profit in all Things belonging to the said Office as far as I legally can or may: I will keep the King's Rights, and all that belongeth to the Crown: I will not consent to lessen or decrease, or conceal the King's Rights of his Franchises; and whensoever that I shall have Knowledge that the Rights of the Crown are concealed, or withdrawn, be it in Land, Rents, Franchises, Suits or Services in any other Matter or Thing, I will do my utmost to make them be restored to the Crown; and if I may not do it of myself, I will certify and inform some of his Majesty's Judges thereof; I will not respite or delay to levy the King's Debts, for any Gift, Promise, Reward or Favour, when I may raise the same without great Grievance to the Debtors; I will do Right as well to Poor as to Rich, in all Things belonging to my Office; I will do no wrong to any Man for any Gift, Reward or Promise, nor for Favour or Hatred; I will disturb no Man's Right, and will truly and faithfully acquit at the Exchequer, all those of whom I shall receive any Debt or Duties, or Sum or Sums of Money belonging the Crown; I will do nothing whereby the King may lose, or whereby his Right may be disturbed, injured or delayed; I will truly return, and truly serve all the King's Writs to the best of my Skill and Knowledge; I will truly serve and return reasonable and due Issues of them that be within my Bailiwick, according to their Estates and Circumstances, and make due Panels of Persons able and sufficient, and not suspected or procured, as is appointed by the Statutes of this Realm; I have not bought, purchased, or taken to Farm, or contracted for; nor have I promised or given any Consideration whatsoever by myself, or any other Person for me, or for my Use, directly or indirectly, to any Person or Persons whatsoever, for the Office of Under-Sheriff of the County of S. which I am now to enter on and enjoy, nor for the Profits of the same, nor for any Bailiwick thereof, or any other Place or Office belonging thereunto: I have not sold, contracted for, or let to Farm, nor have I granted, or promised for Reward, or Benefit by myself, or any Person for me or my Use, directly or indirectly, any Bailiwick thereof, or any other Place or Office belonging thereunto; I will truly and diligently execute the good Laws and Statutes

of

of this Realm, and in all Things well and truly behave myself in my said Office for his Majesty's Advantage, and for the Good of his Subjects, and discharge my whole Duty, according to the best of my Skill and Power. So help me God.

17. *Witness on an Indictment to Grand Jury.*

THE Evidence which you shall give to the Grand Inquest, upon this Bill of Indictment against *J. O.* shall be the Truth, the whole Truth, and nothing but the Truth. *So help you God.*

18. *To Witnesses on Crown Side.*

THE Evidence which you shall give to this Inquest against *J. O.* the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth. *So help you God.*

19. *To Witnesses at* Nisi prius.

THE Evidence which you shall give to the Jury sworn, concerning the Matter in Variance between the Parties, shall be the Truth, the whole Truth, and nothing but the Truth. *So help you God.*

The next Justice of the Peace may give an Oath to every Officer present at the Trial of an Offender, by a Court Martial, before any Proceeding thereon, where the Criminal may be punished by Death.

19. *Officer returning Assembly-Men.*

I *A. B.* do solemnly swear, That I have not directly nor indirectly received any Sum or Sums of Money, Office, Place or Imployment, Gratuity or Reward, or any Bond, Bill or Note, or any Promise or Gratuity whatsoever, either by myself or any other Person, to my Use or Benefit or Advantage, for making any Return at the present Election of Members to serve in General-Assembly; and that I will return such Person or Persons, as shall to the best of my Judgment appear to me to have the Majority of legal Votes.

By 9 *Geo.* 2. *c.* 14. Persons who have omitted to take the Oaths, receive the Sacrament, *&c.* required by 25 *Car.* 2. shall, on doing the same on or before 1 *Aug.* 1736, be indemnified, and their Acts valid, but not to restore to any Office, *&c.* already vacated.

And as by the former Acts three Months only was given for Persons to qualify themselves; by this Act all Persons admitted into any Preferments or Places after the said 1 *Aug.* 1736, shall have six Months after Admission to take the Oaths, *&c.* and if beyond Sea, six Months after their Return, but all Persons neglecting to take the Oaths, *&c.* within the Time here limitted, are to incur the Penalties inflicted by the former Acts, and all the Power in the former Acts to continue in Force, except as the Alteration of Time.

And

And in the ſame Seſſion another Act paſſed to indemnify ſuch who had omitted to read the Prayers and ſubſcribe the Declaration, as required by 13, 14 *Car.* 2. and to give them till the 1 *March* 1736, ſo to do, *&c.* And almoſt in every Seſſions farther Time is given to thoſe who have omitted to qualify themſelves. *Vide* 14. *Geo.* 2. *c.* 18.

The Nomination of Officers by the Juſtices.

WE his Majeſty's Juſtices of the Peace of the ſaid County of H. *whoſe Hands and Seals are hereunto ſet, do nominate and appoint* L.M. *of the Townſhip of* P. *in the ſaid County, Aſſeſſor of the Townſhip aforeſaid, and* M. N. *of the ſaid Townſhip to be Collector of the ſame, commanding each of them to take upon him his reſpective Office aforeſaid, until he ſhall be from thence lawfully diſcharged, and forthwith to repair to one of his Majeſty's Juſtices of the Peace of the County aforeſaid, before him to take his Oath for the faithful Execution of the ſaid reſpective Office. Given under our Hands and Seals at,* &c.

ORCHARDS.

A Warrant againſt Robbers of Orchards.

New-York, *ſs.* To the Conſtable, *&c.*

WHEREAS it hath been duly proved upon Oath before me, That *M. K.* of your Town of *R.* Weaver, hath within three Months laſt paſt, robbed the Orchard or Garden of *G. K.* of your ſaid Town, and carried away great Quantities of Apples, *&c. (or digged up his Fruit-Trees, or cut Corn, Graſs, or pulled up his Fence,* &c.) to the Value of *Fifty Shillings*; And that *S. M.* of your Town, Baker, hath abetted him in ſo doing, and received and bought of him, divers of the ſame Things, to the great Damage of the ſaid *G. K.* contrary to the late Acts of Parliament in that Caſe made and provided: *I do therefore* hereby order and require, That the ſaid *M. K.* ſhall within Six Days after Notice to him given of this my Order, pay to the ſaid *G. K. Twenty Shillings*; and that the ſaid *S. M.* do within Six Days after Notice to him given of this my Order, pay likewiſe unto the ſaid *G. K. Thirty Shillings* more, in Recompence to him for his Wrongs aforeſaid; and that theſe Payments be made in the Preſence of the ſaid Conſtable hereby commanded, upon Requeſt to ſee it done; and hereof you are forthwith to give them Notice: And if either of them ſhall not pay the ſame, that then you do give me Notice thereof, to the End that they may be farther proceeded againſt according to the ſaid Statute (43 *Eliz. cap.* 7. 15 *Car.* 2. *cap.* 2.) And hereof fail not, *&c.* Given under my, *&c.*

Upon

Upon Non-payment of the aforesaid Sums.

WHEREAS it hath been duly proved upon Oath before me, That *M. K.* of your Town of *R.* Weaver, hath within three Months last past, robbed, *&c.* (*as in the former, to the Words* (*made and provided*) Wherefore, the Premises considered, and that I judge the said Offenders *M. K.* and *S. M.* unable to make Satisfaction for the said Wrong; I do hereby order, that they be forthwith committed to the said Constable of *R.* to be whipt; the which you are hereby required forthwith to do, as you will answer to the contrary at your Peril. Given under, *&c.*

A Warrant to search for People suspected of robbing an Orchard.

Bed. ss. *To the Constables of* Northill, *in the said County.*

WHEREAS it appears to me, upon the Complaint of *O. T.* Esq; That on Saturday Night last, his Garden, in your Town, was robb'd of a great Number of Peaches and other Fruit, and that he hath just Reason to suspect some idle dissolute Persons in your Parish, to have committed the said Fact: These are therefore, in his Majesty's Name, to require and authorise you, and either of you, on Sight hereof, that you make diligent Search in all and every the Houses, Outhouses, and Places belonging to such Persons, and upon finding any such Fruit, to seise the same, and also to bring such Persons, in whose Possession the same shall be found, before me, or some other of his Majesty's Justices of the Peace for this County, to answer the said Complaint. Given under my Hand and Seal, this First Day of September, 1749.

A Warrant to Whip a Person for robbing a Garden.

Bed. ss. *To the Constables of* Northill *in the said County.*

WHEREAS it hath been duly proved before me, That *J. D.* of *N.* aforesaid, Labourer, did on the 21st of *August* last, rob the Garden of *O. T.* Esq; in your said Parish, contrary to the Laws in that Case made and provided: And whereas it appears to me, that the said *J. D.* is not able to make Satisfaction for the Wrong he hath done, as aforesaid: These are therefore, in his Majesty's Name, to require and authorise you the said Constables, and either of you, to cause the said *J. D.* to be publickly Whipp'd in your said Parish of *N.* as the Law in that Case requires. Given under my Hand and Seal, &c.

By the Stat 43. *Eliz. cap.* 7. the Conviction is by one Witness before one Justice, and to make Satisfaction, or be Whipt. The Officer neglecting his Duty, to be imprisoned till the Offender be punished.

Barking Fruit Trees, forfeits treble Damages to the Party grieved, and *Ten Pounds* to the King; The Damages to be recovered by Action of Trespass. 37 *Hen.* 8. *cap.* 8.

Overseers

Overſeers of the Poor. *Vide* Poor.

CHURCH-Wardens were anciently the ſole Overſeers of the Poor, and it lay wholly on them under the Direction of the Miniſter, to take Care of all ſuch as were in want in their Pariſh, and provide for their Relief, in order whereto they had the Charity of well-diſpoſed Perſons, the liberal Contributions of the Clergy, and the Religious and the Poor Man's Box intruſted to them. But when on the Diſſolution of Religious Houſes, and alienating of Tythes to the Laity, the Contributions of the Clergy and Religious failed (which was the main Fund on which all the Poor of the Realm had hitherto been maintained) it was found neceſſary by Act of Parliament to lay a Tax upon the Nation for their Support, and the firſt Statute made for the Relief of the Poor, was 43 *El. c.* 2. by which publick Officers are created to provide for the Poor of the Pariſh, who are to be nominated yearly in Eaſter Week, or within a Month after by two Juſtices of the Peace, (*Quorum* 1.) they muſt be Houſholders, and are ſometimes two, three, or four, according to the Largeneſs of the Pariſh; and theſe Overſeers, which are in that Act ſuper-added for the levying and diſpoſing of the ſaid Tax, have in a Manner ſuperſeded the Church-wardens Care in this Particular. However, the Church-wardens are ſtill by the Common Law Overſeers of the Poor in every Pariſh, and the ſaid Act joins them in equal Power with the other Overſeers appointed by that Act, both for levying and diſtributing of the ſaid Tax, and all other Duties of the ſaid Office; and by ſeveral Acts of Parliament, whereby Forfeitures are inflicted to the Uſe of the Poor, the ſaid Church-wardens are intruſted with the receiving and diſpoſing of the ſaid Forfeitures to the Uſe aforeſaid. But they having other Buſineſs beſides (*i. e.*) to take Care of the Church, and the other Matters belonging thereto, the whole Care of the Poor is now uſually left to the Overſeers; and the Church-wardens by the Cuſtom of moſt Pariſhes, are allowed no further to be troubled therewith than of their Good-will and Liking they ſhould think fit.

By 43 *El. c.* 2. Overſeers of the Poor of Pariſhes are to be choſen yearly in Eaſter Week, or within one Month afterwards by Appointment under the Hands and Seals of two Juſtices of the Peace (one whereof to be of the *Quorum*) dwelling in or near the Pariſh or Diviſion where the Pariſh lieth. Juſtices of Peace neglecting to nominate Overſeers according to the Statute, forfeit *Five Pounds*, leviable on their Goods by Warrant from the General Seſſions of the Peace.

Overſeers

Overſeers of the Poor, *&c.* are to meet once a Month in the Pariſh Church on *Sunday* after Divine Service, unleſs hindred by ſome Cauſe to be allowed by two Juſtices, at which Meeting they are to conſider of proper Methods for providing for the Poor; and if they neglect thus to meet, they forfeit *Twenty Shillings.*

An Appointment of Overſeers of the Poor by Juſtices.

WE *A. B.* and *C. D. Eſquires, two of his Majeſty's Juſtices of Peace for the County of*, &c. *one whereof being of the* Quorum, *do hereby appoint* E. F. *and* G. H. *of*, &c. *being ſubſtantial Houſholders of the Pariſh of to be Overſeers of the Poor of the Pariſh of aforeſaid, to the ſaid County, for the Year next enſuing the Date hereof, according to the Direction of the Statute in that Caſe made. Given*, &c.

Within four Days after the Overſeers Year is up, and after other Overſeers are nominated according to Law, the old ones muſt yield up to the two next Juſtices (*Quorum* 1.) a true and perfect Account of all Money by them received, or rated and aſſeſſed, but not received; and alſo of ſuch Stock as ſhall be in their Hands, or in the Hands of any of the Poor to work, and of all other Things concerning their Offices, and ſhall pay and deliver over the ſame to the new Church-wardens and Overſeers.

When the Overſeers Books are paſſed, it is uſual for the two Juſtices to ſignify it writ in their Books at the Foot of their Accounts.

And if Money be due to the old Overſeers, you write thus, *viz.* Due to be paid from the new to the old Overſeers, - - 30*l.* 9*s* 9*d.*

October 11, 1749. Peruſed and allowed by us *A. B. C. D.* two of his Majeſty's Juſtices of the Peace for the ſaid County, whereof one is of the *Quorum.*

And if Money be due to the new Overſeers, you may ſay, Remaining in the old Overſeers Hands to be paid to the new Ones, 19*l.* 19*s.* 9*d.*

October 11, 1749. Peruſed and allowed by us *A. B. C. D.* two of his Majeſty's Juſtices of Peace for the ſaid County, whereof one is of the *Quorum.*

If the Church-wardens or Overſeers refuſe to Account, then two Juſtices of the Peace, whereof one is of the *Quorum*, may commit the Perſon ſo refuſing to the County Goal, there to remain without Bail or Mainprize until he make a true Account, and ſhall have ſatisfied and paid ſo much as upon the Account ſhall appear to be remaining in his Hand, which alſo by Warrant may be levied by Diſtreſs, 43 *El. c.* 2. and if he make a falſe Account, he may be bound over to the Seſſions, and indicted there for it. 5 *Mod.* 179. *Dalt.*

In Actions brought againſt Church-wardens or Overſeers of the Poor for miſpending the Pariſh Money, any Pariſhioner not receiving Alms, *&c.* ſhall be admitted as Evidence in all Courts of Record, by *Stat.* 3. *and* 4. *W. and M. c.* 11.

OUT-

OUTLAWRY.

THIS is when a Man is called into Law, and doth not appear upon three Writs iſſued againſt him, which being directed to the Sheriff, who returns a *Non eſt inventus* (that he is not found, *&c.*) then there is a Writ called the *Exigent*, directed to the Sheriff to proclaim the Man (that is, to call him, in five County Courts, which are held once a Month in the Country, (but oftner in *London*) charging him to appear; which if he did not, then he was *Exlex*, (that is, deprived of the Benefit of the Law) and out of the King's Protection.

The Puniſhment ſeems to be derived from the old *Britiſh* Prieſts called Druids, who ſate as Judges here; and if any Perſon made Default in appearing before them, he was forbidden the Sacrifices, and then no Man would either ſpeak to him, or come near him, for fear of being infected; and beſides, he was to have no Benefit of the Law.

It was ſo great a Puniſhment, that in After-Ages no Man was outlawed but for Felony; and then the old Writers tell us, That the Perſon had *Caput Lupinum* (a Wolf's Head) that is, he carried his own Judgment in his Face, for he might be killed as a Wolf; and this ſo continued till *Ed.* 3. and then it was made lawful for the Sheriff only to kill him, but not without a Warrant to do it.

But now Outlawries are become frequent in Perſonal Actions; the Effect of which is, *viz.* Forfeiture of Goods and Chattels to the King; and if for Felony, then 'tis Forfeiture of his Lands in Fee, or for Life, and his Goods, *&c.*

It was a Queſtion, whether a Man outlawed for Felony might be taken in Execution at the Suit of a Creditor, becauſe he being attainted by the Outlawry, his Goods are forfeited to the King, and his Body at his Diſpoſal; but it was held, That he is ſubject to ſuch Execution, but the Sheriff may chuſe whether he will execute it, or not; and that if the Law ſhould be otherwiſe, then the Party might take Advantage of his own Fault, for he might ſuffer himſelf to be outlawed, and then get a Pardon, and deceive all his Creditors.

A Man was outlawed for Murder, who held Lands of the King, which he ſeized and gave to another; the Outlawry was reverſed; and the Queſtion was, Whether the Perſon might re-enter, or firſt Petition the King? And it was held, that he might re-enter upon his Grantee, becauſe there was no Record of Attainder to put him on his Petition. 1 *And.* 188.

PARDON

PARDON is either 1. Of Course; or 2. Of Grace.

Pardon of Course is, where a Man is Convicted of Manslaughter, or *Se defendendo*; which see in *Chance-Medley* in *Homicide*.

Pardon of Grace is either General or Particular.

General Pardons have now so many Qualifications and Exceptions both as to Offence, and Persons, that the Court cannot take Notice of them without being pleaded; and in the Plea the Defendant must aver, That he is none of the Persons excepted: A Form of which Plea you may see 3 *Inst.* 234.

By the Stat. of 13 *R.* 2. *c.* 1. 'tis enacted, That the Offence shall be specified in the Pardon, otherwise it shall not be allowed. Before the making that Statute, a Pardon of all Felonies was good for Murders; but since it hath been held, That a general Pardon for Murders or Robberies is not good, without reciting the Indictment and Verdict in the Pardon itself. *Sid.* 366, 430. *King* and *Dudley*. *King* and *Maddox*.

Mr. *Howard*, Brother to the *Earl of Carlisle*, and his two Servants, were convicted for the Murder of one *Proby*, and being brought to the Bar, they pleaded the King's Pardon, in which all the Proceedings on the Indictment were recited, and that the King pardoned the Killing and Felony, but the Word *Murdrum* was not in the Pardon, and there was no Writ of Allowance; whereupon Mr. *Howard* was advised to get a better Pardon, otherwise this might be repealed by *Scire Facias* seven Years hence, and he might be executed; afterwards he had a better Pardon, and a Writ of Allowance.

Ann. 31. *H.* 8. It was made Treason for a Wife to poison her Husband. The very next Year this Fact was committed by a Woman, and she was pardoned; her Son brought an Appeal of Murder and it was adjudged that it did not lie; because the Offence being made *Treason*, could not be punished as *Murder*, for the greater Crime drowns the less; but this seems to be a very odd Reason, that the Alteration of the Punishment should change the Nature of the Offence; for tho' it was newly made Treason, yet it was *Murder* still.

In Cases of *Treason*, the Court may allow a Pardon without a Writ of Allowance, but not so in Felony; and therefore where a particular Pardon is pleaded, it must be *sub Sigillo* (under Seal) and and it ought to have a Writ of Allowance; but a Clause of *Non obstante* (notwithstanding) dispenses with that Writ.

One *Cole* was convicted of Burglary, and pardoned, *Ita quod bene se gesserit* (so that he behaved himself well) towards all People: Afterwards he broke the Peace by beating another Man, and this being

being ſuggeſted to the Court, Execution was prayed againſt him: and the Clerk of the Crown informed the Court, That one *Whidden* was hanged in the Queen's Reign for the ſame Cauſe after a Pardon; but I do not find any Rule made in the principal Caſe.

I ſhall mention the Caſe of Sir *Walter Raleigh*, becauſe it was an extraordinary one. He was attainted of Treaſon, *Anno* 1 *Jac.* and was kept priſoner in the Tower twelve Years; then the King gave him a Commiſſion to go into *Guinea*, and Authority to execute Marſhal Law and Power over the Lives of other Men; he went thither, and upon his Return was committed again to the Tower, and brought to the Bar, and had Sentence and Execution upon the Attainder, though he inſiſted that his Commiſſion giving him Power over the Lives of other Men, was a *Pardon by Implication*; but the Court anſwered, That no Man muſt be pardoned but by expreſs Words, and not by Implication.

A Pardon doth not only take away *pœnam* (the Puniſhment), but *reatum* (the Guilt); ſo that a Man is reſtored to his Credit, and enabled to be a Witneſs, though he hath been convicted of Felony; but it ſeems otherwiſe if the Conviction had been for Perjury, becauſe it would be an Injury to the People in general to make them ſubject to the Teſtimony of ſuch a Perſon. 1 *Vent.* 349. 1 *Sid.* 51. *Wicks* and *Smalbrook*.

A Conviction of Felony, and burnt in the Hand, this is in Nature of a Pardon; for by this Puniſhment he is cleared of the Offence, and is become a lawful Witneſs. *Raym.* 370.

On the twelfth of *February* a mortal Stroke was given, the Perſon died the 18th of *June* following; in the ſame Year there was a general Pardon, by which all Offences, Miſdemeanours and Felonies, before and until the fourteenth of *February*, were pardoned: It was adjudged, That the Stroke being before the Pardon, though the Death enſued afterwards, the Offender ſhould be diſcharged, becauſe the Stroke was the Offence, and that was pardoned; ſo that all the Conſequences of that Offence were likewiſe diſcharged. *Plowd. Com.* 401. *Cobe*'s Caſe. 4 *Rep.* 42. *Heydon*'s Caſe.

'Till an Inquiſition is found, nothing veſts in the King, and therefore a Pardon before an Inquiſition found, diſcharges all Forfeitures. 2 *Mod.* 53. *King* and *Turvil*.

But where once an Intereſt is veſted, a Pardon will not operate upon the Goods forfeited, without ſome Words of Reſtitution. *Sid.* 168. *Toombes* and *Etherington*.

Pardon is no Bar to an Appeal, nor to an Execution, if the Offender be attainted and pardoned of Felony only.

Some Perſons convicted of Capital Offences have been thought fit to be reprieved from Execution, in order to obtain a Pardon, as fit to ſerve the King either in the Army or Navy, but have been continued in Priſon a long Time, in Expectation of paſſing ſuch

Pardon

Pardon under the great Seal, and ſome Time is taken up in the pleading and allowing it in the uſual Form of Law: Therefore, by a late Act, as ſoon as the Judge receives a Warrant under the Sign Manuel of the King for a Pardon, he may direct his Warrant to the Sheriff or Goaler, directing the immediate Delivery of ſuch Priſoner out of Cuſtody, to ſuch Officer under whom he ſhall be liſted, and the Pardon, when paſſed, ſhall be entered and enrolled.

About the latter End of the Reign of *Car.* 2. it was argued by Council in *B. R.* in the Caſe of one *Parſons*, who was pardoned for the Murder of Mr. *Wade* of *Eſſex*, That the King could not pardon one who was convicted of that Offence; and becauſe it could not be proved that there was any human Law prohibiting ſuch Pardon, therefore Recourſe was had to the Scripture, where we find a poſitive Law given by God to *Noah*, about 1658 Years after the Creation of the World, and about 796 Years before the *Moſaical* Law, *viz. He who ſheddeth Man's Blood, by Man ſhall his Blood be ſhed.* Gen. ix. 6.

But this Text was never taken to be univerſally Obligatory; for we find, that if a Maſter had killed his Servant, and he died immediately under his Hand, then the Maſter was to die: but if the Servant had ſurvived 24 Hours, though he died afterwards, in ſuch Caſe the Maſter was not to die. *Exod.* xxi. 13. *Numb.* xxxv. 30.

So if there were not two Witneſſes to prove the Murder, the Offender was not to die. *Deut.* xix. 15.

We likewiſe find that *Simeon* and *Levi*, the Sons of *Jacob*, were guilty of Murder, but not puniſhed.

Then as to the *Moſaical Law*, 'tis true, the Text is, (viz.) *Thou ſhalt take no Satisfaction for the Life of a Murderer, who is guilty of Death, he ſhall ſurely be put to Death.*

This was only obligatory to the *Jews*, and not to the *Gentiles* before the Time of our Saviour, nor to Chriſtians ſince; and if it only obliged the *Jews*, then the ceremonial and *judicial* Laws being abrogated ever ſince the Death of Chriſt, or at fartheſt at the Deſtruction of *Jeruſalem*, when the *Jewiſh* Common-wealth and Government was deſtroyed, the Obligation of that Law has ceaſed ever ſince.

Beſides, the *Moſaical* Laws *de pœnis* (of Puniſhments) were not natural, but poſitive and judicial, and admitted of Diſpenſations even among the *Jews*, to whom they were only binding; for the Chriſtians never puniſhed Offenders in ſeveral Caſes with thoſe Penalties which were preſcribed by *Moſes* to the *Jews*, (*viz.*) The Stealer of an Ox was to reſtore five Oxen, and ſo in many other Caſes.

'Tis true, he ſaith, That a *Murderer ſhall ſurely be put to Death*, and 'tis as true, that in another Place he ſaith, *That whoſoever doth any Work on the Sabbath, he ſhall ſurely be put to Death*; and yet no Man will affirm that the ſupreme Magiſtrate cannot Pardon thoſe who work on the Sabbath.

David

David, who was the beſt of Kings, and who underſtood the *Jewiſh* Laws as well as any Man, pardoned *Abſalom*, who had killed his Brother *Amnon*, and 'tis no where imputed to him as a Fault pardoning ſo unnatural a Murder.

'Tis therefore plain, that there is neither any divine or human Law to prohibit Kings from pardoning Murder; and may often happen, that (upon due Conſideration of the Perſon, Times and other Circumſtances) a Pardon may be as effectual to attain the good Ends intended by a Puniſhment, as any rigorous Execution of it might have been, and in ſuch Caſes the King is the ſupreme Judge.

PEACE. See *Good Behaviour*.

EVERY private Perſon, that ſhall be preſent at any Affray, Aſſault or Battery, ought to part them that fight, and may ſtay them till their Heat be cooled; but they may not impriſon them, unleſs the one of them be in Peril of Death by ſome Hurt, for then any Man may carry the other to the Goal, till it be known whether the other will live or die. *Lamb.* 131. *Dalt.* 33.

If any Affray, Forcible Entry, or any Thing in Diſturbance of the Peace, be done in the Preſence of a Juſtice of Peace, he may record it, and certify the ſame, and commit the Parties preſently. *Dalt.* 144.

If the Juſtices of Peace certify into *B. R.* that *A. B.* hath broken the Peace, upon that Certificate *A. B.* ſhall be there fined, without allowing him any Traverſe. *Dalt.* 144. 2 *Cro.* 132.

All Affrays, Aſſaults, injurious and violent Handlings and Battery, Strikings, Impriſonment without Warrant, thruſting one into the Water, *&c.* are Breaches of the Peace; and for theſe, and ſuch as theſe, a Man may be bound to keep the Peace, and be indicted and fined.

Surety of the Peace is the acknowledging of a Recognizance to the King, taken by a competent Judge of Record for the keeping of the Peace.

A Juſtice of [illegible]e may, of his own Authority, Motion and Diſcretion, bind a Man to the Peace, and that againſt all the King's Subjects, if he thinks fit. 1. Where an Aſſault is made on the Juſtice himſelf. 2. When an Aſſault is made upon another in his Preſence. 3. If one in his Preſence threatens another, *&c.* 4. For Contention in hot Words in his Preſence. 5. If one not authoriſed go armed offenſively, or with an unuſual Number of Servants, *&c.* or Servants or Labourers bearing Weapons, againſt the Stat. of 12 *Rich.* 2. 6. He may bind any Perſon by him ſuſpected to be endeavouring to break the Peace. 7. A Perſon brought before him by a Conſtable who had made an Affray, *&c.* in his Preſence,

8. A Person who goes about to break the Peace in the Constable's Presence, or assaults him, may be carried by the Constable before the Justice who may bind, &c. 9. He may at his Discretion convene before him a Person who had broke the Peace (though not in his Presence) and command Sureties of him. 10. He may upon his Discretion bind to the Peace a common Barretor. 11. So of Rioters. 12. If one bound break the Peace, the Justice ought to bind him anew; but it seems not till after Conviction upon the first Recognizance. 13. Any Justice may for the Insufficiency of the Sureties, compel one bound to the Peace to find better. *Dalt. cap.* 70.

One fearing that another will burn his House, may demand the Peace against him, but not he that is threatned to be imprisoned, or to have his Goods burnt.

It seems likewise the Peace shall not be granted for the Master's Fear, that another will hurt his Servant, &c. or for that he is at Suit or Variance with his Neighbour. *Lamb.* 85.

When the Peace is granted, upon Request, there must be an Oath made by the Party desiring it, That he stands in fear of his Life, or some bodily Hurt, or the firing of his House by him against whom he desires it, or by his Procurement; and that he desires the Peace against him, not out of Malice or Hatred, but out of very Fear from his threatning to do it, or procuring it to be done, or otherwise.

And it is held, that the Justice may not bind to the Good Behaviour, nor commit to Prison, for Refusal to give Surety upon a general Accusation, without some Particulars. *Pasch.* 23 *Car* 2. *B.R.*

If he which is bound to the Peace break his Recognizance, he may be indicted for it, for it is a new Offence. *Style* 369.

A Person said to be a Member of the House of Commons, bound in a Recognizance of *Five Hundred Pounds* to keep the Peace, for challenging one of the Queen's Witnesses in an Indictment for Treason; and because the Witness had accepted the Challenge, he was bound in the same Sum. 2 *Vent.* 317. *Holt* 676, *Harding*'s Case.

The Warrant of a Commitment for not finding Sureties for the Peace, ought to express in what Sum the Person is required to find Sureties; otherwise it may be so excessive, that any Person may be constrained to remain in Prison. 2 *Vent.* 22. *Rudyard*'s Case.

A Warrant to find Sureties for the Peace.

Essex, ss. To the Constables, &c.

FOrasmuch as A. B. *of* C. *hath this Day taken his corporal Oath before me, That* C. D. *of* &c. *hath already threatned that he will beat, wound, maim, kill, or do him some other bodily Harm, or burn his House; and that he is afraid he will accordingly do so, and hath therewithal prayed Security of the Peace against the said* C. D. *These are*

are therefore in his Majeſty's Name, to command you the ſaid Conſtable, that you do cauſe the ſaid C. D. *to come before me, or ſome other of his Majeſty's Juſtices of the Peace for the ſaid County, to find ſufficient Security, as well for his perſonal Appearance at the next General Seſſions of the Peace to be holden for the ſame County at* T. *aforeſaid, then and there to do and receive as by the ſaid Court ſhall be enjoined; as that he will in the mean Time keep his Majeſty's Peace towards his ſaid Majeſty, and all his liege People, and eſpecially towards the ſaid* A. B. *and if the ſaid* C. D. *ſhall refuſe ſo to do, that then (without expecting any further Warrant) you do ſafely convey him to the Goal aforeſaid, and him there deliver to the ſaid Keeper of the ſame, together with this Precept; commanding alſo you the ſaid Keeper, to receive him into the ſaid Goal, and him there ſafely to keep, until he ſhall find ſuch ſufficient Security aforeſaid. Hereof fail not at your Peril. Given under my Hand and Seal, &c.*

If a Man be to find Surety of the Peace or Good Behaviour, the Juſtice muſt ſhew the Matter in the Warrant, but need not, if it touch Treaſon, Felony or capital Offences, or Conſpiracy, or unlawful Aſſemblies. *Dalt.* 440. *Crompt.* 148. *l.* 16.

PERJURY.

IS an Offence, where a *lawful Oath* is adminiſtred to a Witneſs by any who hath *Authority* ſo to do in any *judicial* Proceeding, and the Perſon ſweareth falſly, either himſelf, or by the Subornation of another, in a Matter *material* to the Iſſue or Cauſe.

'Tis puniſhable either at *Common Law*, or by the Statute 5 *Eliz. c.* 9. A falſe Oath in any *Court* of *Record*, or in any *judicial* Proceeding, tho' not in a *Court* of *Record*, is Perjury at *Common Law*, tho' 'tis not in any Thing *material* to the Iſſue. *Stiles* 374. *Roll. Abr.* 2 *Part* 257, 258. *Sid.* 274.

And therefore Perjury in the *ſpiritual Court*, or in a *Court Baron*, is puniſhable at *Common Law*; but where the Indictment is upon the *Statute*, it muſt appear to be committed in a *Court* of *Record*; as if the Defendant is indicted for *procuring* a Witneſs to take a falſe Oath before the Town-Clerk of *London*; this is not within the Statute, for 'tis *coram non Judice*, (not before a proper Judge) and the *Subornation* muſt be to give Evidence in a *Court* of *Record*. 3 *Leon.* 170.

So where a Man was proſecuted in the *Star-Chamber*, for a Perjury in the *Court* of *Requeſts*, where the Freehold of the Land came in Queſtion; it was reſolved by all the Judges, That the Man was not puniſhable, becauſe that Court had no Authority to examine Titles of Land, and therefore what he ſwore was no more than an idle Oath. *Yelv.* 3.

But if a Man ſwear in common Diſcourſe, that he hath a Property in a Thing, when really he hath not; or if a Conſtable is ſworn to execute his Office truly, and doth not; theſe and ſuch-like Oaths are called *Extrajudicial*, and are puniſhable either at Common Law, or by the Statute of Perjury.

If an Indictment is grounded upon the Common Law, there needs not ſo great a Certainty in it as if brought on the Statute. *Sid.* 106.

By the 5 *Eliz.* 'tis enacted, *That whoſoever ſhall procure another to commit corrupt Perjury in any Court of Record, or in* perpetuam rei Memoriam, *the Suborner ſhall forfeit* Forty Pounds *being convicted; and if not worth it, then he ſhall be committed Six Months without Bail, and ſhall ſtand in the Pillory one Hour, in ſome Market-Town adjoining, or where the Offence was committed, and be never more a Witneſs till Judgment reverſed.*

The Suborned, or he who by his own Act commits willful Perjury, ſhall, upon Conviction, forfeit Twenty Pounds, *and be committed ſix Months without Bail, and be diſabled to be a Witneſs till Judgment is reverſed; and if not worth* Twenty Pounds, *then to be ſet in the Pillory as aforeſaid, and have both his Ears nailed.*

One Moiety of the Forfeitures to the King, the other to the Party grieved, who will ſue for the ſame.

Juſtices in Seſſions have Power to hear and determine, &c. *the Offences againſt this Statute.*

My Lord *Coke*, in his Paraphraſe upon this Statute, tells us, That the Indictment muſt ſet forth the judicial Proceeding; it muſt alſo ſhew, that the Oath was taken in ſomething material to the Iſſue, becauſe the Act gives the Remedy to the Party grieved; and if the Depoſition is not in a Thing which is conducing to the Iſſue, the Party is not grieved. *Cro. Car.* 152. 3 *Inſt.* 165.

Perjury may be committed in an *Anſwer in Chancery*, though not in a Matter charged in the Bill; but then the Indictment muſt be laid at *Common Law*, becauſe 'tis in a Thing not *material* to the Iſſue: But if it had been in a Depoſition, 'tis not Perjury, if not contrary in a Matter particularly charged in the Interrogatories, becauſe the Commiſſioners who adminiſter the Oath, have not Power but only in Matters therein charged. *Sid.* 274.

The Reaſon why Perjury cannot be puniſhed by the Statute for a falſe *Affidavit* taken before a Maſter in *Chancery*, or for a falſe *Anſwer* is, becauſe the Statute extended only to *Witneſſes* in Cauſes between the *Parties*; but ſuch falſe *Affidavit* may be puniſhed as aforeſaid, by an Indictment at Common Law; and in ſuch Caſe the *Affidavit* muſt be filed, and after the Perjury is aſſigned, you muſt conclude, *prout patet per Recordium* (as appears by the Record). *Stiles* 336.

But if it appears that the *Oath* was made in ſomething *conducing to the Iſſue*, ſetting forth that the Maſter had Power to adminiſter an Oath, the Indictment may be good upon the *Statute*.

If

If an Indictment is at *Common Law*, ſuppoſing the Perjury to be committed in a *Depoſition* to Interrogatories in *Chancery*, you need not ſet forth to what Interrogatory; but if 'tis upon the *Statute*, then you muſt ſhew that the Commiſſion was under the Great Seal of *England*, that it may appear to the Court that the Commiſſioners had Authority to adminiſter the Oath, and you muſt aſſign the Perjury to be in a Point conducing to the *Iſſue* in *Chancery*, and ſhew how it concerned the ſame.

So likewiſe, if it be upon the *Statute*, it muſt appear to be *willful* Perjury; for if 'tis that the Defendant *falſo & deceptive depoſuit* (falſly and deceitfully depoſed) 'tis not good, tho' the Indictment includes *& ſic commiſit voluntarium Perjurium* (and ſo hath committed willful Perjury) becauſe the one is no poſitive Allegation that he did it *willfully*; and the other is but a wrong Concluſion from the Premiſes.

If Iſſue be joined upon Indictments, and the Proſecutor will not try it, the Defendant may bring it on by *Proviſo*, tho' 'tis not in the Caſe of the *King*, becauſe 'tis for the Benefit of the Subject not to lie under ſuch an Imputation.

And becauſe the Fact ſhall be tried, the Courts do not grant *Certioraries* to remove theſe Indictments, nor quaſh them upon Motions before Trial.

Neither after Trial do they grant a *New one*, tho' there is apparent Cauſe; but this muſt be underſtood where the Defendant is acquitted, for 'tis otherwiſe where he is found guilty. *Sid.* 49. 1 *Lev.* 9.

R. was convicted of Perjury, upon the Evidence of *D.* and afterwards *R.* convicted *D.* of Perjury in the very ſame Manner; but before he can be reſtored to his Credit, he muſt bring a Writ of Error to reverſe the Judgment upon the firſt Perjury. *Sid.* 217.

I ſhall mention a Caſe or two more, and conclude this Title.

B. a Midwife, was indicted for Perjury; the Caſe was thus, *viz.* One *Dormer* was Tenant for Life, with Remainder in Tail to his Son, and for want of ſuch Iſſue, to his Daughter, *&c.* he married, and lodged with his Wife in *Chancery-Lane*, and in a ſhort Time died; his Wife ſoon after his Death declared, That ſhe was delivered of a Daughter; and upon a Trial in Ejectment between the Infant and him in Remainder, it was proved that ſhe was delivered by Circumſtances uſual in ſuch Caſes; but the Midwife depoſed, That this was the Child of a poor Woman in St. *Giles's in the Fields*, which ſhe bought of the Mother for Half a Crown, and that ſhe conveyed it into the Boſom of Mrs. *Dormer*, who cried out, and then the Midwife took the Child from her, and that there was a Bladder of Blood, and ſome other Things provided by her, to ſhew the After-Birth. The Jury gave Credit to the Midwife, and acquitted her of the Perjury.

A Bill in *Chancery* was filed againſt *B.* and *B.* put in his Anſwer, and made Affidavit, that *D.* was ſo ill that he could not travel; when the Cauſe came to the board, *D.* came into Court, and affirmed,

That

That he was not ſick, but that it was a Contrivance of *B.* who deſired him to feign himſelf ſick in Bed, that he might depoſe he left him ſo. The Lord Keeper *Egerton*, ordered both Parties to attend, and to be examined on Interrogatories, and *B.* denied the Practice; but *D.* affirm'd it, and produced ſome Witneſſes, who proved it very plainly. Now this being double Perjury, for making a falſe Affidavit, and afterwards denying the Practice on Interrogatories, he was fined *Twenty Pounds* to the King, and committed. This I have mentioned, becauſe there have been ſome Doubts whether the *Chancery* could puniſh Perjury. *Nelſon's Juſt. Vol. 2. p.* 40.

Price was indicted upon the Statute, for that he being produced a Witneſs for the *King* upon the Trial in an Information, he did forſwear himſelf, and ſhewed wherein; and it was held, That a Witneſs for the King cannot be puniſhed by an *Indictment on the Statute*; which is meerly at the Suit of the King, for he cannot puniſh his own Witneſs, but he may be proſecuted upon the Statute of an Information, becauſe one Moiety of the Penalty goes to the Informer.

Sir *John Jackſon* obtained a Verdict againſt one *Primate*, in Treſpaſs, who indicted the Witneſſes for Perjury; and this coming to a Trial, Sir *John* ordered his Servants to beat the Witneſſes who were to prove the Perjury; which was done, ſo as they could not appear that Day: And thereupon the Defendants were acquitted. And becauſe after an Acquittal in a Criminal Caſe a new Trial cannot be granted, therefore the Court directed an Information againſt Sir *John Jackſon* for this Offence, and he was convicted upon it, and fined 1000 *l.* and bound to his good Behaviour for a Year. *Lev.* 124. *Sid.* 153.

PICK-POCKET.

THIS, is called, by my Lord *Hales*, Larceny, from the Perſon, without putting him in Fear, for 'tis done *clam & ſecrete*, without his Knowledge; and in ſuch Caſe, the Offender ſhall not have the Benefit of his Clergy, for 'tis taken away by 8 *Eliz. cap.* 4.

But 'tis not Capital, unleſs the Thing taken be of the Value of *Twelve Pence*, or more; for though the Statute took away the Privilege of Clergy, it did not alter the Offence, but it remains ſtill Petit-Larceny, if under that Value. Therefore, to make this Crime Capital,

1. It muſt be *clam & ſecrete* (privily and ſecretly). 2. The Thief muſt have the actual Poſſeſſion of the Thing taken. 3. It muſt be without putting in Fear. And 4. It muſt be above the Value of *Twelve Pence*.

PILLORY.

THIS is an infamous Puniſhment uſed here in the *Saxon* Times, and ſince that appointed by ſeveral Statutes, as,

51 *H.* 3. On Bakers. 31 *Ed.* 1. On Fore-ſtallers. 11 *H.* 7. For falſe Weights. 33 *H.* 8. *cap.* 1. Getting Money by Counterfeit Letters. 2 *Ed.* 6. *cap.* 15. Workmen conſpiring about Wages, ſecond Offence. 5 *Ed.* 6. *cap.* 6. Counterfeiting Seals of Cloth, or taking them off. 5 *Eliz. cap.* 9. Perjury. 9. *Geo.* 2. *c.* 3. Telling Fortunes.

Juſtices of Peace ſhould be well adviſed before they give Judgment therein, and the ſafeſt Way is to follow the Acts of Parliament. 3 *Inſt.* 219.

Plague. *See* Quarentine.

IF any Perſon infected, or dwelling in an Houſe infected with the Plague, being by a Juſtice or Head Officer, *&c.* commanded to keep Home, ſhall yet wilfully go Abroad, having an infectious Sore, it is Felony; if no Sore, yet ſhall be puniſhed as a Vagabond, and bound to the Good Behaviour for one Year. 1 *Jac.* 1. *c.* 31.

Juſtices and Head Officers, *&c.* ſhall appoint Searchers, Watchmen, Keepers, and Buriers in Places infective, give them Direction, and adminiſter an Oath to them for Performance of their Office. *Ibid.*

If any Perſon infected, *&c.* ſhall attempt to go Abroad, ſuch Watchmen may inforce them to keep their Houſes. *Ibid.*

Two Juſtices or Head Officers may tax every Inhabitant, *&c.* for the Relief of infected Perſons in the ſame Place; and by Warrant of two Juſtices, *&c.* may levy the ſame by Diſtreſs; and for Default thereof, *&c.* by like Warrant may commit ſuch Perſons to the Goal, till he ſatisfy the Taxation. *Ibid.*

If the Inhabitants of ſuch Place, *&c.* are not able to relieve their infected Perſons, *&c.* upon Certificate thereof by the Head Officer and Juſtices, *&c.* any two Juſtices near the Place may tax the Inhabitants within five Miles thereof, for the Relief aforeſaid. *Ibid.*

If any infected ſhall be in any Borough, *&c.* where there are no Juſtices, or in any Hamlet, then any two Juſtices of the County may tax the Inhabitants of that County, and within five Miles of the Place, to be levied as aforeſaid, *&c.* and ſuch Sums ſhall be diſtributed by Juſtices, or Head Officers and Juſtices. *Ibid.*

All ſuch Taxes ſhall be certified at the next Quarter Seſſions in ſuch City or County, *&c.* Univerſities, Cathedral Churches, and the Colleges of *Eaton* and *Winton* are excepted out of this Act. Continued by 3 *Car* 1. *c.* 4. and 16 & 17 *Car.* 1. *c.* 4.

A

A Juſtice may at his Diſcretion appoint Searchers, Watchmen, Examiners, Keepers and Buriers for Perſons and Places infected with the Plague, give them their Oaths for Performance of their Offices, and other Directions, as to his Diſcretion ſhall ſeem good. 1. *Jac.* 1. *c.* 31. *Dalt. c.* 6 & 72, *Lamb.* 197.

A Warrant to ſhut up a Houſe which is infected, and to take Care for their preſent Maintenance.

Kent, ſs. *To the Church-Wardens, and Overſeers of the Poor*, &c.

WHEREAS we are credibly informed that the Plague is in the Houſe of *A. B.* whereof one died; and that divers of the Inhabitants of your ſaid Pariſh have reſorted to the ſaid Houſe, both before and after the ſaid Party was dead; (and eſpecially *D. E. F. G.* and *H. I.* in the Houſe of *N. M.* by Reaſon whereof it is feared they are ſick); by which Means the Sickneſs is like to increaſe and ſpread further in the Town, unleſs there be ſpeedy Proviſion made for the Prevention thereof: Theſe are therefore in his Majeſty's Name to charge and command you, that forthwith you cauſe the ſaid Houſe ſo infected to be ſhut up, and that you appoint a Warden at the Door to keep them from coming forth, and others from going to them; and that you the Church-wardens and Overſeers of the Poor, be careful that the Parties ſhut up, be ſufficiently provided for, for their preſent Relief and Suſtenance: And further, that you cauſe the ſaid *N. M.* and his Family to keep themſelves within Doors; and that in the mean time he forbear to victual or let any come into his Houſe till he hath further Order. And of your further Care and Diligence herein we do expect a continual Account, that we may give further Directions as Occaſion ſhall require. And we further adviſe and order the Pariſhoners that they be very careful not to mingle themſelves with thoſe that have been of the ſame infected Houſe: And of this our Warrant we require you to give ſpeedy Notice. Hereof fail not at your Peril. *Given*, &c.

A Warrant to make a Rate for the Relief of the Perſons infected. To the Church-Wardens, and Overſeers, &c.

Eſſex, ſs. FORASMUCH as Information hath been given unto us by Certificate, that the Pariſh of *A.* within this County, is infected with the Plague; and that the Inhabitants thereof do find themſelves unable to relieve the poor infected Perſons, and therefore have need of Relief from the adjacent Places five Miles about, according to the Statute in that Caſe made and provided: Theſe are therefore in his Majeſty's Name to command you and every of you, to come before us on the 10th Day of *July* next, at two of the Clock in the Afternoon, at *T.* in *N.* &c. and bring with you your Church Books of Rates for the Poor, to the End that an equal weekly Rate and Aſſeſſment may be made for the Purpoſes aforeſaid. Hereof fail not at your Perils. Given under, &c.

A weekly

A weekly Rate made the Ninth Day of, &c. by *J. J.* and *T. L.* Esqrs. two of his Majesty's Justices, *&c.* with the Assistance of the Church-wardens and Overseers of the Poor of the Parishes within five Miles Compass of the Parish of *A.* at this Time infected with the Plague, to be paid by the Inhabitants of the same Parishes weekly, for their Relief, during the Time of the Infection, according to the Statute in that Behalf provided.

The Inhabitants of the Parish of *Q.* to pay weekly as followeth:

A. B.	--------	--------	*l.* 00	01	00
C. D.	--------	--------	00	00	06
E. F.	--------	--------	00	00	04 &c.

A Warrant to levy the weekly Relief.

To the Constables, &c.

Essex, ss. FORASMUCH as there being a Rate or Assessment made for your Parish of *L.* (*annexed to this Warrant*) for the Relief of the Inhabitants of the Parish of *A.* in this County, at present infected with the Plague, according to the Statute in that Behalf made and provided: These are therefore in his Majesty's Name to command you, that you, some or one of you, do forthwith levy and collect the several and respective Sums of Money of the Persons therein respectively named, by Distress and Sale of the Goods of the Offenders, rendring to the Parties the Overplus, if any be; and the same Money so by you received, to be paid to the Overseers of the Poor of the said Parish of *A.* and give in the same upon your Account at the End of your Year. Given under our Hands and Seals, &c.

POOR.

IT was the Complaint of my Lord Chief Justice *Hales*, That the Laws of this Kingdom are defective in the Provision for the Poor, and that (contrary to all other Nations) the more populous we are, still we are the poorer.

But as the Law now stands, which is chiefly that of 43 *Eliz. cap.* 2. the Fault seems wholly to be in the Overseers of the Poor, who have only got a Custom of taxing the Parish, and neglect their Duty in the most material Things relating to the Poor.

These Persons are usually nominated in the *Easter-Week*, or within a Month afterwards, and this by an Appointment under the Hands and Seals of two Justices dwelling in or near the Parish, or Division where the Parish lieth: For the Form of this Appointment, see Title, *Overseers of the Poor*. And being nominated, refuse to act, shall be fined *Twenty Shillings*, and a new one appointed. 43 *Eliz. cap.* 2.

Justices

Juſtices Order to appoint an Overſeer in the Place of one that was fined.

WHEREAS we his Majeſty's Juſtices of the Peace for the ſaid County, (*Quorum unus*) have, out of the Liſt of Names returned to us to nominate and appoint Overſeers of the Poor of the Pariſh of, *&c.* for the Year One Thouſand Seven Hundred and Forty Nine, choſen *A. B.* of *&c.* in the Room and Place of *C. D.* (who was lately choſen, and fined for the ſame;) And he the ſaid *A. B.* together with *E. F.* before nominated, appointed and choſen, are hereby commanded, together with the Church-wardens of the ſaid Pariſh, to provide for their ſaid Poor according to the Form of the Statute in ſuch Caſe made. Given under our Hands and Seals, *&c.*

Juſtices neglecting to nominate, forfeit *Five Pounds.* 43 *Eliz. c.* 2.

By this Statute they are to meet every Month in the Pariſh-Church, if not ſick, or having ſome other juſt Excuſe to be allowed by two Juſtices; and the Intent of their Meeting is to conſider of ſome proper Methods, not only to tax the People, and apply the Money for Relief of the Poor, but to raiſe by ſuch Taxation a convenient Stock of Flax, Hemp, Wool, Thread, Iron, and other neceſſary Stuff, to ſet them to work.

If they neglect thus to meet, they forfeit *Twenty Shillings* for every neglect to the Uſe of the Poor.

We have Laws now in Force, to confine Men to certain Places of Habitation, which is a Sort of Impriſonment, not for a Fault, but for a Misfortune in being Poor.

But by a late Act, the Liberty of a Poor Man is a little inlarged, for now he may remove into another Pariſh where he may have Work: but then he muſt have a Certificate under the Hands and Seals of the Church-wardens and Overſeers, or the major Part of them; or under the Hands and Seals of the Overſeers where there are no Church-wardens, acknowledging the Perſon therein mentioned to be an Inhabitant legally ſettled in the Pariſh. 8 and 9 *Will.*

This Certificate muſt be atteſted by two Witneſſes, and allowed and ſubſcribed by two Juſtices, and delivered to the Officers of the Pariſh to which he removeth.

And this ſhall oblige the firſt Pariſh to receive the poor Man and his Family, when he ſtands in *Need* of *Relief.*

And by a ſubſequent Law 'tis declared, That the Perſon who ſhall come into a Pariſh by ſuch Certificate, ſhall not be adjudged to have a lawful Settlement by any Act whatſoever, unleſs he ſhall take a Leaſe of *Ten Pound per Annum,* or execute ſome annual Office in ſuch Pariſh. 9 and 10 *Will.*

In *Trinity*-Term, 2 *Annæ*, a Queſtion did ariſe between two Pariſhes in *Northampton*, upon an Order removed into *B. R.* by *Certiorari*; which was thus:

A

A Perſon who was not legally ſettled in the Pariſh who gave the Certificate, but who had lived there ſome Time, went into another Pariſh by Virtue of the Certificate, by which the Pariſh who gave it, owned him to be ſettled as an Inhabitant with them: Afterwards, being poor, the Pariſh from which he came took him again; but upon Inquiry, found that he was never lawfully ſettled with them, but had gain'd a Settlement in another Place before they gave this Certificate, and thither they removed him: The Pariſh to which he was removed, appeals; becauſe thoſe who had given the Certificate, had owned him to be an Inhabitant ſettled with them; but the Certificate was held by the Court to be only an Evidence of a Settlement, and ſo the firſt Order was confirmed.

The Perſons to be maintain'd by a Pariſh-Charge, are of two Sorts, *viz.* Poor by Impotency, as *aged Perſons, Infants, Ideots*, or Perſons *viſited by Sickneſs*.

2. Poor by Caſualty, as *Perſons maim'd*; Houſe-keepers decay'd by *Fire, Robbery*, or being bound for others and paying their Debts.

And every Inhabitant and Occupier of Houſes, Lands, Tythes, Mines or Underwoods, are to be taxed towards this Charge, according to the viſible Eſtate which he hath or poſſeſſeth in the Pariſh where taxed, and not elſewhere.

This Tax is either upon Lands or Goods, but one and the ſame Perſon is ſeldom taxed for both.

The Farmer or Occupier, and not the Landlord, is liable to this Tax; for it ariſes by Reaſon of the Land in the Pariſh, and the Landlord is never aſſeſſed for his Rent.

The moſt reaſonable Way of Land, is according to a pound Rate, and not according to the Quantity of the Land.

Where a Man hath Land, and a great Stock of Wares, as a Clothier, *&c.* he may be taxed for both, but not for ſuch Stock or Goods with which he doth uſe to manure his Lands.

When Goods are rated, it ought to be after the Value of Lands, *viz.* Goods of the Value of *One Hundred Pounds* ſhall be rated at *Five Pounds per Annum*, as Lands are; and the Perſon muſt be charged only in that Place where the Goods are at the Time of the Aſſeſſment, for if he hath no Goods where aſſeſs'd, and is diſtrained, he may have an Action of Treſpaſs, *&c.*

If the Pariſh is not able to maintain its own Poor, two Juſtices may tax any other Pariſh within the Hundred, and the Seſſions may tax any Pariſh within the County.

If a Pariſh extendeth into two Counties, or Liberties, the Juſtices in ſuch Caſe ſhall intermeddle with that Part which lies within their reſpective Juriſdictions: but the Overſeers ſhall act in the whole Pariſh, and not divide themſelves. 1 *Vent.* 350.

If there is a Vill, a Pariſh which formerly had a Church or Chappel, and parochial Rights, and Officers choſen by the Inhabitants, and a ſeparate Taxation made, *&c.* this is a Pariſh within the Act. *Hutt.* 93. *Cro. Car.* 92.

But

But making Rates ſince the Statute, and Proof of a Chappel being in a Village before, will not make it a Pariſh with all other parochial Rites.

The Title of an Aſſeſſment for the Poor.

W. in the County of *Kent*, *ſs.*

AN Aſſeſſment made on the Inhabitants of the Pariſh aforeſaid, for and towards the neceſſary Relief of the Poor thereof for this preſent Year, commencing, *&c.*

A. B. C. D. Church-wardens,
E. F. G. H. Overſeers.

A Confirmation of the Rate by the Inhabitants.

WE whoſe Names are ſubſcribed to this Aſſeſſment, being Inhabitants of the Pariſh aforeſaid, have ſeen and perus'd the ſame, and the ſeveral Sums above-mentioned are, by our Approbation, rated upon the reſpective Perſons according to the beſt of our Judgment. R. A. I. T.

Confirmed by two Juſtices.

RATIFIED and allowed by us, Two of his Majeſty's Juſtices of the Peace for the County aforeſaid. *J. M. P. L.*

The Rate being thus confirmed, if any Perſon ſhall refuſe to pay, *&c.* it may be levied by Warrant from two Juſtices by Diſtreſs, *&c.* and if that cannot be taken, then two Juſtices may commit without Bail, till Payment. *&c.* The Form is,

A Warrant to diſtrain for the Poor's Tax.

Kent. ſs. To the Overſeers of the Poor of the Pariſh of, *&c.*

WHEREAS Complaint upon Oath hath been made unto us, That A. B. *of* C. D. *both of your Pariſh, Huſbandmen, being duly and ſeverally aſſeſſed*; that is to ſay, A. B. *in* Two Shillings, *and* C. D. *in* Four Shillings, *for and towards the neceſſary Relief of the Poor of the ſaid Pariſh, have and do refuſe to pay the ſame as by Law they ought: Theſe are therefore to command you, That forthwith you, or one of you, do levy the ſaid reſpective Sums of Money upon the ſaid* A. B. *and* C. D. *by Diſtreſs and Sale of their reſpective Goods; and in Default of ſuch Diſtreſs, that then you certify the ſame to us. Given under our Hands and Seals,* &c. E. F. N. O.

A *Mittimus* where a Diſtreſs cannot be had.

To the Keeper, &c.

WHEREAS *A. B.* and *D. E.* both of, *&c.* were lawfully and duly aſſeſſed the reſpective Sums of, *&c.* for and towards the neceſſary Relief of the Poor of the ſaid Pariſh, and that they refuſed to pay the ſaid Sums, and thereupon a Warrant was directed to the Church-wardens and Overſeers of the Poor of the Pariſh aforeſaid, under the Hands and Seals of, *&c.* two of his Majeſty's Juſtices

Juſtices of the Peace for the ſaid County, to levy the ſame by Diſtreſs and Sale of the Goods of the ſaid Offenders: And whereas it appeareth unto us, That the ſaid *A. B.* and *D. E.* have no Goods and Chattels upon which a Diſtreſs may or can be made, and that the ſaid *A. B.* and *D. E.* do ſtill refuſe to pay the reſpective Sums upon them aſſeſſed: We therefore herewithal do ſend you the Bodies of the ſaid *A. B.* and *D. E.* commanding you to receive them into your Cuſtody, and that they remain there without Bail or Mainprize, until they pay the ſaid reſpective Sums. Given under our Hands and Seals, *&c.*

But if any one thinks himſelf grieved by a Tax, he may appeal to the Seſſions, whoſe Determination is final.

Sometimes the Seſſions refer the Matter back again to two Juſtices, to examine the Equality of the Taxes, and then thoſe Juſtices may confirm it, if they ſee Cauſe.

Theſe Overſeers muſt within four Days after the End of their Year, and after other Overſeers are nominated, give up their Accounts before two Juſtices in theſe Particulars:

1. What Money they have received, or what is aſſeſſed and not received.
2. What Stock either they or the Poor have in their Hands.
3. What Apprentices they have put out.
4. What Poor they have relieved.

If they refuſe to account, two Juſtices may commit them to Goal, there to remain without Bail, till they account and pay the Money in their Hands to ſucceeding Overſeers.

If they make a falſe Account, they may be bound over to Seſſions, and there indicted.

If they refuſe to deliver over what remains in their Hands, two Juſtices, by Warrant directed to ſucceeding Officers, may appoint them to levy it by Diſtreſs, *&c.* and if that cannot be taken, then may commit them, *ut prius.*

A Warrant to make the Overſeers account.

Weſtcheſter, ſs. To the Conſtable of, *&c.*

THESE *are in his Majeſty's Name to command you, That you forthwith give Notice to the Church-wardens and Overſeers of the Poor of the Pariſh of*, &c. *in the County aforeſaid, for the Year laſt paſt, perſonally to appear before us at*, &c. *on*, &c. *to give us a true and perfect Account in Writing, of Things by them done relating to their ſaid reſpective Offices: And you are hereby required to ſignify unto them, that they do then and there certify unto us, the Names of ſuch other Inhabitants within your ſaid Pariſh, as are thought fit to be Overſeers of the Poor there, for the Year enſuing.*

This laſt Clauſe may be left out where other Overſeers are already appointed.

A War-

A Warrant to levy the Arrears in the Hands of former Overſeers.

Kent, ſs. To the Overſeers of the Poor of the Pariſh of, *&c.*

WHEREAS it appeareth unto us, upon your Complaint upon your Oaths, That A. B. *and* C. D. *Church-wardens*, &c. *and* E. F. *and* G. H. *Overſeers of the Poor of the ſaid Pariſh for the Year laſt paſt, were in Arrear to the ſaid Pariſh, in the Sum of* Ten Pounds, *for Monies by them collected and received, and not diſburſed in the Execution of their Office, and have not yet paid the ſame to you: Theſe are therefore to command you, That you, or ſome of you, do levy the ſaid* Ten Pounds, *by Diſtreſs and Sale of the Goods of*, &c. *rendring to them reſpectively the Overplus; and in Default of ſuch Diſtreſs, that then you forthwith certify us of the ſame. Given under our Hands and Seals*, &c.

A Warrant to Overſeers to pay what is in Arrear to a poor Perſon, and to continue to relieve him.

Kent, ſs. *To the Overſeers of the Poor*, &c.

WHEREAS Complaint hath been made unto me, by *M. N.* of your Pariſh, Widow, that the former Overſeers of the Poor of the ſaid Pariſh, did pay unto the ſaid *M. N.* the Sum of *Two Shillings per* Week, for and towards the Relief of her ſelf and Children, and that you do refuſe to pay the ſaid weekly Allowance unto her, ſo that ſhe is utterly diſabled to make any Proviſion for her ſelf and her ſaid Children: Theſe are therefore to require you, upon Sight hereof, to pay unto the ſaid *M. N.* all ſuch Arrears as are become due ſince you have forborn to pay the ſame, and that you continue unto her the former Allowance of *Two Shillings per* Week, or forthwith ſhew Cauſe why you refuſe ſo to do. Given under my Hand, *&c.*

A Warrant commanding the Overſeers to relieve a poor Perſon.

Richmond, ſs. To the Overſeers of the Poor, *&c.*

WHEREAS Complaint upon Oath hath been made unto me, That A. B. *of your Pariſh, Labourer, is very poor and impotent, and utterly diſabled to provide for himſelf and Children, ſo that they are likely to periſh for want of Relief: Theſe are therefore*, &c. *that forthwith you do relieve the ſaid* A. B. *and his Children, and that you make ſuch an Allowance weekly, as may be convenient for and towards the Support of himſelf and Children, or forthwith ſhew Cauſe why you refuſe ſo to do.*

The Father, Grandfather, Mother and Grandmother, and alſo the Children of poor old impotent Perſons (being of Ability) ſhall at their own Charge, and without any Taxation, Rate, Relief or Aſſiſtance from the Pariſh, maintain and relieve ſuch poor Perſons in ſuch Manner,

Manner, and according to the Rate, as by Juſtices of the Peace in their General Quarter Seſſions ſhall be aſſeſſed, upon Pain of forfeiting *Twenty Shillings per* Month. 43 *Eliz. c.* 2.

A Huſband marrying a Grandmother, having an Eſtate with her ſufficient, ſhall be chargeable to the Relief and Maintenance of a poor Grandchild, during the Life of the Grandmother; but where a Grandmother is unable to relieve her Grandchild, and marries with a Man of Ability, he is not to be charged. Alſo, if the Huſband after Marriage becomes to be of Ability, the Grandmother at the Time of Marriage having nothing, he ſhall not be bound to keep the Child. 2 *Bulſt.* 345. 347.

A Father was ordered to allow Maintenance to the Son's Wife, he being beyond Sea; and a Father-in-Law has been adjudged within the Meaning of the Act 43 *Eliz. c.* 2. *Style* 283.

By the Statute of 13 & 14 *Car.* 2. *cap.* 12. upon Complaint by the Church-wardens and Overſeers of the Poor, to any Juſtice within Forty Days after a poor Perſon came to ſettle in a Tenement under *Ten Pounds*, two Juſtices might remove him to the Place where laſt ſettled, for Forty Days. 13 *Car.* 2.

This Statute did not prevent clandeſtine coming into Pariſhes, for People would conceal themſelves for Forty Days, which made a Settlement; and therefore by another Statute, of 1 *Jac.* 2. *cap.* 17. the Forty Days was to be accounted from the Time of the *Delivery of Notice in Writing* to one of the Church-wardens or Overſeers; and this muſt be of the Houſe of his Abode, and the Number of his Family, if any.

But this Act was not a ſufficient Remedy againſt ſuch Settlements; and therefore by 3 & 4 *W.* & *M.* the Forty Days, *Anno* 1692. Continuance is to be accounted from the Time of *Publication of Notice in Writing*, of the Houſe of Abode, and Number of his Family.

This is to be read in the Church by the Overſeer or Church-warden, next *Lord's-Day* after Divine Service, who neglecting to read, forfeits to the Party grieved *Forty Shillings*; neglecting to regiſter ſuch Notice, forfeits the like Sum, to be levied by Diſtreſs, *&c.* and for want of Diſtreſs, may be committed for a Month without Bail.

Proof muſt be before one Juſtice, by two Witneſſes upon Oath.

But there are ſome Exceptions out of this laſt Act, which will make a Settlement, without ſuch Notice, as (1.) If on his own Account he execute any publick yearly Office or Charge for a Year. (2.) If he pay any Share of Taxes or Levies of the Pariſh.

But it muſt not be Taxes to the King, for theſe grow due, and are to be paid by Reaſon of the Reſidence of the People. (3.) If an unmarried Perſon, not having a Child, ſhall be hired for a Year, ſuch Service, that is, not the Forty Days, but his continuing in the Service for a Year, ſhall be a Settlement. 8 & 9 *Will.* 3. (4.) Being bound an Apprentice, and inhabiting in a Town, ſhall be a Settlement.

The

The Act of the 13 & 14 *Car.* 2. intitled, *An Act for the further Relief of the Poor of this Kingdom*, is made perpetual, by 12 *Annæ*.

And, after reciting the Act of the 9 & 10 of *W.* 3. it is further enacted, That if any Perſon who ſhall be an Apprentice, or hired Servant to any Perſon whatſoever, who did come into, or ſhall reſide in any Pariſh, &c. by Means of a Certificate, and hath not gained a legal Settlement in ſuch Pariſh, &c. ſuch Apprentice, by Virtue of ſuch Apprenticeſhip, or ſuch Servant by being hired to any ſuch Perſon, ſhall not be adjudged to have any Settlement in ſuch Pariſh, &c. by Reaſon thereof; but every ſuch Apprentice or Servant ſhall have his Settlement in ſuch Pariſh, &c. as if he had not been bound Apprentice, or had not been hired Servant to ſuch Perſon.

Church-wardens and Overſeers refuſing one ſent by Order of two Juſtices, forfeits *Five Pounds* to the Uſe of the Poor of the Pariſh from whence he was removed. 3 & 4 *W.* & *M. cap.* 11.

Proof muſt be by two Witneſſes upon Oath, before one Juſtice of the County to which he is removed.

Forfeiture muſt be levied by Diſtreſs, by Warrant of one Juſtice of the County to which he is removed, directed to the Conſtable where the Offender liveth, &c. and for want thereof, be committed for Forty Days.

He may appeal to the next Seſſions of the Place from which removed.

Giving Notice to a proper Officer to appeal, and not proſecuting the ſame; or appealing, the Seſſions may order Coſts for whom the Appeal is determined, or to whom Notice was given; to be paid by the Overſeers of the Poor, or other Perſon againſt whom 'tis determined, or by the Perſon who gave Notice, &c.

And if he lived out of the Juriſdiction of that Court, one Juſtice where the Perſon dwelleth, upon Requeſt to him made, and upon producing a true Copy of the Order proved by one Witneſs upon Oath, ſhall by Warrant, &c. cauſe the Money mentioned in the Order to be levied by Diſtreſs, &c. and for want thereof, commit the Perſon for Twenty Days.

Appeals muſt be determined at the Seſſions of the County, or Place wherein the Pariſh doth lie, from whence the poor Perſon is removed, and not elſewhere.

None are to be relieved, whoſe Names are not regiſtred in a Pariſh-Book kept for that Purpoſe, unleſs by Authority under Hand and Seal of a Juſtice of the Pariſh, or if none there, by a Juſtice in the Parts adjoining, or by Order of Seſſions.

But in Caſes of peſtilential Diſeaſes, *viz.* Plague or Small-Pox, in reſpect of their Families only, they are excepted. 3 & 4 *W.* & *M. c.* 11.

He and his Wife and Children cohabiting in the ſame Houſe, muſt have on the uppermoſt Garment, and upon the Shoulder of the Right Sleeve, a large *Roman* P. and the firſt Letter of the Pariſh; or otherwiſe

wiſe, one Juſtice, &c. upon Complaint, may cauſe his Allowance to be abridg'd or ſuſpended, or may commit Offenders to the Houſe of Correction, not exceeding Twenty-one Days.

Officers relieving ſuch who do not wear the Badge, forfeit *Twenty Shillings* for every Offence; one Moiety to the Informer, the other to the Poor.

Proof is to be before one Juſtice upon Oath of one Witneſs; Forfeiture is to be levied by Warrant of one Juſtice.

No Juſtice of Peace ſhall order Relief to any poor Perſon, until Oath made before him of reaſonable Cauſe, and that the Perſon had applied to the Pariſhioners, at ſome Veſtry or publick Meeting, or to two of the Overſeers of the Poor of the Pariſh, and was by them refuſed to be relieved; and until the Juſtice hath ſummoned the Overſeers to ſhew Cauſe why Relief ſhould not be given. Stat. 9. *Geo.* 1. *cap.* 7. *Shaw's Juſt.* 2 Vol. 4.

None may be ſuffered to take Relief at any Man's Door, tho' within the ſame Pariſh, unleſs it be by Order of the Overſeers; neither may any be ſuffered to beg by the Highway, tho' in their own Pariſh. *Dalt.* 227.

A Pauper that is an Object, and is refuſed Relief by the Veſtry, may apply himſelf to a Juſtice, who may ſummon ſuch Officer to ſhew cauſe why he ought not to be relieved; and if the Officer make Default in ſhewing Cauſe, or the Cauſe be diſallowed, then the Juſtice may make an Order on the Pariſh for Relief, he firſt examining the Pauper on Oath; which Examination may be in the Words following:

Midd. *to wit. The Examination of* T. M. *aged about* 70 *Years, now reſiding in the Pariſh of* C. *taken before me one of his Majeſty's Juſtices of the Peace for the County of* Middleſex.

THIS Examinant on his Oath, ſaith, That he is Seventy Years of Age, and very infirm in Body, and in no wiſe able to take Care of himſelf; and that the laſt Place of his legal Settlement was in the Pariſh of *C.* aforeſaid, and not elſewhere. *T. M.*

Sign'd and Sworn this 31*ſt Day of* Dec. 1749. His † Mark.

Whereupon the Juſtice may grant his Warrant or Order to the following Effect.

A Juſtices Warrant to relieve a poor Perſon according to the Stat. 9. Geo. 1. *cap.* 7.

Eſſex, *ſs.* WHEREAS A. B. *of your Pariſh, hath made Oath before me* J. S. *Eſq; one of his Majeſty's Juſtices of the Peace for the County of,* &c. *That he is very poor and impotent, and utterly unable to provide for himſelf and Family, ſo that they muſt inevitably periſh, unleſs timely relieved; and that he the ſaid* A. B. *on,* &c. *laſt, applied himſelf to the Pariſhioners of your Pariſh, at a publick Meeting*

as the Law directs, and was by them refused Relief; And I having summoned you the Overseers of the Poor of the said Parish, to shew Cause why Relief should not be given to the said A. B. but you not having made any sufficient Cause appear: These are therefore, in his Majesty's Name, to command you to pay unto the said A. B. the Sum of 2s. per Week, for and towards the Support and Maintenance of the said A. B. and his Family, until such Time as he the said A. B. shall be able to provide for the same, or that you shall be otherwise ordered to forbear the said Allowance. Given, &c.

An Order of two Justices (*Quorum unus*) for the Removal of a Person from one Parish to another.

Sussex, ss. *To the Church-wardens and Overseers of the Poor of the Parish of F. in the said County, and to the Church-wardens and Overseers of the Poor in the Parish of L. in the County of* Surrey, *and to each of them.*

UPON the Complaint of the Church-wardens and Overseers of the Poor of the Parish of *F.* unto us whose Names are subscribed, two of his Majesty's Justices of the Peace for the County of, *&c.* and one of us of the Quorum, That *A. R.* came lately to dwell in the Parish of *F.* not having gained a legal Settlement there, according to the Laws in that Case made and provided, nor produced a Certificate to them, owning him to be settled else-where; and that the said *A. R.* is now chargeable to the said Parish of *F.* and likely to continue chargeable so long as he dwells there: We therefore, upon due Proof made thereof, as well upon the Examination of the said *A. R.* on Oath, as otherwise, and likewise upon due Consideration had of the Premisses, do adjudge that the last Place of the lawful Settlement of him the said *A. R.* was in the Parish of *L.* &c. We do therefore require you to convey the said *A. R.* from *F.* to the Parish of *L.* And we do hereby require you the said Church-wardens and Overseers of the Poor of the Parish of *L.* to receive and provide for him as an Inhabitant of your Parish. Given under our Hands and Seals, *&c.*

Church wardens and Overseers refusing to receive Persons thus removed, and to provide for them, may be bound over to the Sessions, and indicted for a Contempt. 14 *Car.* 2. *cap.* 12.

But now by Stat. 9. *Geo.* 1. *cap.* 9. An Appeal lies to the Quarter-Sessions from the Order of Two Justices *supra*, on giving the following Notice:

To the Church-wardens and Overseers of, *&c.*

THIS *is to inform you, and every of you, That we the Church-wardens and Overseers of the Poor of the Parish of, &c. do intend at the next Quarter-Sessions of the Peace to be holden for the County of, &c. to commence and prosecute an Appeal against you the Church-wardens and Overseers of the Poor of the Parish of, &c. aforesaid, for*

and

and concerning the unjuſt Removal of T. B. *from your ſaid Pariſh of*, &c. *to our Pariſh of*, &c. *of which you are to take this Notice.* Witneſs our Hands this, &c.

The Seſſions, in Caſes of Removals, have no Juriſdiction but upon an Appeal.

Appeals from Orders of Removal muſt be heard and determined at the Quarter Seſſions of the County from whence the Pauper was removed.

If the Juſtices at the Quarter-Seſſions, upon Appeal, ſhall determine in Favour of the Appellant, they are to order the Appellant ſo much Money as ſhall be reaſonably expended by the Pariſh, on whoſe Behalf the Appeal was made, for the Relief of the poor Perſon, between the Time of undue Removal, and the Determination of the Appeal; to be recovered in like Manner as Coſts and Charges upon Appeal are by 8 *and* 9 *W.* 3. *c.* 30.

On Appeals to Juſtices, they muſt either affirm or diſcharge the Matter, or they may be compelled thereto by *Mandamus*. Hill. 15 *Geo.* 2. B. R.

By 43 *Eliz. cap.* 2. The Overſeers of the Poor are to take Order with the Conſent of two Juſtices, at all Times, to ſet to work ſuch Children whoſe Parents are not able to maintain them; and alſo ſuch Perſons as are out of Employment, and have no viſible Trade of Life to get their Living by; and alſo to raiſe weekly, or otherwiſe, (by Taxation of every Inhabitant of the Pariſh, &c. in ſuch Sums as they ſhall think fit) a convenient Stock of Flax, Hemp, Wool, Thread, Iron, &c. to ſet the Poor to work.

By 3 *Car.* 1. *c.* 4. One Juſtice of Peace may give his Conſent to the Church-wardens and Overſeers of the Poor, for their erecting, uſing and carrying on any Trade, Myſtery, or Occupation, for the employing, ſetting to work, and better Relief of the Poor of their Pariſh. And any one Juſtice may ſend to the Houſe of Correction or Common Goal, ſuch as ſhall not employ themſelves in Work, being appointed thereto by the Church-wardens and Overſeers of the Poor of the Pariſh. *Dalt.* 217.

But theſe Statutes having been found ineffectual as to employing the Poor and ſetting them on Work, in the 13 and 14 Years of King *Charles* the Second, another very good Law was made for erecting Corporations, within the Bills of Mortality, whoſe ſole Buſineſs it ſhould be to take Care of, and to employ the Poor; purſuant to which there was a Corporation erected in the City of *London*, who, rightly obſerving that the Poor could neither be ſo well taken Care of, nor ſet to Work, while they remained diſperſed in a Thouſand By-Holes and Corners, where they lived, as they might be, in Caſe they were all to inhabit together in ſome proper Place to be provided for them; purchaſed a large Houſe in *Biſhopſgate-Street* for that Purpoſe, where a great Number of Poor, but eſpecially Children,

are maintained and religiouſly educated, and employed in ſpinning of Wool, Knitting or Sewing, &c. They are dieted and cloathed, and taught to read, write and caſt Accounts, whereby they are qualified for Services and Employments; and are accordingly put forth Apprentices, and to Services.

By this Act Power is granted for the Preſident and Governors of this Corporation, to purchaſe or take any Lands, Tenements, and Hereditaments, not exceeding *l.* 3000 *per Ann.* and any Goods or Chattels whatſoever, of the Gift, Alienation, or Deviſe of any Perſon or Perſons.

This Corporation in *London*, having met with ſuch good Succeſs, a Statute was made 7 and 8 *W.* 3. for the erecting ſuch a Corporation in the City of *Briſtol*, by the Name of, The Governor, Deputy Governor, Aſſiſtants, and Guardians of the Poor. This Corporation hath the Care of, and providing for all the Poor of the ſaid City, except ſuch as are provided for by charitable Gifts, or in Hoſpitals or Alms-Houſes; and may purchaſe, take, or receive any Lands, &c. and of cauſing Rogues, Vagrants, Beggars, &c. to be apprehended, and ſet at Work in their Work-houſes

This produced another Act in the 2d and 3d Year of Q. *Ann*, for erecting a Corporation for providing for the Poor of the City of *Worceſter*, called by the Name of, The Guardians of the Poor of the City of *Worceſter*, and is impowered to hold Courts, ſummon Perſons, &c. and alſo to provide Materials for ſetting the Poor to work, compel idle Perſons, and Poor receiving Alms, and poor Children, to dwell and work in Work-Houſes, &c.

And they have Authority to contract with any Pariſh in the County of *Worceſter*, for the receiving, employing and ſetting to work Poor in their Work-Houſes, &c. This Act was enforced and continued forever by another Act made 3 *Geo.* 2.

Theſe Corporations and Work-Houſes being thus ſet up and eſtabliſhed in particular Places with good Succeſs, at length produced the general good Statute made 9 *Geo.* 1. *cap.* 7. whereby it is enacted, That the Church-wardens and Overſeers of the Poor of any Pariſh, (with Conſent of the major Part of the Pariſhioners) may purchaſe or hire any Houſe or Houſes in the Pariſh or Place, and contract with Perſons for lodging, keeping, and employing of poor Perſons; and there they are to keep them and take the Benefit of their Work and Labour for the better Maintenance and Relief of ſuch poor Perſons. And in Caſe any poor Perſon ſhall refuſe to be lodged, kept and maintained in ſuch Houſe or Houſes, he ſhall be ſtruck out of the Pariſh Books, and not be entitled to Relief.

Where Pariſhes are ſmall, two or more of ſuch Pariſhes, with the Approbation of a Juſtice of Peace, may unite in purchaſing or hiring Houſes for the Purpoſes aforeſaid. And Church-wardens, &c. of one Pariſh (with the Conſent of the major Part of the Pariſhioners) may

may contract with the Church-wardens, &c. of any other Parish, for the Lodging and Maintenance of Poor.

But no poor Persons, or their Apprentices, Children, &c. shall acquire any Settlement in the Parish, Town or Place to which they shall be removed, by Virtue of this Act.

This Statute has had such excellent Effect, that I have now by me a full and true Account of no less than One hundred and Thirty Work-Houses already set up and established in *England*, and more setting up every Day; whereby the Poors Rates are decreased one Third, if not one Half, in most Places where such Work-Houses have been set up. *Shaw's Just.* 2 Vol. *p.* 63, 64, 65.

A Contract for lodging and Maintenance of Poor, by Virtue of the Statute 9 *Geo.* 1. *c.* 7.

Memorandum. IT *is contracted this Day of* &c. *in the Year*, &c. *between* A. B. *and* C. D. *Church-wardens, and* E. F. *and* G. H. *Overseers of the Poor of the Parish*, &c. *and* I. K. *and* L. M. *of* &c. *Yeomen, That they the said* I. K. *and* L. M. *or one of them, shall and will, during the Space of*, &c. *next coming, at their, or one of their own proper Costs and Charges, in the House of*, &c. *find, provide and allow, or cause to be found, provided and allowed unto, and for* N. O. P. Q. R. S. *&c. poor Persons of the Parish of*, &c. *aforesaid, sufficient Lodging, Meat, Drink, and all other Things necessary for their and every of their Keeping and Maintenance*; [*they the said* I. K. *and* L. M. *being paid and allowed by them the said* A. B. C. D. E. F. *&c. the Church-wardens and Overseers of*, &c. *aforesaid, the weekly Sum of*, &c. *for the same*; *which they the said* A. B. C. D. E. F. &c. *do hereby covenant for themselves, and their Successors, well and truly to pay or cause to be paid to the said* I. K. *and* L. M. *as the same shall become due*: Or] *they the said* I. K. *and* L. M. *being allowed the Work, Labour and Service of them the said* N. O. P. Q. R. S. *&c. from Time to Time, in such Work and Labour as they the said* I. K. *and* L. M. *shall think fit to employ them about.* In Witness, *&c.*

By Stat. 17 *Geo.* 2. *cap.* 38. after the 24th of *June* 1744. Church-wardens and Overseers of the Poor shall yearly, within fourteen Days after other Overseers shall be appointed, deliver to such Overseers a true Account in Writing, in a Book for that Purpose, and signed by the Church-wardens and Overseers, hereby directed to account, of all Sums of Money by them received or rated, and assessed and not received; and also of all Goods, Chattels, Stock and Materials that shall be in their Hands, or in the Hands of any of the Poor, and of all Monies paid by the Church-wardens and Overseers so accounting, and of all other Things concerning their said Office; and shall also pay and deliver over all Sums of Money, Goods, Chattels and other Things as shall be in their Hands, unto such succeeding Overseers of the Poor; which said Account shall

be

be verified upon Oath or Affirmation, before one or more Juſtice or Juſtices, who are authorized to adminiſter, ſign and atteſt the Caption of the ſame without Fee or Reward; which ſaid Book ſhall be carefully preſerved by the Church-wardens and Overſeers, or one of them, in ſome publick or other Place in every Pariſh, Townſhip, or Place; and they ſhall permit any Perſon there aſſeſſed, or liable to be aſſeſſed, to inſpect the ſame; and ſhall, upon Demand, give Copies of the ſame, or any Part thereof, paying after the Rate of *Six Pence* for every Three Hundred Words.

And upon Refuſal to account as aforeſaid, two Juſtices, or more, have Power to commit to the common Goal, until Account ſhall be given.

On the Death or Inſolvency of Overſeers, two Juſtices may appoint others to ſerve in their Stead, who ſhall continue till new Overſeers are appointed.

Overſeers removing are to deliver over their Accounts, verified as aforeſaid, to ſome Church-warden or Overſeer, under the like Penalty of Overſeers refuſing to account.

Overſeers dying, their Executors ſhall account in Forty-Days, the Money due on the Account, to be paid before any other of the Deceaſed's Debts.

All Parties aggrieved may appeal to the General or Quarter Seſſions.

Juſtices upon Appeal, from Rates and Aſſeſſments (where they ſhall ſee Cauſe to give Relief) are required to amend the ſame, in ſuch Manner only as ſhall be neceſſary for giving Relief, without altering ſuch Rate to other Perſons mentioned in the ſame; but if upon Appeal it ſhall be found neceſſary to quaſh or ſet aſide the ſame, then the Juſtices are to direct the Church-wardens and Overſeers of the Poor to make a new equal Rate or Aſſeſſment, who are required to make the ſame accordingly.

The Goods of any Perſon aſſeſſed, and refuſing to pay, may be levied by Warrant of Diſtreſs, not only in the Place for which ſuch Aſſeſſment was made, but in any other Place within the ſame County or Precinct; and if Diſtreſs cannot be met with in the ſaid County, on Oath thereof before a Juſtice in any other County, ſuch Goods may be levied in ſuch other County by Virtue of ſuch Warrant and Certificate. Any Perſon aggrieved may appeal to the Seſſions, who may make a final Order therein.

Where any Diſtreſs ſhall be made for any Sum of Money juſtly due for the Relief of the Poor, the Diſtreſs itſelf ſhall not be deemed unlawful, nor the Party a Treſpaſſer, on Account of any Defect, or want of Form in the Warrant for the Appointment of ſuch Overſeers, or in the Rate or Aſſeſſment, or in the Warrant of Diſtreſs thereupon; nor ſhall the Party or Parties diſtraining, be deemed a Treſpaſſer *ab initio*, on Account of any Irregularity which ſhall be afterwards done by

by the Party diſtraining; but the Party aggrieved by ſuch Irregularity, ſhall recover full Satisfaction for the ſpecial Damage he has ſuſtained, and no more.

Plaintiff recovering, to have full Coſts, and all Remedies for the ſame.

No Plaintiff ſhall recover for any Irregularity, if tender of Amends be made by the Party diſtraining.

Succeeding Overſeers are impowered to levy Arrears to reimburſe the former ſo much as they have expended for the Uſe of the Poor, and which are allowed in their Accounts.

And where any Perſon ſhall come into, or occupy any Houſe, &c. out of, or from which any other Perſon aſſeſſed ſhall be removed, or which at the Time of making ſuch Rate, was empty, or unoccupied; that then every Perſon ſo removing from, and every Perſon ſo coming into or occupying the ſame, ſhall be liable to pay ſuch Rate, in Proportion to the Time that ſuch Perſon occupied the ſame reſpectively, in the ſame Manner, and under the ſame Penalty of Diſtreſs, as if ſuch Perſon ſo removing, had not removed, or ſuch Perſon ſo coming in or occupying, had been originally rated in ſuch Rate; ſuch Proportion to be aſcertained by two Juſtices.

That true and juſt Copies of all Rates and Aſſeſſments hereafter to be made for the Relief of the Poor, be fairly wrote and entered in a Book or Books, to be provided for that Purpoſe, by the Church-Wardens and Overſeers of the Poor of every Pariſh, Townſhip or Place, who ſhall take Care that ſuch Copies be wrote and entered accordingly, within Fourteen Days after all Appeals from ſuch Rates are determined, and ſhall atteſt the ſame by putting their Names thereto; and all and every ſuch Book or Books ſhall be carefully preſerved by the Church-Wardens and Overſeers of the Poor for the Time being, or one of them, in ſome publick or other Place, in every ſuch Pariſh, Townſhip, or Place, whereto all Perſons aſſeſſed, or liable to be aſſeſſed, may freely reſort; and ſhall be delivered over from Time to Time, to the new and ſucceeding Church-Wardens and Overſeers of the Poor, as ſoon as they enter into their ſaid Offices, to be preſerved as aforeſaid; and ſhall be produced by them at the General or Quarter Seſſions, when any Appeal is to be heard or determined.

That if any Church-Warden, Overſeer of the Poor, or other Officer of any Pariſh, Townſhip or Place, ſhall neglect or refuſe to obey and perform the ſeveral Orders and Directions of this Act, or any of them, where no Penalty is before provided by this Act, or ſhall act contrary thereto; every ſuch Church-Warden, Overſeer of the Poor, or other Officer ſo offending in the Premiſes, ſhall, for every ſuch Offence, on Oath thereof made within two Calender Months after the Offence committed, before any two or more of his Majeſty's Juſtices of the Peace, forfeit, for the Uſe of the Poor of ſuch Pariſh,

Townſhip

Townſhip or Place, a Sum not exceeding *Five Pounds*, nor leſs than *Twenty Shillings*; to be levied by Diſtreſs and Sale of the Offenders Goods, by Warrant from ſuch Juſtices; which Sum ſhall be paid to ſome Church-Warden or Overſeer of the Poor of ſuch Pariſh, Townſhip or Place, for the Purpoſe aforeſaid.

That Overſeers of the Poor, within every Townſhip or Place where there are no Church-Wardens, ſhall from Time to Time do, perform and execute all and every the Acts, Powers and Authorities concerning the Relief of, and other Materials and Things relating to the Poor, as Church-Wardens and Overſeers of the Poor may do, perform and execute by this Act, or any former Statute concerning the Poor, and ſhall loſe, forfeit and ſuffer all ſuch Pains and Penalties for Neglect, Abuſe or Non-performance thereof, as Church-Wardens and Overſeers of the Poor are liable to by Virtue of this or any former Statute concerning the Poor. *Shaw's Juſt. 2 Vol. p. 705, 6, 7, 8.*

A Certificate of a Man's being a Pariſhioner, made upon his removing to another Pariſh.

Glouc. ſs. To the Church-wardens and Overſeers of the Poor of the Pariſh of, &c. in the ſaid County.

WE *the Church-wardens and Overſeers of the Poor of the Pariſh of*, &c. *in the ſaid County of*, &c. *do hereby certify that we do own and acknowledge* A. B. *Labourer, and* M. *his Wife, to be both Inhabitants legally ſettled in our ſaid Pariſh of*, &c. *And we do hereby promiſe for our Selves and Succeſſors, to receive them into our ſaid Pariſh whenſoever they ſhall become chargeable, or miſbehave themſelves. In Witneſs*, &c. *we the ſaid Church-wardens*, &c. *have hereunto reſpectively ſet our Hands and Seals*, &c.

C. D. & E. F. *Church-wardens.*

Witneſs J. J. *Rector.*
W. T. &c.

G. H. & I. K. *Overſeers.*

We whoſe Names are hereunto ſubſcribed, two of his Majeſty's Juſtices of the Peace of and for the County of, &c. *do allow of the above Certificate:*

L. M. *and* N. O.

Warrant to apprehend Perſons coming into a Pariſh with their Families, without Certificates.

Bed. ſs. To the Conſtables of the Pariſh of, &c.

WHEREAS Complaint hath been made before me, by J. B. *Overſeer of the Poor of the ſaid Pariſh of* Sandy, *that* T. H. W. P. *and* W. S. *with their Wives and Families, and* J. B. *ſingle Man, have lately come into your ſaid Pariſh of* Sandy *to reſide there, not having obtain'd a legal Settlement, or produc'd any Certificate of their being ſettled elſe-where: Theſe are therefore, in his Majeſty's Name, to require and authorize you, and either of you, to bring the ſaid* T. H. W. P. W. S. *and* J. B. *before me, or ſome other of his Majeſty's Juſtices of the Peace, to be examined concerning the Premiſes, and to be further dealt with according to Law. Given under my Hand and Seal*, &c.

A

A Warrant to apprehend a Perſon returning into a Pariſh from whence he was removed.

To the Church-wardens and Overſeers of, &c.

WHEREAS *A. B.* being in *July* laſt lawfully ſettled in the Pariſh of, &c. did come into the Pariſh of, &c. in the County of, &c. not having given Notice to the Overſeers of the Poor of the Pariſh of *F.* of the Place of his Abode, the Number of her Family, nor otherwiſe acquired a lawful Settlement there; and upon Complaint made by the Officers of the ſaid Pariſh of *F.* that the ſaid *A. B.* was likely to be chargeable to their Pariſh, they obtained a Warrant to remove her, and accordingly did convey and remove her to the ſaid Pariſh of, &c. ſince which the ſaid *A. B.* did of her own Accord return to the Pariſh of, &c. from which ſhe was *Removed*. Theſe are therefore to require you, or one of you, to bring the ſaid *A. B.* before me, or ſome other Juſtice of the Peace of, &c. to ſhew Cauſe why ſhe returned to the ſaid Pariſh of, &c. and farther to do and receive as to Juſtice doth appertain. Given under my Hand and Seal, &c.

The Puniſhment is, To be ſent to the Houſe of Correction to be whipt as a Vagabond. The *Mittimus* is as followeth;

A Mittimus *for Returning.*

Kent, ſs. To the Conſtable of, &c. and to the Keeper of, &c.

AS in the former Warrant to the Word (Removed:) *Theſe are therefore to require you, That you, or ſome or one of you, do forthwith convey the ſaid* A. B. *to the Houſe of Correction, and there to deliver her to the Keeper thereof, requiring you alſo the Keeper to receive her into your Cuſtody, and puniſh her as a Vagrant. Given under my Hand*, &c.

Warrant to remove a Perſon coming into a Pariſh by Certificate, on his becoming chargeable.

Bed. ſs. *To the Conſtables of the Pariſh of*, &c.

WHEREAS *A. B.* by Virtue of a Certificate under the Hands and Seals of the Church-wardens and Overſeers of the Poor of the Pariſh of *L.* in the ſaid County of *B.* ſubſcribed and allowed by two Juſtices of the Peace, hath been permitted to come and reſide in the Pariſh of *B.* aforeſaid, about the Space of two Years laſt paſt, for his better Maintenance and Livelihood; but as the Family of the ſaid *A. B.* is ſince increaſed, and he is not able to maintain them without Relief; whereby they are likely to become chargeable to the ſaid Pariſh of *B.* Theſe are therefore, in his Majeſty's Name, to require and authoriſe you to convey the ſaid *A. B.* and his Wife and Family, to the ſaid Pariſh of *L.* where they are, by the Certificate above recited, owned and acknowledged to be ſettled Inhabitants and Pariſhioners, and that you do deliver them to the Overſeers of the Poor of the Pariſh, together with this Precept, &c. Given, &c.

Order

Order to ſeize the Goods and Rents of one who left his Wife and Children on the Pariſh.

Bed. ſs. To the Church-wardens and Overſeers of the Poor of, &c.

WHEREAS it appeareth unto us, upon the Complaint of you the ſaid Church-wardens and Overſeers, that J. S. *of your Pariſh, Carpenter, is departed from his uſual Place of Abode, and hath left his Wife and three Children upon the Charge of the ſaid Pariſh of* L. *tho' he hath a ſufficient Eſtate to diſcharge and indemnify the ſame: Theſe are therefore, in his Majeſty's Name, to require and authoriſe you, to ſeize and take ſo much of the Goods and Chattels of the ſaid* J. S. *and to receive ſo much of his Rents yearly iſſuing out of his Lands, as will amount to the Sum of*---------*which we do hereby appoint you to receive for and towards the Diſcharge of the ſaid Pariſh, according to the Form of the Statute in that Caſe made and provided. Given under our Hands and Seals,* &c.

A Warrant to ſend a Wife and Children to her Huſband, *&c.*

Kent, ſs. *To the Church-wardens and Overſeers of the Poor of,* &c.

WHEREAS Complaint hath been made unto us, That *A.* the Wife of *D. E.* an Inhabitant in the Pariſh of, *&c.* in the ſaid County, is lately come into your Pariſh of, *&c.* and hath brought with her Three Children of the ſaid *D. E.* being all Infants, and that the ſaid *A.* and Children are likely to be chargeable to the ſaid Pariſh: Theſe are therefore to require you, or ſome of you, forthwith upon Sight hereof, to convey the ſaid *A.* and Children, to the Pariſh of, *&c.* aforeſaid, and to deliver them to the ſaid *D. E.* there to be ſettled with him according to Law; and if you do not find him there, then to deliver the ſaid *A.* and Children to the Overſeers of the Poor of the ſaid Pariſh of, *&c.* requiring you the ſaid Overſeers, to provide for them as Inhabitants of your Pariſh. Given under our Hands and Seals, *&c.*

By a *Stat.* 3 *G.* 2. *c.* 29. 'tis enacted, that the Witneſſes who atteſt the Execution of Certificates of Settlements by the Church-wardens and Overſeers, or one of them, ſhall make Oath before the Juſtices, who by the Act 8 & 9 *W.* 3. *c.* 30. are directed to allow the ſame, that ſuch Witneſs did ſee the Church-wardens and Overſeers ſeverally ſign and ſeal the ſaid Certificates, and that the Names of ſuch Witneſſes are of their own Hand-writing; and the Juſtices ſhall alſo certify, that ſuch Oath was made before them; and every ſuch Certificate ſhall be allowed in all Courts as duly and fully proved, and be taken as Evidence without other proof.

When any Overſeers of the Poor of any Pariſh ſhall remove back any Perſons and their Families ſent thither by Certificate, and becoming chargeable, the Overſeers ſhall be reimburſed ſuch reaſonable Charges as they have been put to in maintaining and removing ſuch Perſons

Perſons, by the Church-wardens or Overſeers of the Pariſh to which ſuch Perſons are removed, the Charges being firſt aſcertained by one or more Juſtices of the County to which ſuch Removal ſhall be made, which Charges ſo aſcertained ſhall, in Caſe of Refuſal, be levied by Diſtreſs and Sale of the Church-wardens and Overſeers Goods, returning the Overplus; which Warrant the Juſtices are required to grant.

Where a poor Man comes into a Pariſh with a Certificate, he cannot be removed, unleſs he is actually chargeable to that Pariſh; for it is not enough to ſay that he is likely to be chargeable. 2 *Salk.* 530.

Adjudged, that where a poor Man, who hath a lawful Settlement in one Pariſh, comes into another by Certificate and gains a Settlement there, he ſhall not afterwards be ſent back to the Pariſh certifying. 3 *Salk.* 253.

I ſhall here preſent the Reader with ſuch Rules as I meet with in our Books concerning the drawing of Orders.

The Order muſt ſay, laſt legally ſettled, for by Law the Place which the Poor were laſt legally ſettled at, is the Place which is to provide for them. *Trin.* 5 *Ann. B. R.* It is not ſufficient to ſay, the Order was made on due Notice, without adding (on Complaint of the Church-Wardens and Overſeers of the Poor of the Pariſh;) and tho' on a *Certiorari* it was returned to be ſo, yet the Order is the Record, and the Return cannot make a void Order good. *Mich.* 9 *Ann.* inter *Parech. de Northbery* and *Shugford*, and *Paſch.* 6 *Ann. Regina* cont. *Parochias de Langley* and *Goreing*, 5 *Mod.* 149. *Rex* cont. *Inhabitants of Wooton Rivers.*

If by the Order it do not appear that one of the Juſtices is of the *Quorum*, the Order is naught; for two Juſtices, unleſs one is of the *Quorum*, have no Authority to remove a poor Man. 5 *Mod.* 321. *The Inhabitants of Childingfield* cont. *The Inhabitants of Penthurſt.* 2 *Salk.* 473, 474, 475.

An Order for the removing one becauſe he might become chargeable to the Pariſh is ill, becauſe it denotes a bare Poſſibility, and no Probability; it ought to be, becauſe the Party is likely to become chargeable to the Pariſh. *Farreſly.* 45 *Mod.* Caſes 163. *Regina* cont. *Inhabitants of Newnham.*

If the Order do not ſet forth the Makers to be Juſtices at the Time of their making, tho' the Order be confirm'd on Appeal, yet it is naught, becauſe, tho' they might be Juſtices at the Time mentioned in the Order of Confirmation, they might not be ſo at the Time when the firſt Order was made. 5. *Mod.* 322. *Pariſh of Walton* cont. *Pariſh of Cheſterfield.*

An Order for the Removing of a poor Perſon to a Place, which the Order rehearſes to be, as the Juſtices are informed, the Place of his laſt Settlement, is not good, unleſs it ſays, the Information is on Oath; but, if on Appeal, the Order is confirm'd, it is good. 5 *Mod.* 325. *Pariſh of Trowbridge* cont. *Pariſh of*

An

An Exception was taken to an Order for ſettling a poor Man, that he did not rent a Houſe of 10 *l. per Annum*. *Ch. Juſtice*: That moſt of the Orders ſince 13. *Car* 2. have been ſo; and tho' it might have been better, if it had been added, that he was likely to become chargeable to the Pariſh, yet ſince the Precedents have been ſo, we will not alter it.

But then another Exception was, that it is not ſaid in the Order, there was a Complaint made by the Church-wardens, and that was fatal, for the Juſtices of Peace cannot remove a Man without it; and tho' it is ſaid in this Order, that Complaint was made, yet ſince it is not ſaid by the Inhabitants or Church-wardens of the Pariſh, it is ill. Let the Order be quaſh'd. *Mich.* 7 *W.* 3. *in B. R. Rex* cont. *Inhabitan. de Marlborough*, *Salk.* 492.

An Order made by two Juſtices being quaſh'd by the Seſſions, the Seſſions Order was quaſh'd in *B. R.* becauſe it did not appear the Cauſe came before them by Way of Appeal, without which they have no Juriſdiction. *Salk.* 479.

It ought to appear in the Order, that the Perſon remov'd is a Perſon removeable.

If it be recited, that *whereas Complaint hath been made to us, that A. is likely to become chargeable*, it is naught; but if it be ſaid, whereas it appears to us upon Complaint, *&c.* that *A.* is likely to become chargeable, it is well enough. *Salk.* 491.

Where the Seſſions make an Order, and in the ſame Seſſions vacate it by a ſubſequent Order, it is held to be well enough; for the Seſſions is all deemed but one Day, and the Juſtices may alter their Judgments at any Time while it continues. Inter *St. Andrew's Holborn* and *St. Clement's Danes*, *Mich.* 3 *Ann. B. R. Salk.* 494, 606.

Authority given to Juſtices of Peace muſt be exactly purſu'd, and ſo it ought to appear in their Orders and Determinations; and Orders of Juſtices being judicial Acts, are not abſolutely void in themſelves, but voidable, and continue Orders till avoided. 2 *Salk.* 475, 674.

Two Juſtices of Peace may licence poor diſeaſed Perſons to travel to the *Bath* for Remedies, ſo as they are provided of Relief in their Travel, and do not beg. 39 *El. c.* 4, *Dalt.* 209. 1 *Jac.* 1. *c.* 25. for I do not find that any one or more Juſtices of the Peace may or can, in any Caſe, licence a Man to beg or aſk Relief at all; but only may make a Teſtimonial, or Licence in the two following Caſes, *viz.* 1. To ſuch as ſuffer Shipwreck; and 2. To Soldiers or Mariners coming from the Seas to paſs from Place to Place, and in theſe two Caſes only the Law tolerateth them to aſk, and receive neceſſary Relief, as aforeſaid.

Alſo Juſtices of Peace upon Requeſt, may grant Teſtimonials of Loſs by Fire towards Repairing the Damages ſuſtained by the poor Sufferers.

A Licence and Teſtimonial for ſuch as have ſuffer'd Shipwreck.

Kent. ſs. To all Conſtables, &c.

R. G. *of* W. *in the ſaid County, Eſq; one of his Majeſty's Juſtices,* &c. *Foraſmuch as the Bearer hereof,* L. M. *aged about Twenty four Years, having lately been at Sea in a Ship called the,* &c. *and hath ſuffered Shipwreck, and got to Land at* D. *in the ſaid County of* K. *upon the third Day of,* &c. *laſt paſt, as I am credibly informed, as well by the Report of the ſaid* L. M. *as alſo by the Teſtimonial of divers of the Inhabitants of* K. *aforeſaid: And for that the ſaid* L. M. *hath not wherewithal to relieve himſelf in his Travels homewards to* W. *in the County of* H. *where he ſaith he was born, (or hath a Dwelling,* &c.) *Theſe are therefore to pray you, and every of you to whom theſe Preſents ſhall come, not to moleſt or trouble the ſaid* L. M. *in his travel to* W. *aforeſaid, where he is limited to be within,* &c. *Days next after the Date hereof, but deſiring 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* W. *aforeſaid, not doing any Thing contrary to the Laws and Statutes in this Realm. In Witneſs,* &c.

A Licence or Paſſport for a poor Man to his Friends, for Relief.

Kent, *ſs. To all Conables,* &c.

R. G. and *J. D.* Eſqrs. two of his Majeſty's Juſtices of the Peace for the ſaid County, Greeting: Foraſmuch as *A. B.* of *D.* &c. the Bearer hereof, being reduced to great Poverty and Neceſſity, hath deſired a Teſtimonial or Licence for his ſafe Travel unto the City of *Y.* in the County of *Y.* where he ſaith he was born, and hath ſome Friends yet living, by whoſe Means and Friendſhip he hopeth to be fully reliev'd and holpen: In Conſideration whereof, *Know Ye,* That we the ſaid *R. G.* and *J. D.* (as far as in us lieth) hath licenſed the ſaid *A. B.* to travel and paſs the direct Way from *D.* unto the ſaid City of *Y.* ſo that his Journey be not for longer or farther Continuance than Twenty Days next after the Date hereof; praying you, and every of you, not to moleſt or trouble the ſaid poor Man in his travel, but to permit and ſuffer him to paſs, ſo that he ſhew himſelf in no Reſpect offenſive to his Majeſty's Laws. *In Witneſs,* &c.

Note, *Theſe Paſſports are often made to travel upon other Occaſions, and the Party ought to be particularly deſcrib'd therein.*

I ſhall here add a Liſt of Forfeitures given to the Poor:

Thoſe that ſit tippling in any Publick-Houſe, forfeits *Three Shillings and Four Pence*; and the Conſtable, if he neglect to take them, *Ten Shillings.* 21 *Jac.* 1. *c.* 7.

Conſtables

Conſtables and Church-wardens not levying the Penalties on Victuallers, *&c.* ſuffering People to tipple in their Houſes; or if no Diſtreſs, for not certifying ſo, forfeits *Forty Shillings* to the Uſe of the Poor of the ſame Pariſh; if another, *Ten Shillings*. 1 *Jac.* 1. *c.* 9. 21 *Jac.* 1. *cap.* 7. 1 *Car.* 1. *cap.* 4.

One convict of Drunkenneſs, forfeits *Five Shillings*. 4 *Jac.* 1. *cap.* 5. 21 *Jac.* 1. *cap.* 7.

One keeping an Ale-Houſe without Licence, *Twenty Shillings*; and the Officer not taking Notice of them, *Forty Shillings*. 21 *Jac.* 1. *cap.* 7.

Keeping Weights and Meaſures different from the Standard, *Five Shillings*. 16 *Car.* 1. *cap.* 19.

Clerk of the Markets ſealing falſe, or refuſing to ſeal true Weights and Meaſures, forfeits *Five Pounds*; and for taking more for the ſame than due, *Ten Pounds*. *Ibid.*

All that are preſent at any Games or publick Sports on *Sunday*, forfeits *Three Shillings and Four pence*. 3 *Car.* 1. *cap.* 1.

Perſons profanely Curſing and Swearing, forfeits *One Shilling*. 21 *Jac.* 1. *cap.* 20.

Thoſe who do ought beſides Works of Charity and Neceſſity on *Sunday*, forfeits *Five Shillings*. 29 *Car.* 2. *cap.* 7.

Drovers, Horſe-courſers, Waggoners, Butchers, Higlers, or their Servants, travelling on *Sunday*. *Ibid.*

All that travel, or uſe a Boat or Wherry on *Sunday*, forfeits *Five Shillings*. *Ibid.*

Perſons laying or ſuffering to be laid, Dirt, Aſhes, *&c.* before their Door, forfeits *Five Shillings*, one half to the Poor; if before the Doors of either the King's Houſe or Church-wall, forfeits *Twenty Shillings*; half to the Poor. 2 *W. & M. c.* 8.

For every Fraud committed by the Seller of Butter, the Forfeiture is *Twenty Shillings* for every Firkin; one half to the Poor. 4 & 5 *W. & M. cap.* 7.

Servants, *&c.* for Curſing or Swearing, forfeits *One Shilling* for the firſt Offence, *Two Shillings* for the Second, and *Three Shillings* for the Third; and People of better Rank, double thoſe Sums, to the Uſe of the Poor. 6 & 7 *W.* 3. *cap.* 11.

Hawkers, Pedlars, or Petty-Chapmen, refuſing to ſhew their Licence to a Juſtice of the Peace, forfeits *Five Pounds* to the Uſe of the Poor. 3 & 4 *A. c.* 4.

Conſtables, *&c.* refuſing to aſſiſt in the putting the Laws in Execution againſt Hawkers, *&c.* forfeits *Forty Shillings*; but one Moiety to the Poor. *Ibid.*

Perſons giving or ſelling Squibs, forfeits *Five Pounds*; one Moiety to the Poor. 9 & 10 *W. cap.* 7.

Head-Officers of any Town-Corporate, *&c.* refuſing to ſtamp Ale-Quart or Ale-Pint, forfeits *Five Pounds*; one half to the Poor. 11 & 12 *W.* 3. *c.* 5

Witneſſes

Witneſſes refuſing to appear, forfeits *Ten Pounds*; one third to the Uſe of the Poor. 22 & 23 *Car.* 2. *cap.* 5. 7 *W. cap.* 30.

If any Church-warden or Overſeer of the Poor, refuſe to receive a poor Perſon, removed by Order of two Juſtices of the Peace, under their Hands and Seals, by Virtue of the Statute of 3 & 4 *W.* & *M. cap.* 11. they ſhall forfeit *Five Pounds* to the Uſe of the Poor of the Pariſh from whence the Perſon was removed. 3 & 4 *W.* & *M. cap.* 11.

Perſons wilfully omitting or inſerting Perſons in the Liſts of Jurors wrongfully, or taking Reward for omitting or inſerting, forfeit 20 *l.* a Moiety to the Poor. 3 G. 2. *c.* 25.

A Teſtimonial and charitable Requeſt from Juſtices of the Peace, for poor Men that have had Loſs by Fire.

Kent, ſs. TO all Chriſtian People to whom this preſent Writing or Teſtimonial ſhall come to be ſeen, heard, or read; *A. B. D. B.* and *G. H.* Eſqrs, three of the Juſtices of Peace within the ſaid County of *K.* ſend Greeting: *Whereas* it is both godly and conſonant to Chriſtian Charity, in Matters doubtful and ambiguous, to certifie and report the Truth; we have thought it our Duty, (at the earneſt and lamentable Suit and Petition of our loving Neighbours, the Bearers or Bringers hereof, *G. H I. K. L. M.* &c.) to publiſh and declare, That on the Tenth of *M.* laſt paſt, between three and four of the Clock in the Morning, by Caſualty and great Miſchance by Fire, as well their ſeveral Dwelling-Houſes, to the Number of, &c. and all other Edifices and Buildings to every of their ſaid Dwelling Houſes belonging; and alſo all their Corn, and moſt of their ſeveral Goods and Houſhold-ſtuff, were conſumed, waſted, and burnt, to the great Danger of the Bodies of them and their Families, and their exceeding great Loſs and Impoveriſhment. And foraſmuch as it is a godly and charitable Deed, to further, help, and relieve ſuch poor, needy, and miſerable Perſons (being of honeſt Name, Fame and Converſation) as they who have ſuffered this great Loſs: And for that the Bearers hereof, in behalf of themſelves and their Neighbours, are inforced, by Reaſon of their Loſſes, to ſeek for Help and Succour for their Relief. And we knowing their Eſtate to be ſuch as is premiſed, and moved with Commiſeration of their ſad Eſtate and Condition, have therefore, as much as in us lieth, given Licence unto them, and every of them, to make their Repair from Pariſh-Church to Pariſh-Church, and every Pariſh-Church and Chappel, Town and Place, within the County of *K.* to aſk, receive, and take the charitable Benevolence of all good and well-diſpoſed People, towards the Recovery of their ſaid great Loſſes. And our Requeſt further is, That you and every of you to whom they ſhall repair, do extend your loving Favour and Charity unto them, permitting them, without your Denial, to execute the Tenour of this our Licence; deſiring all Eccleſiaſtical Perſons, to whom theſe

diſtreſſed

diſtreſſed Perſons ſhall make their Addreſs in this Behalf, to declare the Tenour hereof to their Pariſhioners in every of their Pariſh-Churches and Chappels on Sunday, or other feſtival Days, exhorting them to extend their Charity in this Behalf; and thoſe whom it concerns, to aid and aſſiſt them in the Collection thereof. *In Witneſs whereof*, &c.

A Certificate for obtaining a Brief upon a Loſs by Fire.

To his Excellency the Honourable, &c.

WE his Majeſty's Juſtices of the Peace for the County of *M.* do certifie your Excellency, That at his Majeſty's Court of General Quarter-Seſſions of the Peace holden at *N.* for the ſaid County of *M.* on *Monday* the 10th of *March* laſt paſt, it did then and there appear unto us the ſaid Juſtices ſitting in open Court, as well upon the Oaths of *A. B.* and *D. D.* Carpenters, and *E. F.* and *G. H.* Bricklayers, as alſo upon the Oaths of *J. K.* and *L. M.* two of the moſt ſubſtantial Inhabitants of the Town of *W.* within the ſaid County of *M.* That on *Monday* the 24th Day of *February* laſt paſt, between Eight and Nine of the Clock in the Evening of the ſame Day, by Caſualty and great Miſchance, a ſudden and terrible Fire did break forth at the ſaid Town of *W.* which, by Reaſon of the Fierceneſs thereof, (within the Space of Six Hours) burnt down and conſumed the Dwelling-Houſes, Barns, Stables, Cow-houſes, and Out-houſes of above Ten of the Inhabitants of the ſaid Town of *W.* together with their Corn, Hay, and moſt of their ſeveral Goods and Houſhold-ſtuff, to the great Danger of the Bodies of them and their Families, and to their exceeding great Loſs and Impoveriſhment: And that the whole Loſs ſuſtained thereby, did amount to 3000*l.* and upwards; ſo that the ſaid Inhabitants, with their Families, are totally impoveriſhed, and are no ways able to ſubſiſt, moſt but neceſſarily periſh, unleſs they ſhall be timely reliev'd by the charitable Benevolence of Well-diſpoſed People. And we do further certifie, That we have taken Bond of ſeveral of the Inhabitants, that no Part of the Money collected ſhall be applied to the Benefit of any Landlords, or other Perſon of Ability, either in rebuilding his Houſe, or otherwiſe, nor that the ſaid Inhabitants ſhall aſſign over their Collections to any other Perſon or Perſons whatſoever. *In Witneſs whereof*, &c.

The Statutes relating to the Relief of poor Priſoners are 14 *El. c.* 5. 43 *El. c.* 2. & 19 *Car.* 2. *c.* 4.

By theſe Statutes, Juſtices of Peace in their General Seſſions, may tax every Pariſh in the County, not exceeding 6*d.* per Week, for each Pariſh, for the Relief of poor Priſoners; to be levied every Sunday, and be paid Quarterly to ſuch Officers as ſhall be appointed, under the Penalty of 5*l.* --- They may alſo provide a Stock to ſet ſuch poor Priſoners to work, as are committed for Felony or other Miſdemeanours, to be raiſed as other County Charges are.

Popular

Popular and Limited Actions.

RECOVERY in an Action Popular by Covin, ſhall be no Bar in an Action ſued for the ſame Thing *bona fide*. 4 *Hen.* 7. *cap.* 20.

Here the Defendant attainted of Colluſion, ſhall ſuffer two Years Impriſonment, to be proſecuted within one Year.

No Releaſe of a common Perſon ſhall in this Caſe diſcharge an Action popular.

Yet no Colluſion is in this Caſe averable, where the Point of the ſame Action, or the Colluſion it ſelf, hath been tried by Verdict.

Informers heretofore reſtrained by Order of any Court, ſhall not purſue Actions popular. 31 *Eliz. cap.* 5.

In popular Actions the Offence ſhall be laid to be done in the County where indeed it was done; otherwiſe if the Defendant traverſe and diſprove that Point, the Plaintiff ſhall be barr'd.

This Act doth not reſtrain Officers, which have lawfully uſed to exhibit Informations, nor Actions brought for Champerty, buying of Titles, Extortion, Offences againſt the Statute of 1 *Eliz. c.* 11. (concerning the right Landing of Merchandizes, and Cuſtom of ſweet Wines) concealing of Cuſtoms, *&c.* corrupt Uſury, Foreſtalling, Regrating or Ingroſſing, when the Penalty ſhall amount to *Twenty Pounds*, or above: For in theſe Caſes the Offence may be laid in any County.

Popular Actions, where the King only hath the Forfeiture, ſhall be commenced within two Years; where he hath only a Part, and the Informer the Reſt, within one Year. But this is to be underſtood, where a ſhorter Time is not limited by any Statute.

Actions popular which may be preſented before Juſtices of Aſſize, *Niſi-prius*, *G. D. Oyer* and *Terminer*, or of *P.* ſhall be proſecuted only in the Counties where the Offences were committed, except for Recuſancy, Maintenance, Champerty, buying of Titles, concealing of Cuſtoms, *&c.* 21 *Jac.* 1. *c.* 4.

Upon Default of proving that the Offence was committed in the ſame County, the Defendant ſhall be found Not-guilty.

The Informer ſhall make Oath, that the Offence was committed in the ſame County where the Action is laid, and within one Year before the Suit commenced.

The Defendant, in a popular Action, may plead the General Iſſue, and yet give ſpecial Matter in Evidence.

An *Informer* ſhall exhibit his Suit in proper Perſon, and purſue it by himſelf, or by his Attorney in Court, and that by way of Information, or original Action, and ſhall have no Deputy; and all this in Pain of *Ten Pounds*, and the Pillory. 18 *Eliz. cap.* 5.

By 21 *Jac.* 1. *cap.* 16. all Actions upon the Caſe (other than for Slander), Actions for Accompt (other than ſuch as concern Merchandize), Actions or Treſpaſs, Debt. Detinue, Trover and Replevin, ſhall be commenced within three Years after this preſent Seſſion of Parliament, or within ſix Years after the Cauſe of Actions of Suit, and not after.

All Actions or Treſpaſs, of Aſſault, Battery, Wounding and Impriſonment, ſhall be commenced within one Year after this Seſſion, or within four Years after the Cauſe of Suit, and not after.

All Actions upon the Caſe for Words, ſhall be commenced within one Year after this preſent Seſſion, or within two Years after the Words ſpoken, and not after.

Provided, That if in any ſuch Actions Judgment be given for the Plaintiff, and the ſame be reverſed by Error, or a Verdict paſs for him, and upon Motion in Arreſt of Judgment it is given againſt him, or if the Defendant be outlawed in the Suit, and after reverſe the Outlawry: In theſe Caſes, the Plaintiff, his Heirs, Executors or Adminiſtrators, may commence a new Action within a Year after ſuch Judgment reverſed, or given againſt the Plaintiff, or Outlawry ſo reverſed, and not after.

The Right of Action in the Caſes above-ſaid, is ſaved to an Infant, Feme Covert, *Non Compos Mentis*, a Perſon impriſoned or beyond Sea; ſo as they commence their Suits within the Times above limited reſpectively, after their Imperfections removed.

No Claim or Entry ſhall avoid any Fine with Proclamations in the *Common-Pleas*, Counties Palatine, or *Wales*; or ſhall be a ſufficient Claim or Entry within 21 *Jac.* 1. *cap.* 16. for Limitation of Actions, unleſs an Action be commenced in one Year after ſuch Entry or Claim, and proſecuted with Effect.

POSSE COMITATUS.

THE Juſtices, in levying the Power of the County, may have the Aſſiſtance of all Laymen under the Degree of Knights, and above Fifteen Years of Age, and able to travel, upon Pain of Impriſonment, and Fine to the King.

But 'tis in the Diſcretion of the Juſtice how many or how few he will have, and after what Manner they ſhall be armed.

One Juſtice may take the Power of the County to ſuppreſs Rioters.

The Sheriff, Under-Sheriff, or Bailiff, *&c.* if Need be, may, by the Common Law, take *Poſſe Comitatus* to execute the King's Proceſs, or Writ, whether it be of Execution, Replevin, *&c.* 5 *Co. Rep.* 185.

Thoſe who will not aſſiſt, being lawfully required, may be bound to their good Behaviour, and ſhall be fined to the King.

If

If a Supplicavit be directed to a Juſtice, he may, upon Reſiſtance, either by himſelf, or by his Warrant, take the *Poſſe Comitatus* to arreſt the Party, though he be a Peer. 5 *Co.* 115. *b.*

Beſides this, the Sheriff's Writ of Aſſiſtance, which is under the Great Seal, commands all Archbiſhops, Biſhops, Dukes, Earls, Barons, and other Subjects within the ſame County, to be aiding to him in whatſoever concerns his Office.

A Conſtable, in the Execution of his Office, may require the Aid of his Neighbours, or of others preſent, to aſſiſt him; and if they refuſe to aſſiſt him, they may be indicted and fined.

And indeed, ſo every Conſervator of the Peace at Common Law, and every Judge of any Court of Record, may require Help of others to arreſt all ſuch as ſhall go about in their Preſence to break the Peace.

Every Perſon may aſſemble his Friends and Neighbours to defend his Perſon, *&c.* being in his Houſe, againſt Violence, *&c.* but not to go abroad with them to Fair or Market, *&c.* 11 *Co. f.* 82. 22 *H.* 7. 39.

Information of a Riot is a ſufficient Cauſe to raiſe the Power of the County, although indeed there were none. *Dalt.* 473.

Sheriff, upon a Writ of Execution, returned, that he could not execute it for Reſiſtance, and was amerced Twenty Marks, becauſe he took not the Power of the County. *Dalt.* 314.

PRESENTMENT.

THIS is an Accuſation in Writing, formed and drawn up by the Jurors themſelves, without any Bill brought before them; and it differs from an Indictment, which is always the Verdict of a Grand Jury, upon a Bill drawn up in Writing, and laid before them.

There is another Sort of Preſentment, and that is of the Copyholders in Court of a Surrender of a Copyhold out of Court, and ſometimes of a Freehold by particular Cuſtom. 4 *Co.* 9 *b.*

A Preſentment for falſe Weights muſt have in it, that the Offence is within the Juriſdiction, if in a Court-Leet; at leaſt, it is the better Way. *Hob.* 129.

A Juſtice of Peace, upon his own Knowledge, may preſent Offences againſt the Statute of 2 *&* 3 *P. & M. cap.* 8. and 5 *Eliz. cap.* 13. and the other Statutes about the Highways. *Dalt.* 99. 1 *Cro. b.* 125. *a.*

Conſtables are to make Preſentment, on Oath, at the Quarter-Seſſions and the Aſſizes, of all Things within their Knowledge againſt the Peace, and relating to their Office, mention'd in the Particulars of their Oath.

High Conſtables, by Virtue of a Warrant from Juſtices of Peace, iſſue their Precepts to Petty Conſtables, to make Inquiry and Preſentments, *&c.* and they uſually make their Returns, and bring them to a Juſtice to ſign, and then carry them to the High Conſtable as their Return to his Precept.

PROCESS.

THIS is uſually after the Indictment found, and is always in the Name of the King, directed to the Sheriff, and *Teſte* by the Juſtice: The Juſtices have Power by the expreſs Words of their Commiſſion to make Proceſs upon Indictment of Felony, or Treſpaſſes; but where a Man is indicted in one County who liveth in another, there muſt be an *Alias* after the firſt *Capias*, before he can be *Outlawed*; and there muſt be Three Months between the *Teſte* and Return thereof. 8 *H.* 6. *cap.* 10.

There is a *Proviſo* in this Statute, That Proceſs ſhall go out as uſual when the Party is indicted in the ſame County where he liveth; that is, if it be for Felony, and the Party not in Cuſtody, the Juſtices may award a *Capias*, and then an *Exigent*; but if in Cuſtody, they may award Proceſs to try the Offender the next Day.

If it is for Treſpaſs, then there muſt be a *Venire facias*, &c. and if *Nihil habet*, &c. a *Capias*, *Alias* & *Pluries*, and ſo to the *Exigent*; but if he is returned ſummoned, then a *Diſtringas* muſt iſſue if he doth not appear, and ſo *Infinite* till he come.

Sometimes Proceſs is given by particular Statutes; as *per* Statute 5 *Eliz. cap.* 4. the Juſtices may award ſeveral *Capias*'s to a Sheriff or Officer of another County where a Servant or Apprentice in Huſbandry, departs from his Maſter.

Per 5 *Ed.* 6. *cap.* 11. Juſtices may award Proceſs to a Sheriff of another County, in Caſes where Offenders are indicted for Felonies in Counties where the Facts were done, but not where they live.

If any Man is indicted for Murder, there ſhall be but one *Capias*, and then an *Exigent*.

But *per* 25 *Ed.* 3. *cap.* 14. if for Robbery, there ſhall be two *Capias*'s before the Outlawry.

Theſe Proceſſes may be ſtayed by *Superſedeas* iſſuing from the Juſtice, ſetting forth, That the Defendant came before him, and hath found Sureties for his Appearance to anſwer the Indictment, or to pay his Fine.

PROPHECIES.

PUBLISHER or Setter-forth of any fantaſtical or falſe Prophecy, with intent to raiſe Sedition, being lawfully convicted, ſhall be impriſoned for a Year without Bail, and forfeit *Ten Pounds*. 5 *Eliz. cap.* 15.

For the ſecond Offence, being convicted, &c. ſhall be impriſoned for Life, and forfeits all his Goods. One Moiety of theſe Forfeitures to the *King*, the other to the Proſecutor. Proſecution to be in ſix Months.

PUR-

PURVEYANCE.

BY the Statute of 12 *Car.* 2. *cap.* 24. no Perſon by Colour of Purveyance for the King, *&c.* ſhall take any Thing from the Subject without the Owner's Conſent.

Any Juſtice of the Peace, or the Conſtables of the Place, may commit the Offender who by colour of any Warrant under the great Seal, or otherwiſe, ſhall make Purveyance, *&c.* there to remain till the next Seſſions, and the Party ſhall recover treble Damages and treble Coſts.

QUAKER.

NO *Quaker* ſhall be permitted to give Evidence in any Criminal Cauſes, or ſerve in Juries, or bear any Office or Place of Profit in the Government. 7 & 8 *Will.* 3. *cap.* 34. made perpetual by 1 *G.* 1. *c.* 7.

Their ſolemn Affirmation, appointed by 7 & 8 *Will.* 3. *c.* 24. is, by 8 *Geo.* 1. *cap.* 6, changed into the following,

AFFIRMATION.

I A. B. *do ſolemnly, ſincerely, and truly declare and affirm, &c.*

Declaring or affirming falſe, incurrs all the Penalties of Perjury.

QUARENTINE.

WHEN any Foreign Countries are infected, all Ships coming thence are to make their Quarentine in ſuch Places, Time and Manner as the King ſhall appoint; and until they are diſcharged thereof, no Perſon or Goods therein ſhall come on Shore, or into any other Ship, *&c.* nor ſhall any go on board ſuch Ship without Licenſe in Writing, under the Hand of ſuch Perſon who ſhall be appointed to ſee the Quarentine performed: And all Ships, Perſons and Goods, *&c.* during ſuch Quarentine, ſhall be ſubject to ſuch Orders and Directions therein, as ſhall be made by the King, and notified by Proclamation; and if any Maſter or Commander of ſuch Ships, *&c.* ſhall go himſelf on Shore, or on Board any other Ship, or ſuffer any of his Men, *&c.* till his Ship be diſcharged, without ſuch Licence, ſuch Ship with her Tackle, Apparel and Furniture, ſhall be forfeited to the King. And if any Perſon arriving in ſuch Ship ſhall quit the

ſame,

ſame, by going on Shore, or on Board any other Ship during the Quarentine, the Perſon appointed to ſee it performed may compel him, in Caſe of Reſiſtance, by Force to return on board, there to remain, &c. And after the Quarentine, if thereof convicted by one Witneſs before one Juſtice, forfeits not exceeding 20*l.* to be paid to the Juſtices, who at Diſcretion are to reward the Informer thereout not exceeding one Third, and pay the Reſidue, after Charges deducted, to the Poor of the Pariſh where the Conviction was: And in Default of Payment, the Juſtice may commit to the Houſe of Correction to hard Labour, not exceeding one Month.

And the Juſtices of the ſeveral Counties adjoining to Places where Quarentines are to be performed, or one of them, ſhall on appointing the ſame, forthwith cauſe Watches to be kept Day and Night in the moſt proper and convenient Places in the adjacent Pariſhes, with ſtrict Orders to them. And they are required not to permit any Perſon whatſoever to come on Shore from, or go on Board any ſuch Ships, except ſuch only as have the Charge of ſeeing the Quarentine performed, or be licenſed as aforeſaid.

After the Quarentine performed, and Oath made by the Maſter, or Perſons having Charge of the Ship, and two of the Perſons belonging thereto, before the Cuſtomer, Comptroller, or Collector of the Port, or their Deputies, or any Juſtice of Peace near adjoining, *That ſuch Ship or Veſſel, and all and every the Perſon and Perſons therein, have duly performed the Quarentine, and that the ſaid Ship or Veſſel, and all the Perſons on Board are free from Infection*, the ſaid Cuſtomer, &c. or the ſaid Juſtice, are to give a Certificate thereof; and thereupon the ſaid Ship, &c. to be liable to no further Reſtraint, &c. And the Officer, &c. before whom the Oath is made, and by whom the Certificate is given, ſhall demand no more than *One Shilling* for each, beſides the Stamp-Duties.

And after the Quarentine, the Goods imported are to be opened and aired, &c.

A Certificate that a Ship hath performed her Quarentine according to the Statutes 7 Geo. 1. and 1. Geo. 2.

WE *A. B.* Cuſtomer of the Port of, &c. and *D. E.* and *G. H.* Eſqrs; two of his Majeſty's Juſtices of the Peace for the County of, &c, do hereby certify, that the Ship called, &c. lately arrived in the ſaid Port, and the Cargo thereof, have duly performed Quarentine, whereof Proof hath been duly made before us by the Oaths of, &c. as the Law requires; and that the ſaid Ship, Goods and Perſons on Board, are free from Infection of the Plague; and therefore we do hereby certify the ſame as the Statute directs, That all Perſons may take Notice of the ſame, and permit the ſaid Ship and Perſons to paſs, &c. without farther Reſtraint or Moleſtation. *Given*, &c.

RAPE.

RAPE. *Vide* Felony.

RAPE is where a Perſon has carnal Knowledge of a Maid, Wife, or Widow, by Force and againſt her Will; a violent Deflouring of a Woman without her Conſent, either before or after the Fact: And it is Felony by the Common Law. *Co. Lit.* 123. 3 *Inſt.* 60.

But if the Woman conceives, it is no Rape, for the Law preſumes ſhe cannot conceive unleſs ſhe conſent.

If a Woman will not proſecute for a Rape, the Huſband may; or the Father, or next of Kin may appeal: And a Huſband may proſecute for a Rape upon his Wife, after ſhe is dead, and tho' he be divorc'd from her. *Mich.* 43 *Ed.* 3.

And if a Woman be under ten Years old, then, tho' ſhe conſent at firſt, 'tis a Rape; and if ſhe be above ten Years, and does not conſent at firſt, tho' ſhe conſents afterwards, it is likewiſe a Rape. 18 *Eliz.*

If ſhe conſent after the Fact, 'tis ſtill a Rape; and tho' ſhe will not proſecute, yet the Huſband may; and if ſhe have none, then the Father or next of Kin may appeal.

In *Scotland*, the Woman ought to complain the ſame Day or Night in which ſhe was raviſh'd; and by our Law, ſhe ought to complain in Forty Days afterwards, but rather immediately; for concealing it implies a Conſent before the Fact.

Thoſe who aſſiſt in committing a Rape, being preſent, are Principals. 12 *Rep.* 37. *Savil* 42.

In *Bracton*'s Time, the Puniſhment was loſs of Eyes and *Genitalia*, becauſe *Calorem ſtupri induxerunt.*

It was a Doubt, Whether a Rape could be committed on a Girl of Seven Years old; but if ſhe had been Nine Years, it was no Queſtion. *Dyer* 304.

Anno 9 *Car.* 1. one *Martin Page* was indicted at the *Old-Baily*, for that he *Carnaliter cognovit* an Infant under the Age of Ten Years. At his Trial the Jury would not find him guilty, becauſe it was not proved he entered the Body of the Child; but he having very much abuſed her, the Court ordered an Indictment of Battery to be exhibited againſt him, which was tried at the Bar; and he was found guilty, and fined 100 Marks, and ordered to ſtand in the Pillory, &c. and to be bound with Sureties for his good Behaviour during Life, and committed during the King's Pleaſure. If under Ten Years, then tho' ſhe conſent, 'tis a Rape, by 18 *Eliz. cap.* 6. A Woman may juſtify killing a Man in attempting to raviſh her.

Anno

Anno 1 *Geo.* A Woman went for her Huſband to a Bailiff's Houſe, and being ſhew'd the Rooms by a Maid Servant, in Company of a Man that lodg'd in the Houſe, the Servant lock'd the Woman and the Lodger into a Chamber, and went away laughing, and then the Lodger raviſh'd her: In this Caſe, tho' it was prov'd the Woman cry'd out, yet there being an open Familiarity between her and the Priſoner ſoon after, they were both found guilty, but pardon'd. *Leeſon*'s Caſe.

A Warrant to apprehend a Perſon for committing a Rape.

Suſſex, ſs. To the Conſtable, *&c.*

WHEREAS E. B. *of*, &c. *ſingle Woman, hath made Complaint unto me, That on*, &c. *of this Inſtant*, &c. *about ten a Clock at Night, one* G. D. *of your Pariſh came to the Houſe of* A. B. *Father of the ſaid* E. B. *ſituate in*, &c. *and then and there, no Body being in the ſaid Houſe but the ſaid* E. B. and C. D. *he the ſaid* C. D. *did, by Force and Violence, deflour her the ſaid* E. B. *though ſhe uſed her utmoſt Strength to reſiſt him, and cried out Murder, but the Houſe ſtanding in a lone Place, none came to her Relief: Theſe are therefore, in his Majeſty's Name, to command you to apprehend the ſaid* C. D. *and to bring him before me, or ſome other of his Majeſty's Juſtices of the Peace, to be dealt with according to Law. Given*, &c.

A Commitment of a Perſon for being guilty of a Rape.

Suſſex, *ſs. To the Keeper*, &c.

WHEREAS *E. B.* of, *&c.* ſingle Woman, having made Information upon Oath, That *C. D.* of, *&c.* on *&c.* did by Force and Violence deflour and commit a Rape on the Body of her the ſaid *E. B.* in the Houſe of *A. B.* her Father, ſituate in, *&c.* And the ſaid *C. D.* being this Day examined before me concerning the ſaid Offence, but not being able to clear himſelf from the ſame, or to give a good Account where he was when the ſaid Rape was committed: Theſe are therefore to charge and command you, to receive the Body of the ſaid *C. D.* into your Goal, and that you do ſafely keep him in your ſaid Goal and Cuſtody, without Bail or Mainprize, until he ſhall be diſcharged from thence at the next Goal-Delivery for the County of, *&c.* aforeſaid, or be otherwiſe releaſed according to the due Courſe of Law. Given, *&c.*

A Warrant upon a Rape.

Kent, ſs. To all Conſtables, *&c.*

WHEREAS we have received Information and Charge upon Oath, againſt A. B. *of*, &c. *touching a certain Felony; that is to ſay, with the carnal Knowledge and Raviſhment of* N. *the Wife of*, &c. *Theſe are therefore in his Majeſty's Name, to require you to bring the ſaid* A. B. *before me, or ſome other of his Majeſty's Juſtices of the Peace for the ſaid County, to be examined touching the Premiſſes, and to be further dealt with according to Law. Hereof fail not at your Perils. Given*, &c.

RECOG-

RECOGNIZANCE.

THIS is a Bond of Record, teſtifying, That the Party oweth to the King a certain Sum, *&c.* upon the Non-performance of a Condition.

'Tis Matter of Record as ſoon as it is taken or acknowledged, tho' it be not made up, but only entred in the Juſtices Book; and therefore for a Breach of it an Indictment will not lie, but a *Scire Facias*. *Raym.* 196.

When you take a Recognizance, the Name, the Sirname, the Place of Abode, and the Trade or Calling both of the Principal and Sureties, are to be punctually ſet down, and the Principal is to be bound in double the Sum which his Sureties are bound in.

When 'tis entred or made up, you read the Condition to the Parties bound, calling them by their Names, thus:

YOU *N. O.* do acknowledge to owe to our Sovereign Lord the King, the Sum of *Twenty Pounds*; and you *T. U.* and *R. K. Ten Pounds* a-piece, to be levied on your reſpective Goods and Chattels, Lands and Tenements, if Default ſhall be made in the Condition under-written.

THE Condition of this Recognizance is ſuch, That if the above-bounden *N. O.* ſhall perſonally appear at the next General Quarter-Seſſions of the Peace to be holden in and for the County of *Bedford*, to anſwer what ſhall be then and there objected againſt him by *H. I.* on his Majeſty's Behalf; and ſhall, in the mean time, keep the Peace towards the ſaid *H. I.* and all other his Majeſty's Liege People; then this Recognizance to be void, or elſe to remain in full Force.

Theſe Recognizances are to be engroſſed in Parchment or Paper, to which the Juſtice ſubſcribes his Name, but the Perſons bound need not ſet their Hands to it.

Where a Juſtice has Power to take a Recognizance, if the Party refuſe to be bound, he may commit him. 11 *Rep.* 52.

'Tis expedient for the Juſtice to keep a Book, in which he ought to enter his Recognizances, thus,

A. B. *of the Pariſh of* C. *in the County of* D. E. *to appear at the next Aſſizes (or Seſſions of the Peace, as the Caſe is) to anſwer*

Sureties { R. N. *of* B. / B. W. *of* L. } to

The Number and Sufficiency of the Sureties is diſcretionary in the Juſtice, before whom the Recognizance is acknowledged; and when once taken, if he is deceived in the Ability of the Sureties, he may compel the Party to put in more; but this is when the Recognizance is taken *ex Officio*, and not by Virtue of a *Supplicavit*.

Feme

Feme Covert and Infants, may not enter into Recognizance, but their Sureties only, if 'tis for *keeping the Peace.*

Juſtices cannot award Proceſs, but thoſe Records muſt be certified into *B. R.*

Theſe are to be certified, notwithſtanding the Demiſe of the King, or Death of the Cognizor, or of the Party at whoſe Suit they are taken; nay, though they are releaſed.

If they concern any Evidence againſt Felons, they muſt be certified the next Goal-Delivery. 2 & 3 *P. & M. c.* 10. *Vid.* Title, *Good Behaviour.*

All whatever is a Breach of the Peace, is a Forfeiture of a Recognizance. See *Good Behaviour.*

But opprobrious Words, as to call a Man a *Lyar, Knave, &c.* are not a Breach of the Good Behaviour, ſo as to make a Man forfeit his Recognizance; for though ſuch Words may be Provocations to break the Peace, yet they do not immediately tend to it, as aſſaulting and threatning do. *Cro. Eliz.* 86. 4 *Inſt.* 180, 181.

So a Perſon beating, in Defence of his Child, Father, Goods, Maſter, Mother, Poſſeſſions, Way, in Defence thereof, if ancient, is not a Breach of the Peace.

The Manner of acknowledging Recognizances.

Bed. ſſ. } W. O. *of*, &c. *in* 1000
14*th of* June, } H. O. *of*, &c. *in* 1000
1749. } T. W. *of*, &c. *in* 1000

YOU *W. O. H. O.* and *T. W.* do ſeverally acknowledge to owe to our Sovereign Lord the King, *Ten Pounds* a-piece, to be levied on your reſpective Goods and Chattels, Lands and Tenements, for the Uſe of his Majeſty, his Heirs and Succeſſors, if Default ſhall be made in the Condition under-written.

THE Condition of this Recognizance is ſuch, that if the Parties above-bounden, ſhall appear at the next Aſſizes, and give Evidence againſt W. E. *for the Felony and Burglary committed in the Dwelling-Houſe of* W. J. *of* B. *in the Pariſh of* S. *in the County of* B. *on the* 10*th of this Inſtant* June; *then the Recognizance to be void, or elſe to remain in full Force.*

Recognizance ſingle.

Bed. ſſ. *BE it remembred, That on the Twentieth Day of* April, *in the ſeventh Year of the Reign of our Sovereign Lord* George *the Second, by the Grace of God, of* Great Britain, France *and* Ireland, *King, Defender of the Faith,* &c. J. S. *of* H. *in the County aforeſaid, Carpenter, came before me,* O. T. *Eſq; one of his Majeſty's Juſtices of the Peace for the ſaid County, and acknowledg'd himſelf to be indebted to our ſaid Sovereign Lord the King; in* Twenty Pounds *of good and lawful Money of* England; *to be levied on his Goods and Chattels, Lands and Tenements, to the Uſe of our ſaid Soverign Lord the King, his Heirs and Succeſſors, in Caſe Default ſhall be made in the Condition following.*

THE

THE Condition of this Recognizance is ſuch, That if the ſaid *D. E.* ſhall perſonally appear before the Juſtices of the Peace at the next General Quarter-Seſſions of the Peace, to be held for, *&c.* and ſhall then and there anſwer unto ſuch Miſdemeanours which ſhall be objected againſt him, and that he do not depart without Leave of the Court: Then this Recognizance to be void.

N. B. If a Man be bound in a Recognizance for himſelf and his Servants, if any one of them break the Peace, the whole Recognizance is forfeited. *& ſic in ſimilibus.*

The Form of the Releaſe of the Party.

Eſſex, ſſ. BE it remembred, That on the 27th of *Auguſt*, in the Year of our Lord 1748, *J. M.* came before me *J. S.* Eſq; one of the Juſtices of our Sovereign Lord the King, aſſigned to keep the Peace in the ſaid County, and freely remiſed and releaſed, as much as in him lay, the ſaid Security of the Peace by him claimed againſt the ſaid *A. B.* In Witneſs whereof I the ſaid *J. S.* have ſet my Seal to this Releaſe, dated, *&c.*

RESCOUS.

THIS is a Reſiſtance againſt a lawful Authority, and by Violence taking away a Priſoner, or procuring his Eſcape.

If the Perſon reſcued hath committed Felony, and was *arreſted* for it, then *reſcuing* him is *Felony*; but if he was not arreſted, then the oppoſing or hindring any Perſon to apprehend him, is a *Miſdemeanour*, but no *Felony*.

But the Reſcuer ſhall not be arraigned of the Felony till the Principal is attainted; and if he die before Attainder, the Felony is diſcharged; but he ſhall be indicted, fined and committed, for reſcuing him. *Hale's Pl. Coron.* 116.

Indictment for a Reſcous was, *Quod arreſtavit*, without ſaying, *& in Cuſtodia ſua habuit*, and for this Reaſon it was quaſhed; tho' in the ſame Indictment it was alledged, That the Defendant reſcued him *out of the Poſſeſſion* of the Bailiff.

A Warrant of Reſcous.

Kent, ſs. To all Conſtables, and other his Majeſty's Officers of the Peace, whom theſe may concern.

WHEREAS Complaint upon Oath hath been made before me, by C. D. *That on the 27th Inſtant,* E. F. G. H. & J. K. *in a riotous and violent Manner in the Street, did reſcue out of his Cuſtody, one* F. I. *after he had arreſted him by Virtue of a Warrant from, &c. at the Suit of* T. M. *for* Ten Pounds *Debt, &c. Theſe are therefore in his Majeſty's Name, to require you to bring the ſaid, &c. (of whom you ſhall have Notice) before me or ſome other of his Majeſty's Juſtices of the Peace, to be examined and dealt with according to Law. Hereof you are not to fail. Given under, &c.*

Perſons

Perſons oppoſing or reſiſting any Officer, *&c.* in the Execution of any Proceſs, to be committed to the County-Goal without Bail, until the next Aſſizes of Goal-Delivery, 8 & 9 *W. cap.* 27.

Reſtitution of Stolen Goods.

AT the Common Law, the Owner of Goods ſtolen could not have Reſtitution upon an Indictment againſt the Felon, tho' he was freſhly purſued, becauſe the Proſecution was at the Suit of the *King*; it was otherwiſe upon an Appeal, becauſe that was at his own Suit.

But this is now remedied by the Stat. 21 *H.* 8. *cap.* 11. for if the Felon be found guilty, or attainted of the Proſecution of the Party robbed, or Owner of the Goods, the Juſtices have Power to award Reſtitution of *the Goods ſtolen*. *Noy.* 128.

A Man ſtole Cattle, and ſold them in *open Market*; the Sheriff ſeized the Thief and the *Money*, and he was convicted and hanged, at the Proſecution of the *Owner* of the Cattle, and he had Reſtitution of the *Money*. For though the Statute gives Power to the Juſtices to award Reſtitution, *&c.* of *the Goods ſtolen*; and though the *Money* in this Caſe was not *ſtolen*, yet becauſe it did ariſe by *ſtealing*, it ſhall be within the Equity, though not in the very Words of the Statute. *Noy* 128.

This my Lord *Coke* calls a *Beneficial Law*, becauſe it giveth a Party robbed a more ſpeedy Remedy than by Way of *Appeal*, which before this Statute he ought to bring, or he could have no Reſtitution: And becauſe 'tis beneficial, therefore it hath been held to extend to the Executors or Adminiſtrators of the Party, though they are not mentioned in the Statute. 3 *Inſt.* 242.

In ſome Caſes there can be no Reſtitution; as if the Felon ſells the Goods in a Market, *&c.* and is afterwards convicted, the Property is altered by the Sale; or if he waive them and eſcapeth, and 'tis not known who he was, the Lord having ſeized, the Owner cannot have Reſtitution, becauſe the Felon cannot be indicted or attainted; but if Plate is ſold in a Scrivener's Shop, it ſhall be reſtored upon Conviction, &c. becauſe ſuch a Shop is not a proper Market for ſuch Goods. 1 *And.* 344. *Moor* 360.

But notwithſtanding the Caſes above-mentioned, the Practice hath been otherwiſe ever ſince 4 & 5 *Car.* 1. For if the Criminal is convicted at the Proſecution of the Party who loſt the Goods, he ſhall have Reſtitution, though they were ſold in a Market-Overt; and if the Party who bought them pleads it to a Writ of Reſtitution brought, the other upon a Demurrer to ſuch Plea, will have Judgment.

This

This Reſolution tends to the Advancement of Juſtice, to make Men vigilant in proſecuting Offenders; and it will diſcourage Perſons from buying Goods for a ſmall Value in the Market, of ſuch whom they have Reaſon to ſuſpect. *Keeling* 48. *Coke's Magna Charta* 714.

But if Goods are ſtolen, and not waived in Flight, or ſeized by a proper Officer, there the Party may take his Goods again, though he doth not proſecute; but if waived or ſeized, the Party ſhall have no Reſtitution till Conviction at his Proſecution, and even in ſuch Caſe he ſhall have no more than what is mentioned in the Indictment, though other Goods were ſtolen at the ſame Time; and the Reaſon is, becauſe by ſuch Omiſſion the Offender might have eſcaped.

RIOT.

A RIOT is where *Three Perſons, or more*, meet to do an unlawful Act with Force, and accordingly execute the ſame; for if they do not, 'tis only an unlawful Aſſembly. But it can be no *Riot*, except there is a *precedent Intent* to do an unlawful Act, and that with *Force*.

Riots, &c. ſhall be ſuppreſſed and enquired of at the King's Charge, which the Sheriff is to diſburſe by Indenture between Juſtices and him.

What Perſons meeting in Numbers, ſhall not make a Riot.

An Aſſembly meeting together, and they know not for what.

A Bailiff, or Conſtable requiring Perſons to aſſiſt him, &c.

A Jury falling out, and fighting.

Infants meeting in Numbers, not incited by a Man of Diſcretion.

Perſons meeting together to dance, or to be merry on *May-Day*, &c. or to play at any Sport.

A Number of Men meeting to carry away a Thing of Burthen, to which one claims a Right, tho' he hath none, provided they uſe no threatning Words. All theſe are no Riots.

'Tis no Riot in Servants, if they go with their Maſter (who intends to commit a Riot) and they are ignorant of his Intentions. But a Stage-Play cauſing a great Number to meet, is a Riot. *Rol.* 109.

A Juſtice having Notice of a *Riot*, he muſt endeavour to remove it; he may bind the Rioters to the Good Behaviour; and if they have no Sureties, or refuſe to be bound, he may commit them; and if the Juſtice neglects, he is to be fined; and the two next Juſtices to the Places where the Riot was committed, forfeit *One Hundred Pounds* to the King, if they neglect (*having Notice*) to ſuppreſs a Riot. 13 *H.* 4. *cap.* 7.

The

The Record of one Juſtice is traverſable, but not of Two, becauſe 'tis purſuant to the Statute.

But one Juſtice ſitting in a judicial Place, and ſeeing a Riot, may record it upon his own View, which is not traverſable, becauſe he then acts as a Judge; but 'tis otherwiſe if he do not ſit in ſuch Place.

One Juſtice cannot fine them, for this muſt be done by two Juſtices, by Virtue of the Statute of 13 *H.* 4. *cap.* 7. And they ought to ſend to the Sheriff or his Deputy, who by the Statute ſeem to have a concurrent Juriſdiction with them in fining the Offenders; and therefore upon a Writ of Error brought, the Judgment was reverſed where a Fine was ſet without the Sheriff. *Raym.* 386.

But yet, 'tis the Opinion of Mr. *Lambert*, That the Juſtices without the Sheriff, if they ſee a Riot, may commit the Rioters, take away their Weapons, and appriſe them for the Uſe of the King, and juſtifie the beating and killing, if oppoſed.

If Rioters eſcape being taken by the Juſtice, this Record being certified, as aforeſaid, Proceſs ſhall iſſue out againſt them out of *B.R.*

The Juſtices may likewiſe grant Warrants to take thoſe who eſcape, and bind them to good Behaviour, or commit them when taken.

Several were indicted for a Riot in reſcuing a Perſon arreſted near *Charing-Croſs*, and were fined 500 *l.* and to ſtand in the Pilory. *Cro. Car.* 300.

By Statute 1 *Geo.* 1. *Cap.* 5. 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.

The Juſtice, Sheriff, *&c.* 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 then read, or cauſe to be read, in theſe Words, or to the like Effect.

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 lawful Buſineſs, upon the Pains contained in the Act made in the firſt Year of King George *the Firſt, for preventing Tumults and riotous Aſſemblies.*

God Save the King

If after Proclamation made, the Offenders ſhall continue together one Hour, and not 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

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 Perſon with Force willfully obſtructing another to make Proclamation, whereby 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 Number of Twelve or more afterwards, for the Space of one Hour, ſhall be Felons without Benefit of Clergy.

And this Statute againſt Rioters, is to be read openly at every Quarter Seſſions. 1 *Geo.* 1. *cap.* 5.

Two Juſtices, with the Sheriff or Under Sheriff, ſhall by the Power of the County, ſuppreſs Riots, Routs, and unlawful Aſſemblies, and upon View record them, commit the Offenders, and return the Record in *B. R.* whereupon they ſhall be convict: And if the Offenders are gone, Enquiry ſhall be made in a Month, and the Matter determined according to Law, or the Juſtices ſhall forfeit *One Hundred Pounds*. *Stat.* 13 *H.* 4. *c.* 7.

Perſons guilty of heinous Riots, ſhall ſuffer one Year's Impriſonment without Bail. *Per Stat.* 2 *H.* 5. *c.* 8.

If a great Number of People detain the Poſſeſſion of a Houſe with Force, this is a Riot: But any Perſon may uſe Force and Arms in the Defence of his Perſon or Houſe againſt Robbers, or againſt thoſe who ſhall aſſemble to do him any Violence, or to ſuppreſs Riots; but the ſafeſt Way is to be armed in the Aſſiſtance of the King's Officers or Miniſters of Juſtice.

Juſtices of the Peace, Sheriffs, Mayors, Bailiffs, and High and Petty-Conſtables, and other Peace Officers, are to command Aſſiſtance and ſeize and apprehend ſuch Rioters, and carry them before a Juſtice, and if any of the ſaid Rioters are killed or wounded in apprehending, the Perſons concerned ſhall be indemnified from the ſame.

If any Perſons, unlawfully, riotouſly and tumultuouſly aſſembled, ſhall with Force demoliſh or pull down, or begin to demoliſh any Church, Chapel, or Building for religious Worſhip, or any Dwelling-Houſe, Barn, Stable, or other Out-houſe, it is made Felony without Benefit of Clergy. *Per Stat.* 1 *Geo.*

And where ſuch Chapel, *&c.* ſhall be demoliſhed, the Hundred or Town ſhall be obliged to make good the Damage.

When a Riot is committed, not within the View of two Juſtices, and the Rioters are diſperſed and gone, two Juſtices are within a Month after Notice, to make a Precept to the Sheriff of the County to ſummon a Jury to enquire of the Riot; and if 'tis found, then they have Power to commit Offenders, and are to certify the Inquiſition to *B. R.* that they may be fined. *Styles* 303.

A War-

A Warrant againſt Rioters.

To all Conſtables and other his Majeſty's Officers of the Peace, whom it may concern.

WHEREAS Complaint, upon Oath, hath been made before me by *C. D.* That Yeſterday, as he was going about his lawful Buſineſs, *E. F.* met him in the Street in his Way, with two Men in his Company, unknown to the ſaid *C. D.* who in a riotous, inhuman and barbarous Manner, did Aſſault, Beat, Bruiſe and Wound him: Theſe are in his Majeſty's Name to require you to bring the ſaid *E. F.* and the other two Perſons (of whom you ſhall have Notice) before me, or ſome other of his Majeſty's Juſtices of the Peace, to be examined and dealt with according to Law. Hereof you are not to fail. Given under my Hand and Seal, *&c.*

The Form of a Record of a Riot upon View.

MEMORANDUM, That on the Twenty ſeventh Day of *May*, in the Twentieth Year of the Reign of our Sovereign Lord *George* the Second, of *Great Britain*, &c. King, *Annoq; Dom.* 1748. We *D. E.* and *F. G.* Eſqrs, Two Juſtices of the aforeſaid Lord the King, the Peace in the County aforeſaid to preſerve and keep, aſſigned; and *G. H.* Eſq; then Sheriff of the ſaid County, at the grievous Suit and humble Supplication of *W. S.* of *H.* in the County aforeſaid, Yeoman, in our proper Perſons did come to the Dwelling Houſe of *W. S.* in the County aforeſaid, and then and there did ſee *M. H.* of *H.* aforeſaid, Yeoman, and *H. P.* of *C.* in the County aforeſaid, Labourer, and other evil Doers and Diſturbers of the Peace of our ſaid Lord the King, unto us unknown, (to the Number of Perſons) with Swords, Daggers, *&c.* and unlawfully and riotouſly at the ſame Houſe were gathered together, and much Harms upon him the ſaid *W. S.* did commit, 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 in ſuch Caſe made and provided. And therefore, we the aforeſaid *D. E.* and *F. G.* then and there the aforeſaid *M. H.* and *H. P.* did arreſt, and to the next Goal of our ſaid Lord the King, in the County aforeſaid, did cauſe to be ſent, of our own View and Record, convict of that illegal Aſſembly and Tumult, *&c.*

This Record muſt be certain, as to the Time, Place, Number, Weapons, Manner, and other Circumſtances, becauſe 'tis a Judgment, and not traverſable; for if upon Examination it appears to be no Riot, or that the Juſtices did not ſee it, yet the Parties are concluded.

But for committing without recording, or making a Record without committing, the Juſtices forfeit *One Hundred Pounds.*

Information againſt *two Juſtices*, for not enquiring into a Riot, and found againſt one of them, is good. *Roll. Rep.* 109.

After

The Form of an Inquiſition of a Riot.

INQUISITION of our Lord the King, taken at L. *in the County aforeſaid, the 27th Day of* May, *in the Twenty ſecond Year,* &c. Anno. Dom. 1748. *by the Oath of* (the Jury) *honeſt and lawful Men of the County aforeſaid, before* H. P. *and* W. N. *Eſqrs, two Juſtices of the aforeſaid Lord the King, the Peace in the County aforeſaid to preſerve, and alſo for divers Felonies, Miſdemeanours and other Tranſgreſſions in the ſame County perpetrated, to hear and determine aſſigned, which ſame Jurors upon their Oath aforeſaid, ſay, That* M. H. *of* H. *in the County aforeſaid, Yeoman, and other Malefactors and Diſturbers of the Peace of our ſaid Lord the King, to the Jurors aforeſaid unknown, the 20th Day of* May *laſt paſt, with Force and Arms,* viz. *with Clubs, Swords, Daggers,* &c. *and other unlawful Weapons, in the Meſſuage of W. S. in the County of* H. *aforeſaid, between the Hours of Ten and Eleven in the Forenoon of the ſame Day, unlawfully and riotouſly did enter, and in and upon him the ſaid* W. S. *did make an Aſſault, and him did beat and wound, 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 in ſuch Caſe made and provided,* &c.

This Inquiry within a Month muſt be intended of great Riots; for by Virtue of their Commiſſion, the Juſtices may inquire into ſmall Riots at any Time afterwards, ſo that the Limitation of a Month ſeems to prevent the Forfeiture of *One Hundred Pounds*, by the two next Juſtices, in Caſe of great and notorious Riots, they neglecting to make Inquiry within that Time.

But if they enquire afterwards, the Indictment ſhall not be quaſhed for that Reaſon, becauſe a Riot is an Offence at Common Law, and the Statute is not penal, but only directory to the Puniſhment. *Sid.* 186.

After the Riot is found upon this Inquiſition, the Juſtices may award a *Venire Facias*, directed to the Sheriff of the County, under their own *Teſte*, commanding him to cauſe the Offenders to appear before them (*the Form whereof you may ſee before, in Proceſs on Indictment.*)

This is only where the Offenders cannot be taken; and ſo if the Sheriff return, *Non eſt inventus* (not to be found) you may proceed to the Outlawry. But if they appear, the Juſtices may fine them, and commit them till paid, or may take Sureties by Recognizance to pay the Fine, or may accept a Traverſe; which Inquiſition and Traverſe muſt be ſent to the next Seſſions, or into *B. R.* there to be tried.

The Charges of the Juſtices and Jury are to be paid by the Sheriff out of the Fines; and therefore by the Statute of 2 *H.* 5. *c.* 8. the Fines may be encreaſed, and an Indenture being made between the Juſtices and the Sheriff, he is to be allowed it in paſſing of his Accounts in the Exchequer.

If the Truth of a Riot cannot be found by Inquiſition, then within a Month afterwards, the ſame Juſtices and Sheriff muſt certify into *B. R.* ſo much of the Fact as appears to them, together with the Names of the principal Offenders, and Circumſtances and Impediments why the Truth was not found, *ſub Pœna* 20*l.* This Certificate may be in *Engliſh*, by way of a Letter, comprehending the whole Truth, with the Time, Place, *&c.* and if any Thing material be left out of the Inquiſition, it may be ſupplied in the Certificate. But if the Sheriff dye, or the Juſtices are put out of Commiſſion before the Certificate made, it cannot be done afterwards.

N. B. If divers Perſons be lawfully aſſembled, and fall out of a ſudden among themſelves, this is no Riot, only an Affray.

An Indictment for a Riot muſt ſhew what the unlawful Act was, that they aſſembled to do. *Raym.* 1210.

A Mittimus to the Goal upon View, &c.

Eſſex, ſs. To the Keeper of, *&c.*

UPON Complaint, upon Oath, made unto us R. L. *and* L. M. *Eſqrs. two of his Majeſty's Juſtices of the Peace for the County aforeſaid, by* H. C. *of* E. *we did this preſent* 30*th Day of* Auguſt, *go to the Houſe of* M. *and there did ſee* P. Q. *and* W. M. *and others aſſembled together in a riotous and unlawful Company, at* H. *aforeſaid, to the Terror of the People, and againſt the Peace of our Sovereign Lord the King, and againſt the Form of the Statute in that Caſe made and provided: We do therefore herewithal ſend you the Bodies of the ſaid* P. Q. *and* W. M. *they being convicted of the ſaid Riot, and unlawfully aſſembled, by our own View, Teſtimony and Record, commanding you the ſaid Goaler, to receive them into your Cuſtody, and ſafely to keep them until they ſhall from thence be delivered by due Courſe of Law. And hereof fail not. Given under*, &c.

Commitment of Rioters for not diſperſing after Proclamation.

Bed. ſs. *To the Conſtables*, &c. *and Keeper of*, &c.

WHEREAS *J. S.* of *B.* aforeſaid, Butcher, and *J. B.* of the ſame, Shoe-maker, were aſſembled with divers other Perſons, in a riotous and tumultuous Manner, in the Market-place of the ſaid Town, on the 3d of this Inſtant *October*, to the Terror of his Majeſty's peaceable Subjects, and refuſed to diſperſe themſelves on reading the Proclamation contained in the Statute made in the Firſt Year of King *George* the Firſt, for preventing Tumults and riotous Aſſemblies: Theſe are therefore, in his Majeſty's Name, to require and authoriſe you the ſaid Conſtables, and either of you, to take the ſaid *J. S.* and *J. B.* and to convey them to the ſaid Goal; and you the ſaid Keeper are hereby required, to receive the ſaid *J. S.* and *J. B.* into your Cuſtody, and them ſafely to keep until they ſhall be diſcharged by due Courſe of Law. Given under my Hand and Seal, *&c.*

ROBBERY

ROBBERY.

ROBBERY is a felonious and violent Taking Money or Goods from the *Perſon* of another, to any Value, *putting him in Fear*; for without putting in Fear 'tis no Robbery. *Dyer* 224.

My Lord *Coke* tells us, That 'tis *Robbery*, becauſe Goods were taken *quaſi de la Robe*, that is, from the *Perſon*, as he calls it. But the learned Sir *Henry Spelman*, gives us a different Account of the Word, *viz.* That in the Time of the *Saxons*, it was uſual for Travellers to lodge in any Man's Houſe for one Night (for in thoſe Days they had very little Money, and no Inns) That *Reab* in the *Saxon* Language, ſignifies a *Garment*; and becauſe Rogues did ſteal the Cloaths of ſuch Travellers (for they had nothing elſe to loſe) therefore they were called *Robatores*, and the Crime it ſelf *Roberie*; ſo that at firſt it was not a taking from the *Perſon*, for the Cloaths were uſually ſtolen in the Night after the Traveller went to reſt: But now it muſt be a taking from the *Perſon*, and 'tis the Violence and putting in Fear that diſtinguiſhes this Offence from a Cut-purſe or Pick-pocket, which is *clam & ſecrete* (privily and ſecretly.)

Now an aſſaulting, without taking any Thing, is no Robbery. But commanding the Perſon to *Deliver*, and he doth it, this is a Taking and Robbery, tho' the Thief doth deliver the Thing taken back again. So is compelling one to ſwear to bring him Money, and he doth it; if the Wife receives it, this is a taking: And all that are in Company, (tho' the Fact is done by one alone) are Principals.

Three Perſons come to rob *M.* and one doth the Fact out of the Sight of the other, who afterwards returns to them, 'tis Robbery in all. 1 *And.* 116.

If being purſued, and endeavouring to eſcape, the true Man let his Hat or Money fall, and the Thief takes it up, this is a Taking from the Perſon. So is taking in his Preſence; for in Law this is a Taking from his Perſon.

Aſſaulting one, and putting him in Fear, and then driving away his Cattle in his Preſence; this is taking from his Perſon, and Robbery.

By a late Statute, he who apprehends and proſecutes a Highway-Man to Conviction, ſhall, within a Month after, receive of the Sheriff of the County where the Robbery was committed, *Forty Pounds*, producing the Certificate of the Judge or Juſtices, before whom the Perſon was convicted: And if any one is killed in taking of a Highway-Man, thoſe who have a Right to adminiſter, ſhall have the *Forty Pounds*; and he who takes, proſecutes and convicts, ſhall have the Horſe, Furniture, Money, and other Goods of the Highway-Man, unleſs ſtolen. 4 & 5 *W. & M.*

The Hundred is chargeable if the Robbery is committed in the Day-Time; and therefore, if its done in *January* after Sun-setting, or if a Highway-Man compel a Waggoner in the Day-Time, to drive his Waggon out of the Way, and then robs him in the Night; this ſhall likewiſe be a Robbery in the Day, becauſe the firſt Seizure was a Robbery, and the Hundred in both Caſes ſhall anſwer it. *Sid.* 263. See *Hue-and-Cry*.

Robbery in a Houſe is diſtinguiſhed from that which is but mere Larceny; for Larceny is only fradulent, without any actual Force; and a Robbery is done with Force. So the actual Breaking a Houſe makes it Burglary. For if the Door of a Houſe be open, and a Thief enter in the Night and ſteal Goods; this is only Larceny and no Burglary, becauſe there was no Force, which is that which diſtinguiſheth Robbery from Felony.

Examination of a Perſon robb'd on the Highway.

The Examination of *R. K.* of *B.* in the County of *B.* taken upon Oath before *R. B.* Eſq; one of his Majeſty's Juſtices of the Peace for the County aforeſaid, on the 25th Day of *May*, 1749.

THIS Examinant ſaith, That on Tueſday *the 9th Day of this Inſtant* May, *he was aſſaulted in the Highway leading from* B. *to* T. *at a near a Place called the* R. H. *about Ten of the Clock in the Morning of the ſame Day, by three Men on Horſeback, who ſeized this Examinant, and carried him out of the Road to a By-place adjoining, and robb'd him of the Sum of* Nine Pounds *and his Horſe. And further ſaith, that he is ſince informed that the ſaid Highway and By-place are both in the Pariſh of* B. *and within the Hundred of* M. *in the ſaid County, and that he did not then, or yet doth know either of the Perſons who committed the ſaid Robbery.* R.K.

Sworn before me the Day and Year above-written. R. B.

IN order to bring the Action, the Perſon muſt make an Oath as followeth:

Bed. ſs. June 1. 1749.

R. K. *of* B. *in the ſaid County, Gent. came before me* H. P. *Eſq; one of his Majeſty's Juſtices of the Peace for the ſaid County, the Day and Year above written, and made Oath, That on* Tueſday *the 9th of* May *laſt, about Eight of the Clock in the Forenoon of the ſame Day, travelling from* B. *to* T. *he was aſſaulted in the common Road, three Miles from* T. *in a Field called* O. W. *by three Horſemen, one of them being a Man of about Twenty-five Years of Age,* &c. (deſcribing all their Habits and Horſes, *&c.*) *which ſaid three Perſons then robb'd this Deponent, taking from him, by Force,* Twenty Pounds, *and a Mare; and the ſaid* R. K. *did further depoſe, that he did not know the ſaid Perſons, or either of them.* R. K.

Sworn before me the Day and Year above-written. H. P.

SESSIONS

SESSIONS.

SESSIONS is a Court of Record held before Two or more Juſtices, *Quorum unus*. Formerly it was diſcretionary in the Juſtices at what Time to keep this Court, which made it uncertain; but now by the 2 *H.* 5. *cap.* 4. 'tis appointed to be kept four Times in a Year.

If the Juſtices ſhould happen to be divided in Opinion about the Conveniency of the Place of holding or keeping the Seſſions, and ſome ſhould appoint one Place, and ſome another, and the Seſſions ſhould be held at both Places, 'tis void in both, becauſe the Authority of the Juſtices being equal, their ſeveral Appointments muſt be ſo likewiſe; and by the Nature of the Service, there can be no Priority of Time.

At this Court ought to attend all Bailiffs of Hundreds and Franchiſes, to give an Account of Seſſions Proceſs.

The Clerk of the Peace to read the Indictments, to draw Proceſs, and to enrol the Acts of the Court, and as he is Deputy to the *Cuſtos Rotulorum*.

The Conſtables of Hundreds.

The Coroners, as they are Parties to Exigents, and are a Sort of Conſervators of the Peace, having in ſome Caſes a Power to commit.

The Maſter of the Houſe of Correction, with his Calendar of ſuch Rogues who have been committed.

The Goaler with the Priſoners, and to receive thoſe who may be committed by the Court.

The Jurors who are returned by the Sheriff.

All Juſtices of the Peace to certify their Recognizances and Examinations taken by them, and other Matters, *&c.* and if they neglect, they may be fined by *B. R.*

Thoſe who are bound by Recognizance to anſwer, give Evidence or proſecute.

The Sheriff or his Deputy, to receive the Fines ſet by the Court on Offenders, and return Jurors.

N. B. All Perſons bound to attend Seſſions, being abſent, are fineable.

Freedom of Acceſs is incident to a Court of Record, as this is; ſo that if any Perſon come voluntarily thither about any Buſineſs of the Seſſions, as to prefer a Bill of Indictment, *&c.* or is compelled to appear to ſave the Forfeiture of his Recognizance, he ſhall be protected from Arreſts upon mean Proceſs; and if he happen to be arreſted, the Court may diſcharge him upon Examination of the Matter, and Oath of the Party himſelf. 1 *Lev.* 159.

Juſtice

Juſtices of the Seſſions may hear and determine Treſpaſſes againſt the publick Peace, and upon Conviction, give Judgment of Fine, or otherwiſe, as the Caſe requires.

It was the Policy of our Anceſtors to eſtabliſh ſeveral Courts in every County, not only for the ſpeedy Adminiſtration of Juſtice, but to ſuppreſs Diſorders in the firſt Motion, before they ſhould arrive to ſuch Power as to diſturb the Neighbourhood. This was the Buſineſs of County-Courts of Sheriffs, and of Tourns, and of Leets. The Authority of thoſe Courts declining for ſeveral Years, ſeems now to be devolved on this of the Quarter-Seſſions, which yet maintains a Form of Judicature, tho' by Cuſtom and Uſage, 'tis abated, as particularly in Caſes of Felony. For the Power which the Juſtices have, is either by Acts of Parliament, or by their Commiſſion, and by both they have Authority to try Felons; for by 4 *Ed.* 3. *cap.* 2. they have Power to hear and determine *Felonies*, and to inflict Puniſhment according to Law; and by the ſecond *Aſſignavimus* in their Commiſſion, which relates only to the Seſſions, they have Authority to enquire by a Jury, *&c.* of all *Felonies*, *&c.* and likewiſe of ſeveral other Articles therein mentioned, and may ſend out Proceſs againſt the Offenders, to bring them in, and then try them, and give Judgment according to Law. Now, though they have this Power, yet the common Practice is to try only *Petit-Larcenies* at Seſſions, and the Felons are, of Courſe, carried to the Aſſizes by the Goaler, who takes no Notice of this Court without particular Order.

'Tis true, where a Statute creates a Crime, and appoints before whom it ſhall be tried, in ſuch Caſe, if the Seſſions is not named, they have no Juriſdiction: As in *Forgery*, upon the Stat. 5 *Eliz. c.* 14. which provides, that the Indictment ſhall be taken before Juſtices of *Aſſizes*, and Juſtices of *Oyer* and *Terminer*, for they have an expreſs Clauſe in their Commiſſion, *To hear and determine*; yet they cannot proceed in their Seſſions againſt Offenders of this Nature, becauſe there is another Commiſſion of *Oyer* and *Terminer*, which is diſtinctly known by that Name: This was adjudged in my Lord *Sanchar*'s Caſe. 9 *Rep.* 118. *B.*

The Juſtices of Peace, if need require, may keep a Special Seſſions by Virtue of their Commiſſion, or by the Stat. 2 *H.* 5. *c.* 4. *Lamb.* 623.

All Matters within the Commiſſion or Statutes, may at a Special Seſſions of the Peace be given in Charge; yet they are at Liberty to give in Charge, either all or any of them. *Lamb.* 623. 624.

In Caſes of Difficulty it is proper for Juſtices to execute their Office in a Special Seſſions; becauſe if they ſhould in the ſaid Seſſions make any Error or Miſtake in their Judgments upon any Commitment or other Proceeding in ſuch Seſſions, no Action will lie againſt them for it.

If

If two Juſtices of the Peace (one being of the *Quorum*) make a Precept to the Sheriff for the holding a Seſſions at ſuch a Place and Day, and to return a Jury before them; other Juſtices cannot by their *Superſedeas* to the Sheriff inhibit him; *Cro.* 122. but the King by his Writ of *Superſedeas* may diſcharge it. *Ibid.*

Indictments are many Times tried the ſame Seſſions, wherein the Perſon was indicted; nay, often the ſame Day before Juſtices of Goal-Delivery, or Juſtices of Oyer and Terminer. 1 *Cro.* 315, 438, 448. *Dalt.* 537.

But in Caſes of Felony, upon Cauſe ſhewn to the Court, it ſeems very reaſonable to defer it to the next Seſſions; it being ſo generally in an Indictment of Nuſance; and Life to be more valued and favoured, *&c.* *Dalt.* 537.

In Trials of Criminals the Court is to be of Counſel with the Priſoner, and ought to adviſe him for his Good, not taking Advantage too ſtrictly againſt him. And the Court may likewiſe be informed from a By-ſtander, eſpecially a Man of the Law, offering any Thing as *Amicus Curiæ*, relating to the Trial.

How ſummoned; the Nature of the Summons, the Manner of holding the Seſſions, and the Proceedings.

Seſſions held without Summons are good; but then none ſhall loſe any Thing for Default of appearing. *Lamb.* 380, 381.

Summons of the Seſſions is uſually by Precept written to the Sheriff, and by him to be returned at the Seſſions. *Lamb.* 381.

Precept for ſummoning the Seſſions may be made by any two Juſtices of the Peace, one being of the *Quorum*, but not the *Cuſtos Rotulorum* alone: And Summons connot be diſcharged by *Superſedeas* of all the other Juſtices, but by *Superſedeas* out of the Chancery. *Lamb.* 382, 383.

Seſſions held by one Juſtice of Peace is not good, altho' it were ſummoned by two, and ſtiled by their Names, but by two ſufficient Juſtices Warrant (*Quorum unus, &c.*) under Seal.

The Summons is good, though made in the Name of Three.

Though the Place where Seſſions are to be holden is arbitrary, yet if they are ſummoned to be kept in one Place, and hold it then in another, without timely Notice of their Alteration of ſuch Appointment, it is puniſhable in them; but then it muſt be within the County; and in ſuch Caſe there can be no Amercement for Default of Appearance. *Lamb.* 383, 384. *Dalt.* 531.

Jurors not appearing according to Summons, are puniſhable by Loſs of Iſſues returned in the Eſtreats. *Dalt.* 534.

Summons of a Special Seſſions is, for the moſt Part, for ſome Special Inquiry, and not for the general Service of the Commiſſion. *Lamb.* 623.

Mr. *Lambert* tells us in his 19th *Ch. p.* 569. that the Manner is, in ſome Countries, to ſummon yearly Six ſtanding Seſſions of the Peace,

Peace, in others Eight, in others Twelve or Sixteen, and in others otherwiſe. All which is done chiefly upon Pretence to eaſe the Inhabitants of the County, for whom it would otherwiſe be very painful to travel ſo often and far from all Parts of the Shire to any one Place of the ſame. *Lamb.* 569.

To the End the Sheriff may have ſufficient Time to proclaim the Seſſions, to ſummon and return the ſeveral Juries, and to warn all Officers and others that have Buſineſs there, to attend the Seſſions: The Precept ſhould bear *Teſte* Fifteen Days before the Return, and ought forthwith to be delivered to the Sheriff.

It is uſually under the Hands and Seals of two or more Juſtices of Peace, *Quorum unus*, and runs thus:

A. B. *and* J. S. *Eſqrs, two Juſtices of our Sovereign Lord the King aſſigned to keep the Peace in the* County *of* E. *and alſo to hear and determine divers Felonies, Treſpaſſes and other Offences committed in the ſame County; To the Sheriff of the ſame County, Greeting: On the Behalf of our ſaid Sovereign Lord the King, we command you, that you omit not by Reaſon of any Liberty in your County, but that you enter therein; and that you cauſe to come before us or our Juſtices of the Peace,* &c. *ſuch a Day and Year next to come, at* C. *in the County aforeſaid, Twenty four honeſt and lawful Men of the Body of the County; each of which to have* Forty Shillings *a Year of Lands and Freehold at leaſt, then and there to enquire concerning thoſe Things which ſhall be enjoined them on the Behalf of our ſaid Sovereign Lord the King: Alſo that you cauſe it to be known to all Coroners of the County, Stewards, Conſtables, Under-Conſtables, Bailiffs of Liberties within the Hundreds and Liberties aforeſaid; that they be then there, to do and fulfil thoſe Things which by Reaſon of their Offices ſhall be to be done: Moreover that you cauſe to be proclaimed through the whole Bailiwick in proper Places the aforeſaid Seſſions of the Peace to be held at the Day and Place aforeſaid; and do you yourſelf be there at the ſame Time to do and exerciſe thoſe Things which belong to your Office. And have you there then as well the Names of the Jurors, Coroners, Stewards, Conſtables, Under-Conſtables and Bailiffs aforeſaid, as alſo this Precept. Dated under our Seals at* D. *in the County aforeſaid, on the* 16*th Day of* March, *in the Eighth Year of the Reign of our Sovereign Lord the King,* &c.

When the Sheriff has received this Precept, he muſt direct ſeveral Warrants to the ſeveral Bailiffs of Liberties, and Bailiffs of Hundreds, containing in them the whole Subſtance of this Precept.

Then the Sheriff makes his Return of the Summons to the Seſſions in this Manner:

The Execution of this Writ appears in certain Schedules to this Writ annexed. J. B. *Eſq; Sheriff.*

To this are annexed divers Panels fairly ingroſſed in Parchment, containing the Names of the Jurors,

The

The Stile of the Seſſions.

Eſſex, ſſ. THE *General Seſſions of the Peace held at* C. *in the County aforeſaid, on the firſt Day of* October, *in the Twentieth Year of the Reign of our Sovereign Lord* George *the Second, by the Grace of God, of* Great Britain, France *and* Ireland, *King, Defender of the Faith,* &c. *before* J.F. *and* J.S. *Eſqrs, and their Brethren, Keepers of the Peace of our ſaid Sovereign Lord the King; and his Juſtices aſſigned to hear and determine divers Felonies, Treſpaſſes, and other Offences committed in the ſaid County,* &c.

The Juſtices being met, the Courſe is with three *O Yes's* to proclaim the Seſſions; and then the Commiſſion is read, which done, the Conſtables are called, *&c.* and one or more Grand Juries for Preſentment, who being ſworn, the Charge is given: Then they call the Recognizances, eſpecially ſuch as are to proſecute and give Evidence, that ſo Bills may be drawn and prepared, which being ready, the Parties bound over are ſworn to give Evidence, and they are ſent to the Jury to give their Evidence to them; but in difficult Caſes, the Evidence is given in open Court, *Shaw's Juſt. Vol. 2. p.* 182.

Charge in the Quarter-Seſſions, given by the Chair-man.

THE Particulars of my Charge I am to give you, Gentlemen of the Jury, which are ſworn in this Court, I ſhall deliver in an Alphabetical Method, and endeavour to acquit myſelf herein with the Conciſeneſs neceſſary where ſo many Particulars are to be conſulted, and in ſuch a Manner as may cauſe a due Effect upon all Perſons concern'd.

And firſt, as this Court takes Cognizance chiefly of Treſpaſſes againſt the Peace, ſo you are by your Oaths, oblig'd to enquire into *Affrays*; as where two or more Perſons ſhall cauſe a Skirmiſhing or Fighting. Conſtables neglecting their Duties in endeavouring to ſuppreſs an Affray, are fineable; and any Spectator may put a Stop to Affrayers aſſembled in a tumultuous Manner, and apprehend the Offender, where a Perſon is dangerouſly wounded.

The next Head I ſhall mention to you is that of *Ale-houſes*: You are to make ſtrict Enquiry whether any Perſons do keep Inns, or Alehouſes, without being licenſed to the ſame, either in Seſſions, or by two Juſtices, (*Quorum unus.*) Whether any Perſons ſell their Ale in unlawful Meaſures, and whether any Alehouſe ſuppreſs'd, hath been licenſed by two other Juſtices out of the Seſſions? And we are to puniſh *Drunkenneſs.*

We are in this Court to enquire into *Aſſaults* committed; and in *Aſſaults*, a Man may not offer Violence to another, unleſs it be in Defence of his own Perſon, in Defence of his Wife, Father, Mother, Maſter, *&c.*

If

If there are any *Barretors*, or common Diſturbers of the Peace, within your Knowledge, Stirrers up of Suits, Oppreſſors of their Neighbours, *&c.* they are to be indicted and fined in this Court.

Where the two next Juſtices cannot agree in making their Order in Caſes of *Baſtardy*; it is to be referr'd to the Seſſions, but ſubject to return to the ſame two Juſtices with the Direction of the Court; though we may be appeal'd to on the Order made by the Juſtices. Perſons keeping *Bawdy-Houſes* are here to be puniſh'd.

Perſons committing Affrays, Aſſaults, Batteries, Riots, threatning to kill or wound others, *&c.* are to be bound over to appear at the Seſſions, and to be of the *Good Behaviour*; and the Recognizances muſt be certified by the Juſtice at the next Seſſions, or he ſhall forfeit *Ten Pounds*.

Enquiry is to be made in this Court, whether any *Bridges* are out of Repair? Whether the Officers neglect to aſſeſs, collect, or pay the Money for the Reparation of Bridges? And where it cannot be diſcover'd who ought to repair, it is to be preſented by you Gentlemen of the Grand Jury; whereupon an Order of Seſſions is to be granted for laying a Tax on every Pariſh, *&c.*

You are to enquire whether any Perſon hath reſiſted or abuſed any Officer of the *Cuſtoms* in the Execution of his Office, which is an Offence fineable in this Court: And if any Officer of the Cuſtoms ſhall take any Bribe, or connive at any falſe Entry, he is here puniſhable.

We are obliged in this Court to make an Enquiry into *Eſcapes* of Felons. The Perſon which ſuffers a wilful Eſcape, is liable to be puniſh'd for the ſame Crime for which the Party eſcaping ſtood committed; and if a Gaoler permit a Priſoner to go at large, though he returns, yet it is a negligent Eſcape, and fineable. And to bail one not bailable by Law, is a negligent Eſcape.

You are to make particular Enquiry into Larcenies and *Felonies* committed; the Larceny which is triable and puniſhable in this Court, is what comes under the Denomination of *Petit Larceny*; and Perſons getting Money or Goods falſly or deceitfully by Counterfeit Letters, *&c.* are here to be puniſh'd.

Foreſtallers, Ingroſſers and Regrators, are puniſhable in this Court, and for the firſt Offence they forfeit the Goods, or the Value thereof, and are to ſuffer two Months Impriſonment without Bail; for the ſecond Offence, double the Value of the Goods, and ſix Months Impriſonment; and for the third Offence, the Offender loſeth all his Goods, is to ſtand in the Pillory, and be impriſoned during the King's Pleaſure.

If any Perſon who by Fraud, in playing at Cards, Dice, or other *Game*, or by bearing a Share in the Stakes, *&c.* or by betting, win any Sum above *Ten Pound*, at one Time, ſhall forfeit five Times the Value of the Sum ſo won, by Indictment; and Gaming-houſes are by this Court to be ſuppreſs'd.

If

If any *Goal* for ſecuring Offenders againſt the Peace, ſhall be out of Repair, or inſufficient, you, Gentlemen of the Grand-Jury, are to make Preſentment thereof, that a neceſſary Sum may be ordered by this Court, for the rebuilding, or repairing of the ſame, by a Rate or Tax on the ſeveral Hundreds and Diviſions liable thereto.

Juſtices in their Quarter-Seſſions have Power to order the enlarging or widening of *Highways*; and any Juſtice, upon his own Knowledge, may preſent in this Court Offences concerning Highways; upon which the Court may aſſeſs a Fine, though the Offender is abſent.

We are to examine in this Court into *Houſes of Correction*, as every County is to have one at leaſt, and the Government of the ſame; whether the Perſons ſent thither are ſet at Work as they ought, and receive their due Puniſhments; and whether the Governors, or Officers of ſuch Houſes, do their Duties therein? Of all which a true Account is to be rendered every Seſſions.

Informations grounded on Penal Statutes, are inquirable in this Court of Quarter-Seſſions; but we cannot try an Information without particular Power reſerved by ſome Statute, though we are to proceed by Indictment.

In this Seſſions *(Michaelmas)* we are to take from all Conſtables of Hundreds, Returns of their Liſts of the Names and Places of the Reſidence of Perſons qualified to ſerve on *Juries*, between the Age of Twenty-one and Seventy, order'd in *Midſummer* Seſſions; and a Duplicate of theſe Liſts the Clerk of the Peace is to deliver to the Sheriff. And in reſpect to Juries, we have Power to alter the Panel after 'tis return'd, to remove a Juror after he is ſworn, on good Cauſe, and may impanel an Inqueſt, to enquire into Concealments of Jurors, and fine them.

Murders, *Treaſons*, &c. are here to be enquir'd into, tho' the Offenders are not puniſhable in this Court.

If any diſaffected Perſons ſhall refuſe to take the *Oaths*, being tender'd by two Juſtices, ſuch Refuſal is to be certified to this Court, and from hence into the Court of King's Bench, whereupon the Offenders ſhall be adjudged Popiſh Recuſants Convict, and as ſuch be proceeded againſt.

If any Perſon ſhall be guilty of *Perjury*, it is to be enquir'd into, and the Puniſhment of Perjury is a Fine of *Twenty Pound*, and ſix Months Impriſonment, or to be ſet in the Pillory in ſome publick Place; and ſuborning Witneſſes incurs a Forfeiture of *Forty Pound*.

If Overſeers of the *Poor* refuſe to accompt and pay the Money in their Hands to their Succeſſors, they are to be committed by two Juſtices, and in Caſe they make a falſe Account, they are to be bound over to the Seſſions, and here indicted. Poor Perſons may be relieved by Order of Seſſions, and Juſtices in Seſſions have Power to tax any Pariſh within the County for the Relief of the Poor.

Where

Where a Perſon is removed from one Pariſh to another by Virtue of a Warrant, or Order of two Juſtices, and the Church-wardens or Overſeers refuſe to receive him, they ſhall forfeit the Sum of *Five Pounds*, but the Party grieved may appeal to the Court of Quarter Seſſions of the County from whence the Party was remov'd.

All *Recognizances* are to be certified by Juſtices of Peace in this Court, unleſs they concern any Evidence againſt Felons, when they are to be certified to the next Goal-Delivery: But we cannot in this Court award any Proceſs upon a Recognizance forfeited; and in this Caſe we muſt certify the ſame with the Cauſe of Forfeiture into the Court of King's Bench, to be proſecuted there.

To this Court are to be certified all Convictions on the Statutes againſt profane *Swearing* and *Curſing*; and this Crime, (though common) is of a fatal Tendency, eſpecially in the Cauſe of Religion.

In this Court of Quarter-Seſſions it is a Branch of our Duty to appoint the Rates or Allowances *per* Mile, or otherwiſe, for the paſſing of *Vagrants*, to prevent Impoſitions upon Pariſhes by corrupt Officers; and to make Orders for the Reimburſing of Conſtables, *&c.* We are likewiſe to make Enquiry into the Defaults of Officers in the conveying of Vagabonds, and to puniſh the Offenders.

And Conſtables are at this Court to preſent Offenders for ſelling Corn, *&c.* by unlawful Weights and Meaſures; and if any Perſon ſhall offer to ſell the ſame in Meaſures not ſeal'd according to the Statute, they are here to be puniſh'd; which finiſhes my Charge at this Time to be given."

This is a Summary of the Buſineſs of the Quarter-Seſſions; and the References to Statutes, you'll find under the particular Heads. I now come to the particular Proceedings.

While the Jury is abſent to conſider of the Bills, the Courſe is to hear Motions touching Settlements of poor Perſons, and to call Perſons bound to the Peace or Good Behaviour. But ſuch are not to be diſcharged before the End of the Seſſions, for fear leſt any come to prefer Bills againſt them, or with other Complaint, and they ſhould be gone.

When the Charge is given, the Clerk of the Peace ſhall diſtinctly read, with an audible Voice in open Court, all ſuch Statutes as are now in Force, and appointed to be publickly read or proclaimed at the General Quarter-Seſſions; as the Statutes 4 *H.* 7. *c.* 12. 33 *H.* 8. *c.* 9, *&c.*

Then every Pariſh ſhall be rated towards the Relief of Hoſpitals, *King's Bench* and *Marſhalſea*, and Alms-Houſes in the County, Stat. 43 *El. cap.* 2. alſo towards the Relief of Priſoners in common Goal. *Stat.* 14 *El. cap.* 5.

In *Michaelmas* Seſſions the Court ſhall nominate two Juſtices of Peace to take a View of the Sheriffs Books of Eſtreats. 11 *H.* 7. *c.* 15.

Then the chief Conſtables of Hundreds and the Petty Conſtables ſhall be ſworn.

As

As ſoon as the Grand Jury have found any Bills, and appear with them in Court, it is uſual then to proceed to the Trial of thoſe Priſoners againſt whom the Bills are found for Petty Larceny, &c. for Grand Larcenies are (as is ſaid before) ſent to the Aſſizes.

But the Trial of Priſoners and Proceedings thereupon, are in this Manner: The Goaler is called to ſet his Priſoners to the Bar; and the Crier having made a Bar, one of the Priſoners is called to by the Clerk of the Peace, or his Deputy, A. B. *hold up thy Hand; thou ſtandeſt indicted by the Name of* A. B, &c. reciting the whole Indictment in *Engliſh*; which done, *How ſayeſt thou* A. B. *art thou guilty of this Felony, or,* &c. *whereof thou ſtandeſt indicted, or not Guilty?* If he ſay Guilty, the Confeſſion is recorded, and he ſet aſide till Judgment: If he ſays not Guilty, the Clerk ſays *Culp' prit'* how wilt thou be tried? He anſwers, By God and my Country; but if he ſtands mute, he ſhall not be put to his *peine fort & dure*, as in Caſe of Grand Larceny; for that the Statute of *Weſtminſter* extends not to Petit Larcenies; but Judgment ſhall be entered againſt him, by *Nihil dicit. Co.* 2 *Inſt.* 177. And it is alſo the Courſe to enter Judgment by *Nihil dicit*, in Caſe of a *Premunire*; for otherwiſe, by the Party's Contempt, the King ſhall loſe the Forfeiture of his Goods, in Caſe of a Petit Larceny; and Lands and Goods in Caſe of a *Premunire*.

In like Manner proceed to arraign the reſt of the Priſoners, and they are ſeverally called upon to plead, &c.

When ſo many Priſoners are arraigned, as may be conveniently tried by a Petit Jury at one Time, the Proſecutors are called on their Recognizance to give Evidence; then the Jury are called upon their Panel thus: You good Men who are returned to inquire between our Sovereign Lord the King and the Priſoners at the Bar, anſwer to your Names and ſave your Fines; which done, and a Jury appear, Proclamation is made, If any can inform his Majeſty's Juſtices of Peace, the King's Serjeant, the King's Attorney, or this Inqueſt now to be taken between our Sovereign Lord the King, and the Priſoners at the Bar, of any Felony or other Miſdemeanour committed or done by the Priſoners at the Bar, or any of them; let them come forth and they ſhall be heard; for the Priſoners now ſtand at the Bar upon their Deliverance: And all Perſons bound by Recognizance to give Evidence againſt any of the Priſoners at the Bar, let them come forth and give their Evidence, or elſe they forfeit their Recognizances. Then the Clerk ſays to the Priſoner, the Perſons who have been called, and have now appeared, are to paſs upon your Trial; and 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 are ſworn, and you ſhall be heard. Then the Crier calls the Foreman of the Jury, and ſays to him, Lay your Hand upon the Book, and look upon the Priſoner, *You ſhall well and truly try and true Deliver-*

rance

rance make between our Sovereign Lord the King and the Priſoner, or Priſoners at the Bar, whom you ſhall have in Charge; and a true Verdict give according to your Evidence. So help you God. Then ſwear the Second, and ſo on to twelve; then the Clerk ſays, Look upon the Priſoner you who are ſworn, and hearken to his Charge, *He ſtands indicted by the Name of* A. B. *for that he, &c.* and ſo recite the whole Indictment; and then goes on and ſays, To which Indictment he hath pleaded Not Guilty; and for his Trial hath put himſelf upon God and his Country, which Country Ye are; ſo that your Charge is to inquire whether he be guilty of the Felony, *&c.* whereof he ſtands indicted, or Not guilty. If you find him Guilty, you ſhall enquire what Goods and Chattels he had at the Time of the Felony committed, or at any Time ſince: If you find him Not guilty, then you ſhall enquire if he did fly for the ſame; and then you ſhall enquire what Goods and Chattels he had at the Time when he did ſo fly for the ſame, or at any Time ſince, If you find him not guilty, nor that he did fly for the ſame, then you muſt ſay ſo, and no more, and hear your Evidence.

Then the Witneſſes are called and ſworn; for which Oath, ſee Title, *Oaths.*

When all the Witneſſes for the King have been examined, then if the Priſoner deſires that any Witneſſes ſhould be examined for him, they muſt be examined alſo upon Oath. When the Priſoner has done, and has been heard all he has to ſay in his Defence, the Evidence is ſummoned up by the Chairman to the Jury; and then if the Jury cannot agree on their Verdict at the Bar, a Bailiff muſt be ſworn to keep the Jury; for which Oath, ſee Title, *Oaths.*

When the Petty Jury are agreed of their Verdict, and are come back, the Priſoner is again ſet to the Bar, and the Clerk ſays, Gentlemen of the Jury, Are you agreed on your Verdict? If they ſay Yes, then he ſays, Who ſhall ſay for you? They anſwer, Our Foreman: Then the Clerk ſays, Look upon the Priſoner, Gentlemen; 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, and ſay, God bleſs the King and this Honourable Bench. If they ſay, Guilty, then the Clerk records the Verdict, and ſays to the Jury, Hearken to your Verdict, as the Court has recorded it: Ye ſay that *A. B.* is Not guilty of the Felony (or as the Caſe is) whereof he ſtands indicted, and ſo ye ſay all. Or ye ſay that *A. B.* is guilty of the Felony (or as the Caſe is) whereof he ſtands indicted, and ſo ye ſay all. Then the Clerk ſays, Set *C. D.* to the Bar, and ſays and does as laſt before, and ſo on with the reſt *(mutatis mutandis).* Then the Crier makes Proclamation, and ſays, His Majeſty's Juſtices command all Manner of Perſons to keep Silence while they proceed to give Judgment againſt the Priſoners at the Bar, upon Pain of Impriſonment; and then the Judgment is pronounced, and ſo for the reſt.

When

When the Petty Larcenies, and other grand Offences are tried, then the Proceſſes are called over, and the Traverſes follow next. If any Perſon indicted for a Treſpaſs or other Miſdemeanour, do appear, he ſhall not hold up his Hand at the Bar, as in the Caſe of Felony; but if he plead Not guilty, and ſhall traverſe his Indictment, according to the uſual Courſe, then he ſhall enter into Recognizance to proſecute his Traverſe at the next Quarter-Seſſions.

Then the Clerk ſhall call the Parties bound by Recognizances taken the laſt Seſſions, to proſecute their Traverſes at this preſent Seſſions.

In all Trials the Counſel of the Proſecutor ſhall conclude the Evidence, and the Judge of the Court ſhall give the Direction to the Jury.

Every Contempt ſhall be anſwered in proper Perſon, and not by Attorney. *Crompt.* 190.

The Juſtices of Peace cannot (out of Seſſions) puniſh Petty Larceny by their Diſcretion (as ſome have thought) but muſt bind the Offender over, and they muſt be tried and diſcharged at Seſſions. *Dalt. cap.* 101.

But there are many Things and Offences which by particular Statutes ought to be done and proſecuted in this Court, as

Inn-holders, Whether they ſell Victuals or Drink at unreaſonable Prices, 21 *Jac. cap.* 21. 2 *Edw.* 6. *cap.* 15. or forfeited their Recognizances, 5 & 6 *E.* 6. *cap.* 25.

Buggery and *Baſtards*, 25. *H.* 8. *cap.* 6. 13 & 14 *Car.* 2. *cap.* 12.

Weights and Meaſures, 9 *Hen.* 5. *cap.* 8. 11 *H.* 7. *cap.* 4. 8 *H.* 6. *cap.* 5. 11 *H.* 6. *cap.* 8.

Counterfeit Letters, and getting Money by them, 33 *H.* 8. *cap.* 1.

Eſcapes of Felons, 1 *R.* 3. *cap.* 3.

Eſtreats of Sheriffs, Controuling them by Juſtices, 11 *H.* 7. *cap.* 15.

Fore-ſtalling, regreating and ingroſſing, 5 & 6 *E.* 6. *cap.* 14.

Forging of Deeds, &c. 5 *Eliz. cap.* 14.

Jurors levying Iſſues loſt by them, 27 & 30 *Eliz. cap.* 7 & 18.

Money falſe, to ſuppreſs, 3 *H.* 5. *cap.* 7.

Moſs-troopers, to ſuppreſs them, 29 & 30 *Car.* 2. *cap.* 2.

News falſe, telling it, 2 *R.* 2. *cap.* 5. 22 *R.* 2. *cap.* 11. 1 & 2 *P.* & *M. cap.* 3.

Perjury upon the Stat. of 5 *Eliz. cap.* 9. 29 *Eliz. cap.* 5.

Propheſies, falſe and fantaſtical, publiſhing them, 5 *Eliz. cap.* 15.

Riots, Routs and unlawful Aſſemblies.

Rogues, Vagabonds, 13 & 14 *Car.* 2. *cap.* 12. 1 *Jac. cap.* 7. 39 *Eliz. cap.* 2. 17 *Geo.* 2.

Servant aſſaulting his Maſter, 5 *Eliz. cap.* 4.

Uſury on the Statute of 13 *Eliz. cap.* 8.

Theſe and many more Crimes and Offences againſt the Law are Cognizable before the Juſtices in their Seſſions.

Strict

Strict Words are not required in an Order of Sessions, as they are in an Indictment; but Forms are necessary in the Proceedings. And as to Fines imposed there, *B. R.* may mitigate them. 1 *Ven.* 37.

The Sessions may fine a Jury for not finding a Bill upon plain Evidence: The Jury in this Case was fined *Ten Pounds*. *Sid.* 219.

And now I have mentioned Fines, it may not be improper in this Place to inform the Reader, what grievous Fines and Punishments have been inflicted on Persons for Striking in *Westminster-Hall*. And as the Court of Sessions should act in Conformity to the great Courts there, in the Distribution of Justice, so where they are interrupted in the peaceable Administration thereof, by Fighting in the Presence of that Court, the Punishment for such an Offence should bear some Proportion to that which is inflicted on Offenders for striking in the Presence of the Courts above, which is thus, *viz.*

For striking a Man in the Face, and threatning to hang him, if he give Evidence against a Felon, who was then to be tried in *B. R.* he was imprisoned during Life, to forfeit all his Lands during Life, Goods and Chattels, and that his Right Hand should be cut off; which was done accordingly.

For drawing his Sword on the Stairs, going up to the *Court of Requests* (tho' it was out of the View of the Courts) Judgment to perpetual Imprisonment.

For assaulting another in the *Palace-Yard*, the Court sitting, Imprisonment during the King's Pleasure, and fined *One Hundred Pounds*. *Cro. Eliz.* 405. 3 *Inst.* 140. *Cro. Car.* 373.

In these two last Cases there was no Judgment for cutting off the Right Hand, because the Facts were not done in the Presence of the Justices.

Then if before the Tryal the Offender is bailed, it must be Body for Body; and formerly this Offence was punishable with Death.

SOLDIERS.

THERE is hardly any Nation but of late hath been involved in Wars, wherein *England* hath not been least concerned, which hath occasion'd divers Acts of Parliament to be made for recruiting, training up, mustering and quartering of Soldiers, &c. some of which I shall treat in their Order.

And first by Stat. 2 & 3, and 3 & 4 *Annæ*, the better to recruit the Forces during the Wars; it was enacted, That three Justices of the Peace (not having any military Office) have Power to send Warrants to Constables to bring before them such able-bodied Men in their Divisions, which have not any Vote for electing Members of Parliament, and who have no lawful Calling or Imployment or visible Means for their Maintenance and Livelihood.

The

The Perſons ſo brought before the Juſtices are to be delivered to ſome of the King's Officers appointed to raiſe Men in that County, who ſhall attend the Juſtices for that Purpoſe; and ſuch Officer is to pay out of the Levy-Money to every Man *Twenty Shillings*, and to the Conſtable who ſhall bring them *Ten Shillings* for each Man: And if any Perſon ſhall liſt himſelf voluntarily, he ſhall be paid *Forty Shillings*. This advance Money by a ſubſequent Act is augmented to *Four Pounds*.

Then the Articles of War againſt Mutiny and Deſertion are to be read, the Juſtices being preſent; and the three Juſtices are to make a Certificate under their Hands and Seals of the Names of the Perſons raiſed and delivered over to the Officer, and that the Articles of War were read in their Preſence; and after the Articles of War are read, ſuch Perſons ſhall be eſteemed liſted Soldiers, and if they run away ſhall be puniſhed as Deſerters, tho' they refuſe to receive the advance Money, the ſame being tendred.

The Three Juſtices are to tranſmit an Account under their Hands and Seals to the next Seſſions, of the Names of the Perſons liſted as aforeſaid, of the Pariſhes from whence brought, and of the Pariſh-Officers which brought them, the Time when brought and liſted, and the Names of the Officers to whom delivered, and of the Regiment and Company to which they belong: Which Certificate is to be kept by the Clerk of the Peace.

If any Perſon ſhall harbour or conceal a Deſerter, or ſhall buy Arms of him, knowing him to be ſo, he ſhall forfeit *Five Pounds*, to be levied by Warrant of two Juſtices, being convicted at Seſſions. *Per* Stat. 7 & 8 *W.* 3. *c.* 23. and 2 & 3 *Annæ*.

If a Soldier ſhall depart, without Licence, it is Felony without Benefit of Clergy, *per* Stat. 7 *H.* 7. and 2 & 3 *Ed.* 6. And if a Soldier ſhall go beyond Sea to ſerve a foreign Prince, before he hath taken the Oath of Allegiance, it is Felony. 3 *Jac. c.* 4.

If a Soldier come from beyond Sea, ſhall wander idly without a Teſtimonial from one Juſtice reſiding near the Place he was put on Shore, expreſſing the Time of Landing, and to what Place he is to paſs, *&c.* 'tis Felony by 39 *Eliz. c.* 17. and counterfeiting ſuch Teſtimonial is likewiſe Felony.

When any poor Soldier or Mariner ſhall come home from beyond the Seas, and cannot get Work there, two Juſtices may make Order for ſetting him at Work, or for want thereof, they may tax the whole Hundred for his Relief. 39 *Eliz. c.* 17. and 6 & 7 *W.* 3.

And Juſtices in their Quarter-Seſſions have Power to charge every Pariſh towards a weekly Relief of maimed Soldiers and Mariners, ſo as no Pariſh be charged to pay weekly above *Ten Pence*, nor under *Two Pence*; nor any County which conſiſts of above fifty Pariſhes, pay above *Six Pence*, one Pariſh with another. Stat. 43 *Eliz. c.* 3.

And by Stat. 12 *Ann.* all disbanded Soldiers (other than Commission-Officers) shall be freed from Arrests or Imprisonments, and their Stock and their Tools from being seized for any Debt owing by them at the Time of Listing, for three Years.

Persons wandering, suspected to be Deserters, are to be apprehended by Constables or Tithingmen, and carried before a Justice to be examined, and if it doth appear that such Person is a listed Soldier, and ought to be with his Company, such Justice shall send him to the common Goal of the County, and transmit an Account thereof to the Secretary of War. 1 *Geo.* 1.

Persons apprehending Deserters shall have *Twenty Shillings* for each, to be paid out of the Land-Tax-Money, by Virtue of a Justice's Warrant.

If any Person shall harbour or conceal a Deserter knowingly, or buy or exchange Arms, Cloaths, or other Furniture belonging to the King, or change the Colour of such Cloaths, and thereof shall be convicted by the Oath of one Witness before one Justice, he shall forfeit *Five Pound*, to be levied by Distress on his Goods and Chattels. *Ibid.*

Officers not to break open any House to search for Deserters, without a Justice's Warrant, on Pain of 20 *l.*

A Warrant to make search for Persons fit to be sent Soldiers, and to bring them before the Justices.

THESE *are in his Majesty's Name to require you forthwith to give Notice to all Petty-Constables and Tithingmen within the respective Tithings in your Hundred, that they make a diligent Search in each Tithing, after all loose, idle and disorderly Persons, above the Age of sixteen Years, as have no lawful Employments, which are fit to serve the King, and that they bring a List of the Names of such Persons, together with the Persons themselves before us, or some other of his Majesty's Justices of the Peace for this County, to be dealt with according to Law: Hereof fail not*, &c. *Given*, &c.

A Testimonial of a Soldier come from beyond Sea, for his easy Travel home.

WHEREAS *A. B. a poor decrepit Soldier, who on*, &c. *of this Instant*, &c. *landed from*, &c. *at the Port of*, &c. *hath humbly requested of me C. D. Esq; one of his Majesty's Justices of the Peace for the County of*, &c. *aforesaid, to grant him a Testimonial or Certificate of such his Landing, for his Safety and Preservation in his Travel to*, &c. *which he informs me is the Place of his Nativity, or where he was last settled here in* America: *I do therefore hereby certify the same accordingly, as aforesaid, and licence the said A. B. to travel and pass the direct Way from*, &c. *to the said*, &c. *and do hereby desire all Persons not to molest or trouble the said A. B. in his Journey, but to permit him to pass quietly, and if there be Occasion, to contribute towards his Relief. Given*, &c.

SQUIRE.

SQUIBS.

THE People having got a fooliſh Cuſtom of throwing Squibs during the Time of any publick Solemnity, and ſome having loſt their Eyes thereby, and other Damages being done, a Law was made, prohibiting the *Making, Selling, or offering or expoſing to Sale, any Squibs*, &c. *or Fire-Works*, or any Caſes, Moulds or Implements for making Squibs, *&c.* And prohibiting Perſons to ſuffer any Squibs, *&c.* to be caſt out of their Houſes, or out of or from any Part thereof, into any publick Street, or into any Street or Houſe. 9 & 10 *W.* 3.

The *Offence* is declared to be a common Nuſance, and the Maker of the Squibs or Moulds, or Seller, *&c.* is to forfeit *Five Pounds*. He that throws or aſſiſts in throwing or firing any *Squibs, &c.* or that permits any *Squibs* to be thrown out of his Houſe, forfeits *Twenty Shillings* for every Offence. The Conviction to be before one Juſtice, by Confeſſion of the Party, or Oath of two Witneſſes. The Forfeitures to be levied by Warrant from the Juſtice before whom the Party is convicted, by Diſtreſs and Sale of the Goods; one Moiety to the Poor of the Pariſh, the other to him who proſecutes to Conviction.

But Commiſſioners of the Ordnance, or any Perſon authorized by them, may order Fire-Works to be uſed or fired, and ſo may the Artillery Company in *London*, and the Militia of *England*, in the Exerciſe and Practice of Arms only.

SUPERSEDEAS.

SUPERSEDEAS is ſufficient, though it neither name the Sureties, nor contain the Sum wherein they are bound; but it it better if it doth both. *Lamb.* 96.

After *Superſedeas* deliver'd to the Officer, if he inſiſt on new Sureties, the Party may refuſe, and if he be committed, the Party may have his Action. *Lamb.* 29.

Superſedeas out of the Chancery will diſcharge Surety of the Peace in the King's Bench; and a *Superſedeas* either out of the Chancery or King's Bench, will diſcharge a Precept for the Peace awarded by a Juſtice of Peace. And an Attachment lieth againſt him, if he obeys not the Writ, and he may be impriſoned and fined for it. *Lamb.* 90.

And when a *Superſedeas* is received by a Juſtice of Peace out of a higher Court, he ſhall forbear to make any Warrant; or if one be made, he ought to ſend out his *Superſedeas* to the Sheriff or other Officer, to deſiſt to put it in Execution, tho' awarded againſt Law. *Ibid.*

Though a *Certiorari* to remove a Record is in itſelf a *Superſedeas* to the Juſtices, yet the Party may have a *Superſedeas* to the Sheriff, that he arreſt him not upon the Juſtices Record. *Lamb.* 525.

An *Exigent* awarded againſt one indicted of Treſpaſs before the Juſtices of Peace, may be ſtayed by *Superſedeas* out of the Chancery, upon Surety found there to appear at the Day in the Writ, though he be taken upon it. *Lamb. Ibid.*

Q. Whether the Party bound, ſending the *Superſedeas* to the Seſſions, be diſcharged of his Appearance there. The Precedents are, that the Party appeared, and prayed Allowance, *&c.*

The Form of a Superſedeas by a Juſtice of Peace.

R. Q. *Eſq; one of his Majeſty's Juſtices of Peace within the County of* B. *to all Conſtables, &c. in the ſaid County, ſendeth Greeting: Foraſmuch as* A. B. *of, &c. Gardener, hath perſonally come before me at* N. *&c. and hath found ſufficient Sureties, viz.* D. E. *of, &c. Labourer, and* F. G. *of, &c. Yeoman, each of which hath undertaken for the ſaid* A. B. *under the Penalty of* Twenty Pounds; *and he the ſaid* A. B. *hath undertaken for himſelf under the Penalty of* Forty Pounds, *that he the ſaid* A. B. *ſhall well and truly keep the Peace towards our Sovereign Lord the King, and all his liege People, and eſpecially towards* J. R. *of, &c. Gent. and alſo that he ſhall perſonally appear before his Majeſty's Juſtices of the Peace, at the next General Seſſions of the Peace, to be holden for this County, at* R. *in this County: Therefore on the Behalf of our ſaid Sovereign Lord the King, I command you and every of you, that you utterly forbear 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* N. *aforeſaid, under my Hand and Seal, this laſt Day of, &c.*

SUPPLICAVIT.

THIS Writ of *Supplicavit* is a judicial Writ, granted out of Chancery or *B. R.* but not without Special Cauſe upon Oath, and by Motion in open Court; for it is in Effect an Accuſation of the Juſtices below, as if the Party could have no Relief of them, and therefore was forced to apply himſelf to theſe above. 2 *Cro.* 659. the King *verſ.* Lord. 2 *Cro.* 356. Steynbridge, Godb. pl. 451.

It is uſually directed to one or more Juſtices, and ſometimes to them and the Sheriff; but the Juſtice to whom it is firſt delivered, ought to execute it, and to make Return. *Moor* 699.

And

And then the Juſtice acts as a Miniſter, and muſt execute it in every Particular, and make a Return under his Hand and Seal; and it is a judicial Writ, and cannot be executed by a Deputy.

The Form of the Writ.

GEORGE *the Second, by the Grace of God, of* Great Britain, France, *and* Ireland, *King, Defender of the Faith*, &c. *To our faithful and well-beloved* J. S. *Eſq; and his Brethren, our Juſtices aſſigned to keep our Peace in the County of* Eſſex: A. B. *hath beſought us, That whereas he is grievouſly and manifeſtly threatned of his Life, and maiming of his Members, and alſo of burning of his Houſes by* R. G. *We willing to provide for the Security of the ſaid* A. B. *in this Particular, We command you, firmly injoining you, that you cauſe the ſaid* R. G. *to come before us or you to find ſufficient Mainceptors, who will undertake for him, or bail him under a certain Penalty to be reaſonably impoſed upon them by you or us, for which ye or you will anſwer to us; and if he ſhall refuſe to do this before us or you, then do you or one of you commit the ſaid* R. G. *to our next Goal, therein to be ſafely kept until he will freely do it; and when ye or you ſhall ſo take ſuch Security, do ye or you certify before as under the Seals of you or ſome of you, or under your Seal diſtinctly and plainly, without Delay, and then do ye or you return this our Writ to us.* Witneſs, *&c.*

By the Clauſe in this Writ (for which ye will anſwer to us) it is diſcretionary in the Juſtice to take what Security he ſhall think to be ſufficient, but ſometimes the Sum is mentioned in the Body of the Writ, and then he is bound up to take that Security, and no other.

The Juſtice to whom this Writ is delivered, may forthwtth iſſue out his Warrant againſt the Party: The Form of which is thus:

The Form of a Warrant upon a *Supplicavit*.

Eſſex, *ſſ.* NS. *Eſq; one of his Majeſty's Juſtices of the Peace for the* . *County aforeſaid, to the Sheriff of the ſaid County, and to the High Conſtable of the Hundred of* C. *and to the Petty Conſtable of*, &c. *and to the other Conſtables within the ſaid Hundred of*, &c.

Whereas I have received a Writ from the King, reciting that A. B. *hath prayed his Majeſty, that he the ſaid* A. *being in Danger of his Life, or of ſome other bodily Hurt from* R. G. *his ſaid Majeſty would provide for the Security of him the ſaid* A. B. *And thereupon his ſaid Majeſty, by the aforeſaid Writ hath commanded me to cauſe the ſaid* R. G. *to be brought before me to find Security for the Peace, or to commit him to Goal, if he ſhall refuſe ſo to do, as by the ſaid Writ, Relation being thereunto had, it doth and may more at large appear: Therefore I do hereby command you and every of you, immediately upon Receipt hereof, to apprehend the ſaid* R. G. *and cauſe him to come before me, to find ſufficient Sureties for the Peace, to be from henceforth kept by him at well towards his ſaid Majeſty as all his People, and more eſpecially*

towards

towards the said A. B. *and if the said* R. G. *shall refuse so to do, that then you convey him to the common Goal for the said County at* C. *there to remain until he shall willingly do the same. Given under my Hand and Seal, &c.*

The Party must be brought before no other Justice but him who grants this Warrant, neither can any other Discharge him by a *Supersedeas*.

When he is brought before the Justice, and he hath taken Security, as directed by the Writ, then he may return it thus, written on the Back thereof.

The Execution of this Writ appears in the Schedule thereto annexed.

Then he may file the Return to the Writ thus, in a Piece of Parchment by itself.

I J. S. *Esq; one of the Justices assigned to keep the Peace in the County of* Essex, *do humbly certify to our Sovereign Lord the King, That by Virtue of the Writ within written, first delivered to me by the within named* A. B. *I have caused the said* R. G. *named in the said Writ, personally to come before me at such a Place on the 6th Day of* September *last past: And I also caused the said* R. G. *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 Schedule set my Hand and Seal on the 18th Day of* September *in the Year of our Lord* 1749.

The Justice need not return the Recognizance, which is the Security by him taken, as aforesaid, nor make a Certificate till a *Certiorari* come for that Purpose; and when he returns that Writ, then he may write on the Backside of it.

I J. S. *Esq; one of the Justices, &c. by Virtue of the Writ within written, do humbly certify to our Sovereign Lord the King, the Tenor of the Security of the Peace, whereof Mention is within made as in the Schedule annexed to this Writ. Dated the 20th of* October *in the Year of our Lord* 1749.

Then write the Recognizance *verbatim*, and file it to the *Certiorari*, and so send it up together.

When this is done, the Justice may grant a *Supersedeas*, either in *Latin*, reciting the *Supplicavit*, or without it.

The Form of the *Supersedeas*.

Essex, ss. *To the Sheriffs, Bailiffs, Constables, and other of his Majesty's Officers within the County of* Essex, *and to every of them.*

WHEREAS *R. G.* of, *&c.* hath personally come before me *J. F.* Esq; one of his Majesty's Justices of the Peace for the said County, and hath found sufficient Sureties *(The best Way is to name the Parties, and in what Sums bound, but the* Supersedeas *is good without it)* well and truly to keep the Peace towards his said Majesty

Majeſty and all his People, but more eſpecially towards *A. B.* &c. and alſo that he ſhall perſonally appear before the Juſtices of Peace at the next General Quarter-Seſſions to be held for, &c. Therefore on the Behalf of his ſaid Majeſty, I command you and every of you, to forbear to arreſt, impriſon, or otherwiſe moleſt the ſaid *R. G.* for or on the ſame Account, and no other; and if he ſhall be taken or impriſoned for the ſame, that then you cauſe him to be forthwith diſcharged. Given under my Hand and Seal, &c.

The Party may alſo move the Court of *B. R.* for a *Superſedeas*; but this muſt be upon a *Supplicavit*, and not where the Juſtice proceeds *ex Officio*; becauſe by the Statute of 21 *Jac.* 1. *cap.* 8. it muſt appear to the Court, that Proceſs of the Peace or Good Behaviour is required againſt the Offender in that Court by the Party grieved, out of which the *Superſedeas* is deſired.

SUSPISION.

Communis vox & fama (common Voice and Fame) that ſuch a Perſon did the Offence, is ſufficient Cauſe of Suſpicion; but then the Fact muſt be actually done, otherwiſe not.

In many Caſes evident Proofs are not to be had, and therefore probable Preſumptions are good Cauſes of Suſpicion, and ſufficient for a Juſtice to commit the Perſon ſuſpected.

Preſumptions are thus divided by Lord *Coke*.

1. *Violenta* (violent) which he tells us, is *plena Probatio*.
2. *Probabilis* (probable) which moveth a little.
3. *Levis* (light) which is of no Force.

Some Preſumptions of the firſt Sort are ſo violent, that no Proof can be admitted to contradict them; as if a Man is taken with a bloody Knife upon a murdered Perſon, or flying from the dead Man; though no Body ſaw the Stroke actually given, yet there needs no further Proof.

When a Felony is committed, any Man may arreſt ſuſpicious Perſons, and carry them before a Juſtice of Peace, who may commit them, or take a Recognizance to appear at the Aſſizes or Seſſions.

SWEARING.

BY the Statute of 21 *Jac. cap.* 20. the Puniſhment of one prophanely Swearing or Curſing, was *One Shilling* to the Uſe of the Poor.

The Proſecution was to be within Twenty Days after the Offence.

The

The Conviction by the Oath of Two Witneſſes before One Juſtice; and this Penalty was to be levied by Warrant and Diſtreſs, &c. and if that was not to be had, then the Offender, being above Seventeen Years old, was to be put in the Stocks for three Hours; and if under that Age, then he was to be whipp'd by the Conſtable, who was to have a Warrant from a Juſtice for that Purpoſe, or by the Parent or Maſter in the Preſence of a Conſtable, if the Penalty was not paid.

But ſome Alteration was made of this Law by that of 6 and 7 *W.* 3. for by this Law the Forfeitures of *One Shilling* is confin'd to Day-Labourers, common Soldiers, Sea-men and Servants; but other Perſons are to pay *Two Shillings* for each Oath or Curſe.

And for the ſecond Offence double the Forfeiture; and for the third Offence, three Times as much as the firſt; and in Default of Diſtreſs, if the Offender be above Sixteen Years of Age, he ſhall be ſet in the Stocks for one Hour for a ſingle Offence, and for more than one, (if convicted at the ſame Time) two Hours.

If under Sixteen, and do not pay the Penalty, he ſhall be whipp'd by the Conſtable, by a Warrant from the Juſtice, or by the Parent, Guardian or Maſter, in Preſence of the Conſtable.

The Proſecution muſt be within Ten Days after the Offence. And the Conviction before one Juſtice by the Oath of one Witneſs. The Juſtice who omits his Duty, forfeits *Five Pounds*, one Moiety to the Informer, &c.

This Act is to be read by Parſons in the Church the next Sunday after every Quarter-day, yearly, or he forfeits *Twenty Shillings*.

Juſtices muſt keep a Book wherein they muſt regiſter theſe Convictions, and certify them to the Quarter-Seſſions.

A Warrant to levy the Money for Prophane Swearing.

To the Conſtable, &c.

WHEREAS *it was this preſent Day duly proved before me upon Oath, That* A. B. *of* &c. *did, on Wedneſday the 20th Day of this Inſtant* November, *being then above Sixteen Years of Age, prophanely offend, by ſwearing Four Oaths in the Pariſh of,* &c. *in the ſaid County, by Reaſon whereof he hath forfeited to the Uſe of the Poor of the ſaid Pariſh,* Two Shillings *for every Time he did ſo offend: Theſe are therefore to require you forthwith to levy the ſaid Forfeiture, being in the whole* Eight Shillings, *upon the Goods and Chattels of the ſaid* A. B. *by Diſtreſs and Sale thereof; and that you pay the ſame, when levied, to the Church-wardens or Overſeers of the Poor of the Pariſh of,* &c. *where the aforeſaid Offence was committed, for the Uſe of the Poor of the ſaid Pariſh; And if no Diſtreſs can be taken as aforeſaid, and in caſe the ſaid* A. B. *ſhall not pay the ſaid Forfeiture, or give Security for the ſame, that then you do ſet him in the Stocks, there to remain the Space of two Hours. Given,* &c.

TRAVERSE.

TRAVERSE.

TRAVERSE, from the *French* Word *Traverſer*, to run croſs, to deny or contradict, is the denying the Chief Matter or Point in the Indictment.

Notwithſtanding Offer of Traverſe, upon Enquiry of Force, the Juſtice of Peace muſt make the Reſtitution by the Statute of 8 *H.* 6. *cap.* 9, or elſe deliver or certify the Preſentment in the King's Bench. *Lamb.* 158.

Traverſe lies not to a Record of two Juſtices, of forcible Entry in their View, becauſe they are Judges in that Caſe. 8 *Co.* 121.

That Court that may award Proceſs *ad reſpondend'* upon an Indictment, may take a Traverſe of it; and where Proceſs *ad reſpondend'* goeth out upon an Indictment that is traverſable, the Party may offer and have his Traverſe. *Lamb.* 542, 543.

In Caſe of forcible Entry, the Juſtice may make Reſtitution, notwithſtanding any Offer of Traverſe; yet in this Caſe, the ſafeſt Way is to ſend the Indictment into the King's Bench, or accept of the Traverſe: For the Tender of a Traverſe (to an Indictment of a forcible Entry) upon the Statute of 8 *H.* 6. *cap.* 9. is no Superſedeas, but in Diſcretion; ſo as the Juſtice of Peace or Court may grant or 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, or elſe the Juſtices of Peace, before whom the Indictment was found, may, after Traverſe tendered, certify or deliver the Indictment into the King's Bench, and ſo refer the further Proceeding thereon to the Juſtices of that Court.

After Proceſs is awarded againſt the Party, he may come in and ſubmit to pay his Fine; or elſe he may offer his Traverſe to the Indictment, and the Juſtices ought to allow his Traverſe; the formal Words whereof are in *Latin*, *Abſque hoc*, *&c.*

But altho' the Juſtices of Peace have Power in diverſe Caſes, as aforeſaid (out of their General Seſſions) to take Indictments, or award Proceſs, *&c.* and the Offenders alſo have Liberty to come in and offer their Traverſe, which the Juſtices are to allow of, and to receive; yet it is made a *Quære* by ſome, Whether the Juſtices (out of their General Seſſions) may try ſuch Traverſe tendered to them (except in Caſes of Riots and forcible Entries) without which Trial, all the reſt may ſeem idle: Or, whether upon the Traverſe tendered, they ſhould not 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. However, it is ſafeſt in all Caſes (after ſuch Traverſe tendered) to certify or deliver ſuch Inquiſition or Indictment into the

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.

If one Justice of Peace alone will take upon him to record a Riot, the Party shall not be concluded thereby, for he may traverse it, *Finz.* Tit. *Just. del. P.* 9, *Lamb.* 185.

TREASON.

THIS is a *Crime* of so *Transcendent a Nature*, that it hath not yet been defined; 'Tis *Malum in se*, and therefore an Offence at Common Law, before the Statute of 25 *Ed.* 3.

'Tis true, before that Statute, the Judges did usually determine what Treason was, which made it some-what uncertain; but since that Time it hath been generally reduced under *Six Kinds*; and though more Treasons were introduced by many subsequent Laws, yet that old Stat. of *Ed.* 3. was reinforced, by first *Mariæ* 1. So that all made between these two Laws are abrogated, and the Stat. of *Edw.* 3. is the Standard at this Day.

The Six Kinds of Treason, are these:

1. By compassing or imagining the Death of the *King*, *Queen* or *Prince*, and declaring the same by some Overt-Act.

By killing the Chancellor, Treasurer, Justices of either Bench, or of Assize, Oyer and Terminer, in the Administration of Justice.

2. To violate or carnally to know the Queen, the King's eldest Daughter unmarried, the Prince's Wife.

3. Levying War.

4. Adhering to the King's Enemies.

5. Counterfeiting the Great Seal, the Privy Seal, the King's Coin.

6. By bringing Counterfeit Money into *England* like the King's Coin.

Any open Act manifesting a Design to depose or imprison the King, is a sufficient Declaration of compassing or imagining, *&c.* as providing Arms to effect it, sending Letters to incite wicked Persons to attempt it, writing to Foreign Princes to invade the Kingdom, assembling the People to take the King into their Custody; These, and such like, are Overt-Acts to make one guilty of High-Treason within this Branch of the Statute, especially if there is any Proof of Words signifying to what Purpose such Acts were done.

And even Words themselves may be laid as an Overt-Act of Treason, for 'tis the natural Way to express our wicked Intentions; and this was *Cro. Car.* 332. *Crohagan's* Case, who being beyond Sea, said, *I will kill the King if I can come at him.* This Person afterwards came into *England*, and was indicted for compassing the King's Death, and those Words were laid as an Overt-Act, and being

being proved, he was convicted of High-Treason. 'Tis true, my Lord *Coke* was of a contrary Opinion in his *Pleas of the Crown, fol.* 14. But in the Case of the Regicides, that Opinion was denied to be Law, *Keel.* 13. However, he agreed, That Words set down in Writing may be an Overt-Act to prove the Compassing the King's Death.

Twyn's Case. So is printing any treasonable Positions.

So is the gathering Men together to compel the King to comply with their Demands, or to remove Evil Councillors, or to conspire with a Foreign Prince to invade the Kingdom. *Keeling* 21.

But a Man, *Non compos Mentis*, cannot be guilty within this Branch, *&c.* because he is depriv'd of his Reason; but he may be guilty by attempting any Violence upon the Person of the King, *&c.*

This Overt-Act must be alledged and proved in every Indictment, *&c.*

And because a Civil War, and the Destruction of the People, are the natural Consequences hereof, therefore this was Treason at Common Law.

A King before his Coronation, a King *de facto*, is a King within this Act; but the Husband of the Queen-Regent, or the Right Heir to the Crown not in Possession, is not so.

A Queen must absolutely be so, and not a Dowager.

The second Son after the Death of the Eldest, the eldest Son of the Queen *Regnant*, *Prince*, but the Collateral Heir apparent is not within this Statute.

Violating the Queen doth not extend to a Dowager; if the Queen consents, 'tis Treason in her; but there must be some open Act to manifest it, which must appear by plain and not conjectural Proof; and the Offender must likewise be attainted in his Life-time, for if he die before Conviction, he cannot be attainted but by Parliament.

This Offence was likewise High-Treason before this Statute, because it utterly destroyed the Certainty of the King's Issue, and by Consequence raised Contention about the Succession.

A Conspiracy, or compassing to levy War, is no Overt-Act, *&c.* unless a War is actually levied: This appears by the Statute of 13 *Eliz. cap.* 1. Which made such Conspiracy Treason during the Life of that Queen; but if a War is levyed, then the Conspirators are all Traytors, tho' not actually in Arms.

And yet the meeting and consulting to levy War, tho' no War is actually levied, will be a sufficient Overt-Act to prove the Compassing and imagining the Death of the King.

'Tis true, there is an Opinion in my Lord *Coke's Pleas of the Crown* to the contrary; but that Opinion has been denied to be Law.

Now if a Meeting and Consulting to levy War, tho' no War is afterwards levied, shall be a sufficient Overt-Act to prove the compassing the King's Death *a fortiori*, 'tis so where War is actually levied, *Keel.* 20.

Raising

Raiſing Forces for any publick End or Purpoſe, is Treaſon; this was the Caſe of *Cotton*, and other *London* Apprentices, who aſſembled to pull down Bawdy-houſes: They choſe Captains among themſelves, and marcht in a Poſture of War; they wounded the Conſtable and oppoſed the Guards: All which was found ſpecially at the *Old-Baily*; and upon Conſideration of the Fact, ſome of them were executed. *Sid.* 358.

Several conſpired in *Oxfordſhire* to pull down Incloſures, and to go to the Lord *Harris*'s Houſe for Armour, Horſes, &c. and from thence to *London*, and to join with more: This was held Treaſon.

Two or more conſpired to levy War, and one of them afterwards actually raiſed Forces: This was held Treaſon in all, by the Opinion of the Judges in Sir *Nich. Throgmorton*'s Caſe, who conſpired with *Wyat*.

Some *London* Apprentices were committed for a Riot, and ſome other Apprentices conſpired to releaſe them, and to kill the Lord Mayor, and provide themſelves with Armour, by breaking open two Houſes near the Tower; They had a Trumpet, and a Cloak on a Pole, inſtead of a Flag, and were going towards the Lord Mayor's Houſe, but were oppoſed by the Sheriffs, whom they reſiſted; And this was held Treaſon, by levying War, and within the Stat. 13 *Eliz.*

Adhereing to the King's Enemies, is aiding or comforting them, by ſurrendring any Fort or Caſtle to them for Reward.

If the King's Subject becomes a Rebel, he is not properly called an Enemy, but a Traytor, and ſhall have Judgment againſt him as ſuch, and not as an Enemy, becauſe an Enemy is out of the Allegiance of the King; and if ſuch Perſon is ſuccoured out of the Realm. This, my Lord *Hales* tells us, is not an *adhering* to an Enemy, within this Clauſe.

Treaſon done beyond Sea. As to this Matter, at Common Law, the Perſon was to be tryed in the County where he had Lands; but now by the Stat. of 35 *H.* 8. *cap.* 2. it may be tried in *B. R.* or in any County where the King appoints, and ſo ſhall Treaſon committed on the Sea; and this is by Virtue of the Stat. of 28 *H.* 8. *cap.* 15. tho' by the Civil Law it muſt be tried before the Admiral.

Compaſſing to counterfeit the great Seal, is not Treaſon, for it muſt be actually counterfeited, and it muſt be like the Great Seal.

If the Chancellor put the Seal to a Patent without a Warrant, this is no Treaſon now; but it was otherwiſe before the making of this Statute, as appears by the Old Lawyers, *Briton* and *Bracton*, who wrote before that Time.

Putting the great Seal to another Patent, is not counterfeiting, (as my Lord *Coke* ſays) but a great Miſpriſion; and this was one *Leak*'s Caſe, who glued two Parchments ſo cloſe that it could not be perceived, and put a Label through both; and upon the uppermoſt he wrote a Patent, and got the great Seal affixed to the Label; then he took off the written Parchment, and left the Label hanging to the Blank: This was held to be a Miſpriſion.

Thoſe

Thoſe who aid and conſent to counterfeiting, are within this Statute.

But the counterfeiting of the Privy Signet is not Treaſon within this Act, but it is declared ſo to be, by a ſubſequent Statute, *viz.* by 1 & 2 *Phil. & Mar. cap.* 11.

One *Robinſon* counterfeited the Privy Seal, but he omitted ſome Words in the Style, and added other Words, on Purpoſe that there might be a Difference between the true Seal and the Counterfeit: He likewiſe counterfeited a Grant, and by the Help of this counterfeited Privy Seal, he obtained the Great Seal to his Patent: This was declared to be High Treaſon; for having collected Money by thoſe Counterfeits, he had uſurped regal Authority. 2 *Roll. Rep.* 51.

To forge the Coyn, was Treaſon at common Law, tho' the Offender did not utter it; and to counterfeit it, is made ſo by this Statute. But *clipping*, *waſhing*, *filing*, *&c.* was no counterfeiting it within this Statute; yet it was made High Treaſon by a ſubſequent Act of Parliament, *viz.* by 5 *Eliz. cap.* 11. but it was no Corruption of Blood or Loſs of Dower.

So likewiſe *impairing*, *diminiſhing*, *falſifying*, *ſcaling*, *&c.* is not counterfeiting, but 'tis made Treaſon by 18 *Eliz. cap.* 1. without Corruption of Blood or Loſs of Dower.

By *Money* is intended only the *proper Money* of this Nation; but now forging or counterfeiting any *foreign Money*, (if made current here by Proclamation) is High Treaſon, *per* 1 *Mar. cap.* 6.

And forging it, if not current here, is a Miſpriſion of Treaſon in the principal Forgers, their Aiders and Abettors.

Bringing counterfeit Money into the Realm, is meant ſuch as is made in *Imitation* of *Engliſh* Money, and brought from foreign Parts, not within the Dominion of the *King*.

It muſt not barely be *uttered* here, but it muſt be *brought in and uttered* by one and the ſame Perſon; if ſo, 'tis Treaſon.

Trial. By the Statute of 7 *Will.* 3. *cap.* 3. ſome Alterations are made in Trials of Traitors; for before that Statute, Men were committed for Treaſon, and Friends were not ſuffered to come near them; they had neither Pen, Ink, or Paper, and did not know for what Treaſon they were committed, or by whom accuſed; if by Chance any Perſon adviſed them without Leave of the Court, he was puniſhable; and if upon the Arraignment the Priſoner deſir'd Counſel upon any Point of Law, thoſe Counſel muſt be ready to argue it *inſtanter*, and the Court did give Judgment as ſoon.

'Tis true, he had Liberty to except againſt any of the Jury, but that could be no Advantage to him, becauſe he never had a Copy of the Pannel to conſider againſt whom to except.

When he produced any Witneſſes, they were not to be examined upon Oath, which (as it hath been obſerv'd) is either too great an Advantage for the Priſoner, or none at all; for if his Witneſſes not

ſworn

ſworn, ſhall have equal Credit with thoſe which are upon Oath, the Priſoner has too great an Advantage; but if they are not to have Credit, becauſe not ſworn, then why is he ſuffered to have any Witneſſes on his Side?

Bulſt. 147. My Lord *Coke*, ſo long ago as in *Anno* 11. *Jac.* told us, That the Jeſuits had ſlandered our Common Law in the Caſe of Trials of Offenders for their Lives, becauſe they had neither Counſel, nor were their Witneſſes examined upon Oath. For Truth cannot appear but upon the Teſtimony of Witneſſes; and therefore 'tis abſolutely neceſſary to put the higheſt Obligation on them on both Sides, which is an Oath.

7 *W.* 3. *cap.* 3. By this Statute it is provided, That a Perſon indicted for Treaſon, whereby Corruption of Blood may be made, or for Miſpriſion of ſuch Treaſon, ſhall have a Copy of the whole Indictment five Days before his Trial, he deſiring the ſame; and this is that he may adviſe with Counſel, by two of whom he may make a full Defence, and his Witneſſes ſhall be upon Oath: He is not to have the Names of the Witneſſes for the King.

That no Man ſhall be indicted, tried or attainted of ſuch Treaſon or Miſpriſion, *&c.* but upon the Oaths of Two lawful Witneſſes, who ſhall both ſpeak to the ſame Overt-Act of Treaſon, or to different Acts, but of the ſame Treaſon, unleſs the Party is mute, refuſeth to plead, or challengeth above Thirty-five peremptorily, or confeſſeth his Fault.

But ſuch Offender may be outlawed; and if attainted by Outlawry, yet he may come in and be tried by Law after ſuch Outlawry, and he ſhall upon his Trial have the Benefit of this Act.

And where diſtinct Treaſons of divers kinds ſhall be alledged in one Indictment, one Witneſs to one Species of Treaſon, and another Witneſs to another, ſhall not be two Witneſſes within the Meaning of that Law, and no Evidence ſhall be given of an Overt-Act, unleſs expreſsly laid in the Indictment.

The Proſecution muſt be within *three* Years after the Offence committed, except it be for a Treaſon in deſigning or attempting the Aſſaſſination of the *King*.

No Indictment, *&c.* ſhall be quaſhed for Miſ-writing, or for falſe or improper *Latin*, unleſs Exception be taken to the ſame before the Evidence given in Court; neither ſhall any ſuch Matter be a ſufficient Cauſe to arreſt the Judgment after Conviction, yet it may be reverſed by Writ of Error.

When a Peer is tried, all the Peers who have a Right to ſit and vote in Parliament, ſhall be ſummoned *Twenty* Days before the Trial: They muſt take the Oaths. But the Act doth not extend to any Indictment for counterfeiting the Coin, the Great Seal, *&c.* After Examination of the Offender, and of the Witneſſes who are to be upon Oath, the Criminal muſt be committed.

Any

Any Perſon mending a *Puncheon* (except ſuch as are imployed in the Mint) *Matrix*, *Stamp*, &c. or other Materials by which the Figure of the current Coin ſhall be made or impreſſed, or making any *Edger*, or Inſtrument for making Letters round the Edges, reſembling the coined Money, or buying or ſelling, or knowingly having in his Houſe or Poſſeſſion any ſuch Tool or Inſtrument, they and their *Aiders* and *Abettors* ſhall be guilty of High Treaſon.

Conveying any of the ſaid Inſtruments out of the King's Mint, guilty of the ſame Offence.

Edging any diminiſhed Coin, or counterfeit Coin, like Edges coined at the Mints, Treaſon.

Colouring or gilding Coin, reſembling the current Coin, &c. High Treaſon in them, their *Aiders* and *Abettors*.

Puncheon or *Dye* in the Poſſeſſion of any one not imployed in the Mint, or not having it by lawful Authority, may be ſeized and carried to a Juſtice, &c. to be produced in Evidence againſt the Perſon, and then to be deſtroyed by the Court, or ſome Juſtice.

Counterfeit Money, after produced in Evidence, ſhall be deſtroyed, &c.

Blanching Copper for Sale, or *mixing blanched Copper* with *Silver*, or putting off counterfeit milled Money at a lower Rate than the ſame is denominated. Felony.

This Act ſhall not extend to make *any Corruption of Blood*, or Loſs of Dower.

The Trials for theſe Offences ſhall be in ſuch Manner as is uſed againſt Offenders for counterfeiting the King's Coin.

No Proſecution, unleſs within three Months after the Offence; but *per 7 A. c. 24.* it is inlarged to ſix Months.

Dyer 286. *b.* Indictment for Treaſon muſt be found in that County where the Fact was done, which may afterwards be removed into *B. R.*

3 *Lev.* 396. If it is for levying War, conſpiring the Death of the King, or adhering to his Enemies, it muſt conclude, *contra Ligiantiæ ſuæ debitum*; (contrary to his due Allegiance) and 'tis not ſufficient, tho' the particular Facts ſet forth therein, do ſhew that what was done by the Offender was againſt his Allegiance: This was Mr. *Walcot's* Caſe, who was executed for High-Treaſon, and his Attainder was reverſed in the Houſe of Lords by one Vote.

There is a late Statute, 2 & 3 *A.* which makes it Treaſon for any Officer and Soldier *out of the Realm*, either on Land or Sea, to hold Correſpondence with any Rebel or Enemy to the *King*, or to give them Advice or Intelligence by Letters, Meſſages, Signs or Tokens, or any other Way whatſoever, or to enter into any Condition with them without the King's Leave, or Licence of the General, Lieutenant-General, or Chief Commander. The Trial is to be by a Jury of *Middleſex*, or by a ſpecial Commiſſion.

And

And by a Law 3 & 4 *Anne*, 'tis made Treaſon, during the War with *France*, to ſend, or cauſe to be ſent, loaded, tranſported or deliver'd to the Uſe of the *French* King, or any of his Subjects reſiding within his Dominions, theſe Goods following, *viz. Arms, Powder, Bullet, Salt Petre, Cordage, Hemp, Iron, Maſts, Ordance, Pitch* or *Tar*.

There is likewiſe another Treaſon made by the Act, entitled, *An Act for the better Security of his Majeſty's Perſon and Government*; That if any Perſon after *Twenty fifth* of *March*, 1706, ſhall maliciouſly, adviſedly, or directly, *by writing or printing*, declare or affirm, That the King is not lawful King, or that the *pretended Prince of Wales* hath any Title to the Crown, or that any other Perſon hath a Right to it, otherwiſe than according to the Act of Settlement made 1 & 12 *Wm.* 3. or that the Kings and Queens of *England* are not able, by the Authority of their Parliaments, to make Laws ſufficient to limit and bind the Crown of this Realm; ſhall be guilty of High-Treaſon. And if any one by *preaching, teaching* or *adviſed ſpeaking*, ſhall declare, maintain or affirm, as aforeſaid, ſuch Perſon being lawfully convicted, ſhall incur the Penalty of a *Præmunire*. But if the Proſecution be for Words, there muſt be Information given of ſuch Words, upon Oath, to one or more Juſtices of the Peace within three Days after the Words are ſpoken; and then the Proſecution muſt be within three Months after ſuch Information; and the Conviction muſt be by Oath of two credible Witneſſes.

The Form of a Mittimus.

Eſſex, ſs. To the Keeper of the Common Goal, *&c.*

I *SEND you herewith the Body of* H. M. *who was brought before me this preſent Day, and charged with High-Treaſon: Theſe are therefore to command you, to take the ſaid* H. M. *into your Cuſtody, and him ſafely to keep in your Goal, till he ſhall be from thence delivered by due Courſe of Law. Given under my Hand and Seal, &c.*

Then the Juſtice muſt take a ſeveral Recognizance of every Witneſs to appear at the Aſſizes, and give Evidence againſt the Priſoner.

In High-Treaſon there are no Acceſſaries; but all are Principals; and therefore my Lord *Coke* tells us, That what will make a Man acceſſary to a Felony before the Fact, the ſame will make him Principal in High-Treaſon.

PETTY-TREASON.

PETTY-TREASON conſiſts in three Particulars, *per* Statute 25 *Edw.* 3. As, firſt, *A Servant killing his Maſter.* This extends likewiſe to the Miſtreſs who hath no Huſband, and the Wife of the Maſter. If a Servant have Malice againſt his Maſter whilſt he is in his Service, and afterwards, going out of his Service, *killeth* him; this is *Petty-Treaſon*, but killing him upon a ſudden Quarrel, is *Manſlaughter*.

2dly,

2dly. *A Wife killing her Husband.* If she procure another to murder her Husband, she is only *Accessary*, unless she was present in the House when the Fact was committed, tho' not in the same Room, and she shall be hanged, and not burnt, because she, as *Accessary*, cannot be guilty of Treason, where the *Principal* is guilty of Murder; but if the Person procured is a Servant, then 'tis *Petty-Treason* in both. If she, and another not being her Servant, killeth the Husband, 'tis *Petty-Treason* in her, and Murder in the other.

3dly. *Ecclesiastical Persons killing their Ordinary.* Petty-Treason doth not suppose a Trust and Obedience in the Offender, which is either Civil, as in the Cases above-mentioned, or Ecclesiastical, as in this Case.

But this Statute shall not be construed according to Equity, and therefore if the Son killeth the Father or Mother, 'tis no Petty-Treason, unless he was a Servant receiving Wages, as well as a Son.

Aiders, Abettors and Procurers, are adjudged to be within this Act.

An Indictment against a Man for killing his Master.

Middlesex, THE Jurors for our Sovereign Lord the King, upon to wit, their Oath, present, That *W. G.* of *W.* in the County aforesaid, Labourer, on the Tenth Day of *March*, in the Twentieth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great-Britain*, &c. in the *Mansion-House* of *W. N.* situate at *H.* in the County aforesaid, with Force and Arms, that is to say, with a certain Knife of the Value of One Shilling, which he the said *W. G.* then and there held in his Right Hand, did wilfully, feloniously, and of his Malice forethought, make an Assault upon the said *W. N.* being then his Master, and in the Peace of GOD, and of our said Lord the King, and did feloniously and traiterously at *H.* aforesaid in the said County, strike and wound with the said Knife the said *W. N.* being then his Master, and did feloniously, traiterously, and of his Malice forethought, at *H.* aforesaid, in the said County, give to the said *W. N.* one mortal Wound with the said Knife, upon the right Part of his Belly, of the Length of two Inches, and of the Depth of one Inch, of which said mortal Wound the said *W. N.* at *H.* aforesaid, in the said County languished, and languishing lived from the said Tenth Day of *March* in the Year above-mentioned, to the eighth Day of *April* next ensuing, on which said eighth Day of *April* in the same Year above-mentioned, the said *W. N.* at *H.* aforesaid, in the said County, died of that mortal Wound; and so the Jurors aforesaid upon their said Oaths say, that the said *W. G.* on the eighth Day of *April* aforesaid, in the said Twentieth Year above-mentioned at *H.* aforesaid in the said County, did wilfully, feloniously, traiterously, and of his Malice forethought, kill and murder the said *W. N.* in Manner and Form aforesaid, against the Peace, &c. and that one *A. B.* of *H.* aforesaid, in the said County,

Yeoman, before the Treaſon aforeſaid done by the ſaid *W. G.* as it before related, that is to ſay, on the Eighteenth Day of *March* in the ſame Twentieth Year above-mentioned, at *H.* aforeſaid, in the ſaid County, did feloniouſly aid, abet and procure the ſaid *W. G.* to commit the ſaid Treaſon in Manner aforeſaid, againſt the Peace, &c.

Miſpriſion of Treaſon.

THIS is when one knoweth of any Treaſon, and concealeth it; but it muſt be a *bare Knowledge* only, for if the Perſon conſents to the Treaſon, he is a Traitor. Therefore the Perſon ought, as ſoon as may be, to reveal it to ſome Magiſtrate. But receiving a Traitor, and comforting him, knowing him to be ſuch, he is a principal Traitor himſelf.

If one knowing upon what Deſign Perſons meet, and hear them diſcourſe of Treaſon, though he ſays nothing himſelf, or doth any Act towards it, yet this is Treaſon; for 'tis more than a Concealment, becauſe by his Silence, he gives conſent to what was then doing. But if he did not know upon what Deſign they met, and he caſually hears their traiterous Diſcourſes, and ſays nothing, and never comes again to their Conſultations, this Concealment is only *Miſpriſion* of Treaſon; but if he comes into their Company again, and hears their Diſcourſes, and then conceals it, this is High-Treaſon; for it ſheweth his Approbation of their Deſign: And this was Sir *Everard Digby*'s Caſe, who was preſent at the Powder-Treaſon, met with the Traitors, and heard their Diſcourſes, but neither ſaid or acted any Thing. For to make *Miſpriſion* of Treaſon, there muſt be a *Knowledge* of the Deſign (as already hath been obſerved) and of the Perſons, or ſome of them, and likewiſe a Concealment of it; for a Man cannot be ſaid to conceal what he doth not know: And therefore if I tell a Man, that there will be a Riſing at ſuch a Time, and do not mention the Perſons who are to be in Arms, or the Nature of the Plot, and this is concealed by that Perſon to whom I told it, 'tis but Miſpriſion of Treaſon, becauſe he had no Knowledge of the Treaſon itſelf.

But if a Man knows the Conſpirators, and then in general Diſcourſe tells the People there will be a Riſing, and doth not diſcover the Plot, or the Traitors, this is Miſpriſion of Treaſon; for notwithſtanding ſuch general Diſcourſe, he conceals both the Treaſon and Traitors. The ſafeſt Way in theſe Caſes, would be to diſcover the Treaſon to ſome Magiſtrate; for if to a Perſon who hath not Authority to take an Examination, it may be a Queſtion, Whether ſuch a Diſcovery will acquit him from Miſpriſion of Treaſon. *Keeling* 22. Vide *Miſpriſion.*

TRIAL.

TRIAL.

THE Trial of an Alien, who lives here under Protection of the Laws, if it be for Treaſon, it ſhall not be *per medietatem Linguæ*; (*i. e.* the Jurors half Denizens and half Aliens) but, 'tis otherwiſe in Petit-Treaſon, Murder or Felony. 1 & 2 *Phil. and Mar.*

But ſuch a Trial *per medietatem Linguæ*, is not to be allowed *ex Officio*, or *ex debito Juſtitiæ*, but at the Inſtance of the Party; for if he doth not deſire it, 'tis to be as at Common Law by a Jury of *Engliſh* Men.

If a Man commits Treaſon in *Ireland*, he may be tried here; and this was *Orork*'s Caſe. *Dyer* 1. *And.* 362.

By the Statute of 33 *H.* 8. 'tis enacted, That if a Perſon is examined by three of the King's Council, upon *Treaſon*, *Murder*, &c. and confeſſeth it, or is ſuſpected by the Council to be guilty; in ſuch Caſe, the King, by a ſpecial Commiſſion, may have the Offender tried in any Place. 33 *H.* 8. *cap.* 23.

One *Grevel* was examined before the Council, as Acceſſary to a Murder in *Warwickſhire*, and it was adjudged, that he ſhould be tried *there*, becauſe he was examined as an Acceſſary, and not for the Murder itſelf. 1 *And.* 194.

But regularly Indictments muſt be found in the proper County, and the Trial muſt be by Jurors of that County.

Stroke in one County, and Death in another, the Offender ſhall be tried where the Party died. 2 & 3 *Ed.* 6. 24.

A Trial cannot be had the ſame Seſſions in which the Party is indicted, unleſs in Criminal Caſes, and that is in *favorem Libertatis*.

But then the Offender muſt be in Cuſtody; but this ſeems not to be agreeable to Reaſon, that a Criminal ſhould have a longer Time allowed him to adviſe in trivial Matters, than in thoſe which concern his Life.

Yet the Defendant was indicted and tried the ſame Seſſions for a *Barretry*, and held good, becauſe he appeared; and in ſuch Caſe, upon his Appearance, he may be tried as well then as afterwards. 2 *Cro.* 404.

By Stat. 28 *H.* 8. *cap.* 15. Murder, Robberies, Piracies, and all other capital Offences committed on the Sea, or any other Place where the Admiral pretends Juriſdiction, ſhall be tried in ſuch Counties within the Realm as ſhall be appointed by the King's Commiſſion, in like Manner as if the ſame had been done at Land.

In all Caſes it is of common Right, that the Offender be heard, or at leaſt ſummoned, and make Default, before he can be legally convicted. And the Juſtice ought to make and keep by him a Record of all the Proceedings, eſpecially if there be a Commitment. 1 *Salk.* 381. 6 *Mod. Ca.* 41. 36 *Holt.* 157.

VAGRANTS.

ALL the Statutes relating to Vagrants were repealed by 13 *Geo.* 2. which reduced all Laws relating thereto into that one Act; which Act is again repealed by 17 *Geo.* 2. and that ſubſtituted in its Stead, the reſt ſtill remaining repealed; wherefore we ſhall here give an Abridgement of the ſaid Act of 17 *Geo.* 2. which may be reduced to theſe ſeveral Heads, *viz.*

1ſt, What Perſons come under the Deſcription of the Act as Rogues, Vagabonds, *&c.*

2dly, The Manner of Apprehending and Examination.

3dly, Their Puniſhment.

4thly, The Place where they are to be ſent.

5thly, The Paſſes, the Certificate, the Manner and Charge of Paſſing them.

6thly, Perſons harbouring them.

7thly, Houſes of Correction, and the well Ordering thereof.

AND firſt, as to the Perſon's coming under the Deſcription of this Act, they ſeem rank'd under three ſeveral Claſſes; 1ſt, As idle and diſorderly Perſons; 2dly, As Rogues and Vagabonds; Thirdly, As incorrigible Rogues.

Who ſhall be deemed idle and diſorderly Perſons.

Perſons threatning to run away, or leave their Wives or Children to the Pariſh.

Unlawfully returning to the Pariſh from whence they were legally removed by Order of two Juſtices, without bringing a Certificate.

Not having wherewithal to maintain themſelves, and living idly without Employment, and refuſing to work for common Wages.

Going about from Door to Door, placing themſelves in the Streets, Highways or Paſſages, to beg or gather Alms in the Pariſh or Place where they dwell, ſhall be deem'd idle and diſorderly Perſons. A Juſtice of Peace may commit them, being convicted, on View, by Confeſſion, or the Oath of one Witneſs, to the Houſe of Correction to hard Labour, not exceeding a Month. Reſiſting or eſcaping from the Perſon apprehending them are ſubject to the ſame Puniſhment as Rogues and Vagabonds are liable to by this Act.

Juſtice by his Warrant ſhall order Overſeer of the Pariſh, *&c.* where the Offender ſhall be apprehended, to pay *Five Shillings* to the Perſons apprehending them, for each Offender; this to be allowed the Overſeer in his Accounts, on producing the Order and a Receipt under the Perſon's Hand to whom it was paid; on Non-payment or Refuſal of the Overſeer, it ſhall be levied by Diſtreſs on his Goods, and not allowed him in his Accounts.

Who ſhall be deemed Rogues and Vagabonds.

Actors for Gain or Reward of Plays or Interludes, &c. not having a legal Settlement in the Pariſh, &c. where they are acted, and having no Authority from the King, &c. nor Licence from the Lord Chamberlain.

Alms-Gatherers, Bearwards, Going about as Collectors for Priſons, Goals or Hoſpitals; Fencers, Fortune-tellers, Gypſies, or wandring as ſuch; Minſtrels, but not to prejudice the Heirs and Aſſigns of *John Dutton*.

Petty-chapmen or Pedlars wandring without Licence or otherwiſe authoriſed by Law.

Perſons running away and leaving their Wives and Children, ſo that they become chargeable to any Pariſh or Place.

Perſons wandring abroad and lodging in Barns or Out-houſes, not giving a good Account of themſelves.

Players or Betters at unlawful Games or Plays.

Wandring abroad and begging, pretending to be Soldiers.

Mariners or Seafaring Men, or pretending to go to Work in Harveſt.

All other Perſons wandring abroad and begging, ſhall be deemed Rogues and Vagabonds within the Intent of this Act.

Soldiers having lawful Certificate from their Officers or the Secretary at War, Mariners and Seafaring Men licenſed by ſome Teſtimonial or Writing under the Hand and Seal of a Juſtice of Peace, ſetting down the Time and Place of Landing, the Place to which they are to paſs in a direct Way, and the Time limited for ſuch Paſſage. Perſons going abroad to work in Harveſt, or any other Time, carrying with them a Certificate ſigned by the Miniſter and one of the Church-wardens and Overſeers, declaring they have a Dwelling-houſe therein which they inhabit, are excepted out of this Act.

Who ſhall be deemed incorrigible Rogues.

Perſons apprehended as Rogues and Vagabonds, and eſcaping from the Perſons apprehending them.

Refuſing to go or be examined on Oath before a Juſtice of Peace.

Refuſing to be conveyed by the Paſſes directed by this Act.

Knowingly giving a falſe Account of themſelves on ſuch Examination, after Warning of their Puniſhment.

Breaking or eſcaping out of the Houſe of Correction before the Expiration of the Term of Commitment.

Committing any of the ſaid Offences after having been puniſhed as Rogues and Vagabonds, and diſcharged, ſhall be deemed incorrigible Rogues.

Any Perſons whatſoever may apprehend Perſons offending againſt this Act, and may convey him before a Juſtice of Peace, &c.

Conſtable

Conſtable refuſing or neglecting to uſe his beſt Endeavours to take ſuch Offenders or convey them before ſome Juſtice of Peace, is guilty of Neglect of Duty, and ſhall forfeit any Sum not exceeding *Five Pounds*, nor leſs than *Ten Shillings*; for want of Diſtreſs, Commitment to the Houſe of Correction to hard Labour, for any Time not exceeding two Months. Conviction upon the Oath of a Witneſs before a Juſtice of Peace who is impowered to take ſuch Oath.

The laſt Clauſe extends to all Caſes where Conſtable or other Officer, or Governor or Maſter of Houſe of Correction, is defective, remiſs or negligent in his Duty in the Execution of this Act, where no Puniſhment was before particularly provided for, or where any Perſons diſturb or hinder the Execution of the Act, or reſcue Perſons apprehended, or paſſing from Place to Place by Virtue of it, or adviſe, aid, or aſſiſt in their Eſcape.

Any other Perſon, not being an Officer, charged by a Juſtice of Peace, refuſing or neglecting to uſe his beſt Endeavours to apprehend and deliver ſuch Offender to the Peace-Officer of the Place, to carry him before a Juſtice of Peace, where no Officer can be found, being convicted on View or upon the Oath of one Witneſs before a Juſtice of Peace, *&c.* forfeits *Ten Shillings* to the Uſe of the Poor, *&c.* to be levied by Warrant of Diſtreſs, *&c.*

A Perſon, not being a Peace Officer, apprehending ſuch Offenders and delivering them to a Peace-Officer, or carrying them before a Juſtice of Peace, or where any Conſtable or other ſuch Officer ſo apprehends or conveys ſuch Offenders before a Juſtice of Peace, the Juſtice may order him *Ten Shillings*, *&c.* the Order muſt be under Hand and Seal, and made upon the High or Chief Conſtable.

It muſt be paid within a Week after Demand, upon producing the Order and giving a Receipt: The High Conſtable is to be paid or allowed by the Treaſurer of the County, *&c.* on his Paſſing his Accounts, and delivering the Order and Receipt, and his own Receipt to the Treaſurer; and the Juſtices upon the producing the Vouchers are to allow it to the Treaſurer at the General or Quarter-Seſſions.

In Cities, Boroughs, *&c.* where there are no High Conſtables, the Petty Conſtables ſhall pay, or retain it, and be allowed it in their Accounts upon producing their Vouchers.

If the Petty Conſtable or High Conſtable refuſe to pay or reimburſe the *Ten Shillings*, the Juſtice may by Warrant of Diſtreſs levy *Twenty Shillings*, out of which he ſhall allow the Reward of *Ten Shillings* to the Perſon intitled, and ſuch Recompence for his Trouble, Loſs of Time, *&c.* as he ſhall think fit, returning the Overplus, if any, *&c.*

Juſtices of Peace, *&c.* muſt meet four Times a Year, or oftner if Need be, in their reſpective Diviſions, and by their Warrant command the Conſtables, *&c.* being aſſiſted with ſufficient Men of the ſame Place, to make a general privy Search in one Night throughout their

their ſeveral and reſpective Limits, for finding and apprehending Rogues and Vagabonds; and every Juſtice of Peace receiving Information that Rogues and Vagabonds are in any Place within his Juriſdiction, ſhall iſſue his Warrant to the Peace-Officer, to ſearch for and apprehend them; and they ſhall cauſe ſuch Rogues and Vagabonds as ſhall be apprehended on ſuch Searches to be brought before a Juſtice, &c.

A Warrant to Conſtables to make a general Privy Search for Vagabonds, &c.

Middleſex. *ſs.* To the High-Conſtable of, &c.

THESE are in his Majeſty's Name to charge and command you, that you, together with the petty Conſtables and Tithingmen, within the ſeveral Pariſhes, &c. in your Hundred, taking proper and ſufficient Aſſiſtance, do on, &c. next, at Night, before the Quarter Seſſions, make a general privy Search, within the ſeveral Towns, Pariſhes, and Hamlets in your ſaid Hundred, for the finding and apprehending of Rogues, Vagabonds, and idle and wandring Perſons, and that you do cauſe ſuch as you ſhall find, to be brought forthwith before us, or ſome other of his Majeſty's Juſtices of Peace for the ſaid County, acting in the Diviſion where taken, to be examined and puniſhed according to Law, and that you likewiſe give an Account in Writing of what you ſhall do in the Premiſſes. Given, &c.

The Juſtice of Peace may inform himſelf upon the Oath of the Vagabond, or any other Perſon, of the Condition and Circumſtances of the Perſon apprehended, and of the Pariſh or Place where laſt legally ſettled; the Examination or Subſtance thereof to be put in Writing, and to be ſigned by the Perſons examined; the Juſtice muſt ſign it, and it muſt be tranſmitted to the Seſſions, there to be recorded.

The Examination of a Vagrant.

THE *Examination of* A. B. *a Vagrant, and of* C. D. *and* E. F. *touching his Vagrancy and Settlement, taken on Oath before us* J. F. *and* J. S. *Eſqrs; two of his Majeſty's Juſtices, &c. this, &c.*

The Examinant A. B. *(being this Day brought before us for wandering, begging, and committing other Acts of Vagrancy in, &c.) ſays, on his Oath, That the Place of his laſt Abode, was at, &c. but that he did not live there as a hired Servant, or in any other Manner to make him a Pariſhioner or gain a Settlement there, and being out of Employment, he was forced to wander to, &c. and from thence he came to, &c. the Place which he is informed is the Place of his Birth; and further ſaith not. And the ſaid* C. D. *and* E. F. *both ſay, that they know the ſaid* A. B. *and that he is an idle Fellow, and that they are aſſured the ſaid* A. B. *was born at, &c. aforeſaid, they living in the ſaid Pariſh at the Time of his Birth, and well knew his Parents; but whether he hath acquired any legal Settlement at any other Place ſince his Birth, they knew not.*

The

The Juſtices are to cauſe ſuch Rogues or Vagabonds, apprehended on ſuch privy Search, to be publickly whipped by the Conſtable, *&c.* or order them to be ſent to the Houſe of Correction, to remain there till the next General or Quarter-Seſſions, or for leſs Time, as the Juſtice ſhall think fit, and after ſuch Whipping or Confinement, the Juſtice is impowered, if he ſees convenient, by the Paſs *infra*, to cauſe ſuch Perſons to be conveyed to the Place of their laſt legal Settlement; if that cannot be found, then to the Place of their Birth; and if under the Age of *fourteen*, and having Father and Mother living, then to the Place of Abode of Father and Mother, and to be delivered to the Church-wardens, *&c.*

The Form of the PASS.

To the Conſtable of, *&c.* *(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 and Overſeers of the Poor of the Pariſh or Town *(as the Caſe may be)* of *A.* or either of them, to receive and obey.

WHEREAS A. B. *was apprehended in the Pariſh of* C. *as a Rogue and Vagabond*, videlicet, *wandring and begging there; and upon Examination of the ſaid* A. B. *taken before me upon Oath, (which Examination is hereunto annexed) it doth appear, that his laſt legal Settlement is in* D. *in this County, or that the ſaid* A. B. *was born in the Pariſh of* E. *in this County, and hath not ſince obtained any legal Settlement; (or that the ſaid* A. B. *is under the Age of Fourteen Years, and hath a Father or Mother living or abiding in the Pariſh of* E.*) Theſe are therefore to require you the ſaid Conſtable, or other Officer, to convey the ſaid* A. B. *in the next direct Way to the ſaid Pariſh of* E. *within the ſaid County, and there to deliver him to ſome Church-warden, or Overſeer of the Poor of the ſame Pariſh, to be there provided for according to Law* (Or in Caſe the ſaid Pariſh, Town or Place, to which ſuch Perſon is 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* A. B. *to the Pariſh of* W. *that being the next Pariſh in the next Precinct through which he ought to paſs in the direct Way to the ſaid Pariſh of* E. *to which he is to be ſent, and to deliver him to the Conſtable or other Officer of ſuch firſt Town in ſuch next Precinct, together with this Paſs, and the Duplicate of the Examination of the ſaid* A. B. *taking this Receipt for the ſame; and the ſaid* A. B. *is to be thence conveyed on in like Manner to the ſaid Pariſh of* E. *there to be delivered to ſome Church-warden, or Overſeer of the Poor of the ſame Pariſh; to be there provided for according to Law; and you the ſaid Church-wardens, and Overſeers of the Poor, are hereby required to receive the ſaid Perſon, and provide for him as aforeſaid.*

The

The Juſtice muſt cauſe a Duplicate of ſuch Paſs and Examination to be made, and ſign them, and afterwards tranſmit the Duplicate of the Paſs annexed to the Examination, to the next General or Quarter-Seſſions, to be filed and kept on Record; and annex the Duplicate of the Examination to the Paſs, and ſend it with the ſame; and the Paſs, Examination and Duplicate thereof, may be read in Evidence in any Court of Record, *&c.*

Where any Offenders againſt this Act ſhall be committed to the Houſe of Correction, to remain till the next General or Quarter Seſſions, and the Juſtices at Seſſions ſhall, on the Examination of the Circumſtances of the Caſe, adjudge ſuch Perſon to be a Rogue or Vagabond, or incorrigible Rogue; they may, if they think convenient, order ſuch Rogue or Vagabond to be kept in the Houſe of Correction to hard Labour, any farther Time not exceeding ſix Months; and an incorrigible Rogue any farther Time not exceeding two Years, nor leſs than ſix Months, from the Time of making the Order of Seſſions, and may at their Diſcretion order them to be corrected by Whipping, and afterwards ſend them away by Paſs.

If the Perſon is a Male above Twelve Years old, the Juſtices may, before he is diſcharged from the Houſe of Correction, if they think proper, ſend him to be employed in his Majeſty's Service by Sea or Land.

Incorrigible Rogue breaking or eſcaping out of the Houſe of Correction before the Expiration of the Time of Commitment, or offending again in like Manner, ſhall, on legal Conviction, be deem'd guilty of Felony, and may be tranſported for any Time not exceeding Seven Years, *&c.*

The Juſtice, together with the Paſs, is to give the Conſtable a Note or Certificate, aſcertaining how the Perſon is to be conveyed, whether by Horſe, Cart, or on Foot, and what Allowance ſuch Conſtable is to have, *&c.*

Form of the Certificate.

WHEREAS *by a Paſs* (reciting the Subſtance or Effect of the ſaid Paſs) *I do order and direct the ſaid Perſon to be conveyed on Foot, &c. to the ſaid Town of D. in the Way to ſuch Pariſh, in Days Time, for which the ſaid Conſtable is to be allowed the Sum of and no more. Given under my Hand this Day*

The Conſtable, *&c.* who receives ſuch Paſs and Certificate, muſt convey the Perſon named in the Paſs, in the Manner and Time as is there directed, the next direct Way to the Place where ordered to be ſent, if in the ſame County, Riding, Diviſion, Corporation or Franchiſe where apprehended; but if the Place is in another County, *&c.* he muſt deliver the Perſon to the Conſtable, *&c.* of the firſt Town, Pariſh, or Place, in the next County, *&c.* in the direct Way to the Place where they are to be conveyed, together with the Paſs and

and Duplicate of Examination, taking his Receipt for them; and then ſuch Conſtable is without Delay to apply to ſome Juſtice of Peace of that County, &c. who is to give him a like Certificate, and then he is in like Manner to convey him to the next County, &c. and ſo from County, &c. to County, &c. till they come to the Place where ſuch Perſon is ſent. The Conſtable, &c. delivering ſuch Perſon to the Church-wardens, &c. is at the ſame Time to deliver the Paſs and Duplicate of the Examination, and to take his Receipt for the ſame.

If the Church-wardens, &c. thinks the Examination falſe, he may carry the Perſon ſent, before ſome Juſtice of the Peace, who may, if he ſees Cauſe, commit the Perſon to the Houſe of Correction till next Quarter-Seſſions; and the Juſtices there, if they ſee Cauſe, may deal with ſuch Perſon as an incorrigible Rogue; but the Perſon ſo ſent is not to be removed from the Place to which he is ſent, but by Order of two Juſtices, as other poor Perſons are removed to the Place of their Settlement.

Where Perſons committing Acts of Vagrancy, being ſearched and their Bundles inſpected by the Conſtable, &c. in the Preſence of the Juſtice, appear to have enough to ſatisfy the Charges of their apprehending or conveying, either in the Whole or in Part, the Juſtice ſhall order ſuch Money to be paid, or Effects to be ſold, and employed towards ſuch Expence; if any Overplus, after the Charges of the Sale, to the Vagrant.

The Juſtices at the Quarter-Seſſions are to ſettle the Allowance *per* Mile, or otherwiſe, for paſſing Vagrants, &c. and make ſuch other Orders, Rules and Directions thereto relating, as they ſhall think proper.

The High Conſtable is to pay the Petty Conſtable the Rate for paſſing Vagrants as aſcertained by the Juſtices Certificate with a Receipt from the Church-wardens, &c. to whom delivered, &c. and he is to be allowed it in his Accounts by the Treaſurer of the County, &c. and the Treaſurer by the Juſtices at Quarter-Seſſions, upon producing the Vouchers.

The High Conſtable refuſing to pay, &c. the Juſtice ſhall grant his Warrant to levy double the Sum aſcertained, and thereout to pay the Petty Conſtable the Sum aſcertained in the Certificate and Receipt, and ſuch other Recompence for Trouble, Loſs of Time, and Expences, as the Juſtice ſhall think fit, rendring the Overplus, if any, to ſuch High Conſtable upon Demand.

In Cities, &c. where no High Conſtable, the Petty Conſtables and Maſters of Houſes of Correction, upon producing their Certificates and Receipts, may be paid the Rates by the Treaſurer, who upon producing his Vouchers is to be allowed it in his Accounts.

If any Petty Conſtable, &c. or Maſter of Houſe of Correction, counterfeits any of theſe Certificates, Receipts or Notes, or knowingly permits any Alteration in them, he forfeits *Fifty Pounds*.

Neglecting

Neglecting to convey or deliver ſuch Perſons, or refuſing to receive or give a Receipt and Note as above, forfeits *Twenty Pounds*; the ſeveral Penalties to be levied by a Juſtice's Warrant (at Quarter-Seſſions) of Diſtreſs and Sale, one Moiety to the Informer, the other to the County Treaſurer to be applied as Part of the County Stock, &c.

The Pariſh or Place to which the Vagabond is conveyed by Paſs is to employ in Work the Perſon ſo conveyed, till he enters into ſome Service or Employment; and if the Perſon refuſes to work or go into ſome Service, the Overſeer may carry him before ſome Juſtice of Peace, that he may be ſent to the Houſe of Correction, to be kept to hard Labour.

Lunaticks are provided for by this Act, where they are furiouſly mad, or ſo diſorder'd in their Senſes that 'tis dangerous for them to go abroad.

The Juſtices may by Warrant cauſe ſuch Perſon to be apprehended and kept ſafely locked up in ſome ſecure Place within the County where the Pariſh, &c. lies, as they ſhall appoint under Hand and Seal; and if they find it convenient, ſhall have them chain'd there, if the Perſon's laſt legal Settlement is in any Pariſh, &c. within the ſaid County, &c.

But if it is not, the Perſon is to be ſent by Paſs to the Place of the laſt legal Settlement, there to be lock'd up or chain'd.

The Charges of removing, keeping, maintaining, and curing, during the Reſtraint, which ſhall only be as long as the Madneſs continues, are to be ſatisfied, being firſt proved upon Oath, by Order of two Juſtices, out of ſuch Perſon's Goods and Chattels, Lands and Tenements, by Sale of ſo much of the Goods, and Receipt of ſo much of the annual Rents as ſhall be neceſſary, &c. an Account thereof to be given to the Quarter-Seſſions; if he has no Eſtate, or not more than ſufficient for the Maintenance of his Family, the Charges are to be paid by the Pariſh to which he belongs, by Order of two Juſtices to the Church-wardens, &c.

This Act ſhall not extend to the King's Prerogative, Lord Chancellor's Power, &c. in Relation to Lunaticks, not where the Friends of the Lunatick take them under their own Care.

Perſons knowingly permitting any Rogue, Vagabond, or incorrigible Rogue to lodge or take Shelter in their Houſes, Barns, other Outhouſes or Buildings, and not apprehending and carrying ſuch Rogue, &c. before a Juſtice of Peace, or giving Notice to a Conſtable, &c. ſo to do, being lawfully convicted, either by Confeſſion, or Oath of one Witneſs before a Juſtice of Peace, &c. forfeit not more than *Forty Shillings*, nor leſs than *Ten Shillings*; one Moiety to the Informer, the other to the Poor of the Pariſh, &c. to be levied by Warrant of Diſtreſs.

If any Charge is brought upon any Pariſh by Means of ſuch Offence, the Offender is to anſwer it to the Pariſh; the Penalty and

Charges

Charges to be levied by Diſtreſs and Sale, &c. for want of Diſtreſs, Commitment to the Houſe of Correction for any Time not exceeding one Month.

In Caſes where Perſons wander about, and offend againſt this Act, with Children with them, if any Child above Seven Years old is committed to the Houſe of Correction, the Juſtices at Seſſions may at any Time before ſuch Child is diſcharged, order, in ſuch Manner as they think fit, the Child to be placed out as Servant or Apprentice to any Perſon within their reſpective Juriſdiction, who is willing to take ſuch Child, till the Age of Twenty-one, or for a leſs Time.

If any Offender is found again with the ſame Child, after ſuch Placing out, offending againſt this Act, the Offender ſhall be deem'd an incorrigible Rogue.

Women wandring or begging in a Pariſh to which they don't belong, and being deliver'd of Children and becoming chargeable, the Church-wardens, &c. may detain ſuch Woman in their Cuſtody till they can convey her to a Juſtice of Peace to be examined, who may commit her to the Houſe of Correction till the next General or Quarter Seſſions, who may order her to be publickly whipp'd, and detained in the Houſe of Correction for any farther Time, not exceeding *ſix* Months.

The Juſtices, upon the Application of the Church-wardens, &c. ſhall order the County Treaſurer to pay ſo much Money as ſhall be adjudged a reaſonable Satisfaction for the Charges the Place has been put to on ſuch Woman's Account.

Such Woman being detained and conveyed to a Juſtice, *ut ſupra*, if the Child of which ſhe is deliver'd is a Baſtard, it ſhall not be ſettled in the Place where born, nor ſent there for want of other Settlement by a Paſs, by Virtue of this Act, but the Settlement of the Woman ſhall be deem'd the Settlement of the Child.

Perſons aggrieved by Act of Juſtice, or Juſtices out of Seſſions, in Execution of the Act, may, upon giving reaſonable Notice, appeal to the next General or Quarter Seſſions, whoſe Order is to be final.

Special Acts of Parliament for paſſing Vagrants for Cities or Towns, not altered by this Act.

Perſons being committed to the Houſe of Correction till next Quarter Seſſions, and on their Examination no Place appearing to which to ſend them by Paſs; the Juſtices at Seſſions ſhall order them to be kept and employed in the Houſe of Correction till they can provide for themſelves, or till the Juſtices of Peace at their Quarter Seſſions can put them out as Servants, Apprentices, Soldiers, or Mariners in this Realm or the Colonies in *America*, which they are empower'd to do in ſuch Manner as they ſhall think fit.

Upon the Preſentment of the Grand Jury at the Aſſizes, &c. that there is no Houſe of Correction, and that it will be neceſſary to provide one or more, &c. or that there are not convenient, ſufficient,

that they want to be enlarged, the Juſtices of the Peace of any County, &c. at a General or Quarter-Seſſions, have full Power to build, erect, or enlarge, one or more fit or convenient Houſe or Houſes for that Purpoſe, with Backſides and Outlets, and may purchaſe Land for ſuch Purpoſes; the Money neceſſary for thoſe Purpoſes to be raiſed at the Quarter-Seſſions, and the Lands when purchaſed to be veſted in Truſtees.

The Juſtices, &c. at Seſſions, are to take effectual Care that Houſes of Correction (except thoſe maintained by private Founders) ſhall be fitted up, furniſhed and ſupplied with ſufficient Implements, &c. either for Work or Correction.

Two Juſtices within their reſpective Hundred, Diviſion, or Juriſdiction, where there are any Houſes of Correction, or any two Juſtices appointed by the General or Quarter Seſſions for that Purpoſe, ſhall viſit them twice a Year, or oftner, if neceſſary, and after examining into the Eſtate and Management, make a Report thereof to the next General or Quarter Seſſions, that if any Thing is amiſs it may be reformed and amended by their Order, the Juſtices to have the ſame Power over thoſe to be erected, as thoſe which are already in Being.

Governors or Maſters of Houſes of Correction not ſetting or keeping idle and diſorderly Perſons, Rogues, Vagabonds, or incorrigible Rogues, &c. to hard Labour, and not puniſhing and correcting them according to the Warrants and Orders, &c. or otherwiſe miſbehaving or being defective, remiſs, and negligent in their Duty, the Juſtices at General or Quarter Seſſions may ſet ſuch Fines, &c. as they think fit on them, in the ſame Manner as Fines, &c. are impoſed by 7 Jac. 1. againſt Rogues, &c. to be paid to the Treaſurer and accounted for as County Stock.

Juſtices at Quarter Seſſions may appoint and remove Governors or Maſters, &c. of Houſes of Correction, and make ſuch Orders and Regulations as they think fit for employing, relieving or puniſhing the Perſons therein, and for ſending them to or from thence, &c. ſuch Orders to be final, and no *Certiorari* granted to remove them.

Perſons removed by ſuch Orders not quitting Poſſeſſion of the Houſe of Correction ten Days after Notice in Writing by the Clerk of the Peace, two Juſtices may, upon producing the Order of Seſſions, or an atteſted Copy thereof, and Oath by one Witneſs, of Notice given to the Perſons removed, and of their Refuſal or Neglect to quit Poſſeſſion, by Warrant, &c. direct to the Sheriff, &c. to remove him out of the Houſe of Correction; and he is required to clear the Poſſeſſion as upon a Writ of *Habere facias Poſſeſſionem*.

Where any Offender ſhall be committed as aforeſaid by Virtue of any Law now in Being, or hereafter to be made, and the Time and Manner of their Puniſhment is not expreſſly appointed, the Juſtice or Juſtices ſhall commit the Offender to the Houſe of Correction, to be kept there to hard Labour until the next General or Quarter Seſſions, or until

diſcharged

discharged by due Course of Law; two Justices (of which the Justice who committed the Offender to be one) may discharge the Offender before the Sessions, if they see Cause, and if he is not discharged, then the Sessions may discharge him, or continue him in Custody for any Time not exceeding three Months.

For defraying the Expences of apprehending, conveying, passing and maintaining Rogues, &c. and likewise the Expences of erecting, &c. Houses of Correction, of purchasing Lands, &c. of fitting and furnishing them up, of sending Persons to and from and employing them there, and for defraying all other Expences necessary for the Execution of the Act not before provided for, the Justices at their General or Quarter Sessions shall cause the necessary Sums of Money to be raised in the same Manner as Rates are directed to be raised by 12 *Geo.* 2. for the more easy assessing, &c. of County Rates.

Persons sued for any Thing done in Execution of this Act, may plead the General Issue, and give the special Matter in Evidence, and if a Verdict for the Defendant, or Plaintiff is nonsuited or discontinues his Suit, the Defendant may recover treble Damages. This Act comment'd *June* 1st, 1744. *Nelson's Just. Vol.* 2. *pa.* 319.

Continuation of a Pass from one County to another.

I *DO hereby order you to convey the above-named, or within-named Vagrant to, &c. in the County of, &c. in order to his being further conveyed to, &c. according to the above-written Pass, and as the Law directs. Given, &c.*

You may insert before the Word (convey) in the Pass, *having first punished the Vagrant according to Law*; but this is generally understood to be done by the Constables of Course, without any particular Direction.

A Receipt from the next Constable, on Delivery of a Vagrant, to be endorsed on the Certificate.

I A. B. *Constable of*, &c. *in the County of*, &c. *do hereby acknowledge that I have received this Day, &c. of and from* C. D. *Constable of, &c. in the County of*, &c. J. L. *a Vagrant, by the said* C. D. *brought hither in his Way to, &c. the Place of his last legal Settlement, by Virtue of a Pass granted by*, &c. Witness my Hand the Day and Year above written.

A Warrant to apprehend a Madman.

Essex, *ss.* WHEREAS *A. B.* a furious Lunatick and disorderly Person, has been lately seen walking in the Parish of *M. &c.* to the great Terror, Disturbance, and frightning the People there: These are therefore to require you forthwith to apprehend the said *A. B.* and cause him safely to to be locked up, until he shall be discharged by due Course of Law; And hereof fail not. Given under our Hands and Seals, &c.

A Come

A Commitment of a Vagrant found wandering again, begging, &c. after removed.

WHEREAS it has been duly proved to us, That *A. B.* a Vagrant, who was lately removed and conveyed from the Parish of, *&c.* in the County of, *&c.* to the Parish of, *&c.* in the County of, *&c.* by Virtue of a Pass granted by, *&c.* one of his Majesty's Justices of the Peace for the said County of, *&c.* hath been since the said Removal found wandering and begging in the Parish of, *&c.* in the said County of, *&c.* These are therefore in his Majesty's Name to command you to convey the said *A. B.* to the House of Correction aforesaid: Hereby also requiring you the Keeper of the said House, to take the said *A. B.* into your Custody, and to keep him at hard Labour until the next Quarter-Sessions to be holden for the County of, *&c.* aforesaid, or until he shall be from thence otherwise delivered by due Course of Law. Given, *&c.*

A Mittimus to the House of Correction, of a Person taken by the Watch.

WHEREAS *A. B.* of *&c.* was this Day brought before me *W. B.* Esq; one of his Majesty's Justices of the Peace, *&c.* by *C. D.* Constable of the Parish of, *&c.* being by his Watch last Night apprehended for wandring abroad, *&c.* and it being proved before me, That the said *A. B.* is a Person which lives a very lewd and disorderly Life, *&c.* These are therefore to require you to receive and take into your Custody the said *A. B.* and her safely to keep until the next Quarter Sessions to be holden for the County of, *&c.* aforesaid, or until she shall sooner be discharged from thence by due Course of Law: And in the mean Time, to keep the said *A. B.* to hard Labour, and to give her such Punishment as the Laws direct. Given, *&c.*

A Mittimus to the House of Correction of dangerous Rogue.

To the Master or Governor of the House of Correction at A. *&c.*

FORASMUCH as *A. B.* a sturdy vagrant Beggar, was this Day 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 unto us to be dangerous to the inferiour sort of People, or such a one as will not be reformed of his Roguish Life, contrary to his Majesty's Laws in that Behalf provided: These are therefore to will and require you to receive the said *A. B.* 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 so continue with you, that you hold him to Work and Labour, and to punish him 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 or Work; and that at the next Quarter-Sessions you have the said *A. B.* there, together with this our Warrant. And hereof see that you fail not. Given under our Hands, *&c.*

VER-

VERDICT.

IN Capital Cases, the Jury cannot be discharged before the Verdict is given.

But the Jury may find Matter specially, *viz.* If the Indictment is for Murder, they may find the Defendant guilty of Manslaughter, Chance-medly, or *se Defendendo*; but then they must find in what Manner, that the Court may judge of the Law arising upon the Fact.

A. B. was indicted for Murder. The Fore-man of the Jury said he was guilty of Man-slaughter; the rest of the Jury informed the Court, That they did not agree to that Verdict. Then the Court asked *A. B.* Whether he would be discharged of that Jury. He consented, and the Prisoner was tried by another upon the same Indictment, and found guilty of Murder, and had Judgment to be hanged. *Yelv.* 15. 1 & 130.

The Verdict must be perfect; and therefore if upon the Statute of 8 *H.* 6. the Jury find *si Domus non prædict fuit in possessione Dom' Regis*, then *Billa vera*; (to wit, if the aforesaid House was not in the Possession of our Lord the King, then a true Bill) this is void, for 'tis a conditional Verdict.

There is no Necessity of finding the Value of any Thing as laid in the Indictment: More they cannot find, but less they may.

WARRANT.

[*In most of these his Majesty's Provinces, there are peculiar Laws made by their respective Legislatures, relating to many of the Matters treated of in this Book; which are in those Cases particular Guides to Justices of Peace (provided those Laws are not absolutely repugnant to the Laws of England:) For which Reason, it may not be amiss here to observe, That most of the* WARRANTS *and Precedents in this Book, taken from the English Books, run in a Strain chiefly suitable to the Kingdom of Great-Britain only; therefore many Places must be alter'd, as suits the several Provinces here; which the Discretion of the Justices will enable them to do; particularly 'tis proper, that instead of saying,* the Statutes in that Case made and provided; *to say,* the Laws, *or the* Act of Assembly in that Case made and provided; *Also, as these Parts are chiefly divided into Towns or Townships, rather than Parishes, as in* England; *to their own Judgment will enable them to distinguish when to make the Difference: And it may be worth while to observe, that several Officers here mentioned, go by different Names in some of these Parts to what they do in* England.--*But as a few Examples of this Kind may not be unacceptable; we shall here add two or three for that Purpose,* viz.

A War-

A Warrant for Defaulters not working upon High-ways.

Eſſex, ſſ. *To the Conſtable*, &c.

WHEREAS A. B. *one of the Overſeers of Highways of* E. T. *hath made Complaint, That* C. D. E. F. *and* G. H. *being duly warned, have made Default in appearing to work in repairing the High-way as directed, with a Team*, &c. *Theſe are therefore in his Majeſty's Name to require you to give Notice to the above-ſaid* C. D. E. F. *and* G. H. *to appear before me To-morrow by 3 o'Clock Afternoon, to anſwer the above Complaint*, &c. *Given under my Hand this of* 1749. *J. R.*

A Warrant of Diſtreſs for not working as required by Overſeers of Highways.

Eſſex, ſſ. *To the Conſtable*, &c.

WHEREAS A. B. *one of the Overſeers of Highways for* E. T. *hath by his Oath, made it appear, That* E. D. E. F. *and* G. H. *were duly warned, and made Default in working upon the Highway in ſaid Town, the ſaid* E. D. *with a Team, not having juſt excuſe for ſuch Neglect, whereby the ſaid* E. F. *and* G. H. *have forfeited each the Sum of 4 ſ. 6 d. Procl. and the ſaid* E. D. *double that Sum, in not bringing his Team when required: Theſe are therefore in his Majeſty's Name to require you, to make Diſtreſs on the Goods and Chattels of each of the above Defaulters, and make Sale thereof at publick Vendue, (returning the Overplus if any be) and pay the ſaid Fines and Coſts, according to the Act of Aſſembly in ſuch Caſe made and provided. Given under my Hand and Seal, this Day of* 1749. *J. R.*

A Warrant to levy the Forfeiture on an Overſeer for neglecting his Duty, in repairing the Highways, &c.

Eſſex, ſs. *To the Conſtables*, &c.

WHEREAS *A. B.* one of the Overſeers of Highways of *E. T.* hath neglected repairing the Highway in ſaid *E. T.* having no juſt Excuſe for ſuch his Neglect, whereby he hath forfeited the Sum of *Forty Shillings Proc.* Theſe are therefore in his Majeſty's Name, to require you to levy the ſaid Sum of *Forty Shillings*, on the Goods and Chattles of the ſaid *A. B.* and make Sale thereof at publick Vendue, (returning the Overplus if any be) and apply the ſame as the Law in ſuch Caſe made and provided directs. Given under my Hand and Seal this Day of June *J. R.*

A General Warrant.

Bed. ſs. To the Conſtables, &c.

WHEREAS *Complaint, upon Oath, hath been made before me, by* A. B. *that* C. D. *did aſſault and beat him: Theſe are, in his Majeſty's Name, to require you to bring the ſaid* C. D. *(of whom you ſhall have Notice) before me, or ſome other his Majeſty's Juſtices of the Peace, to be examined and dealt with according to Law. Hereof you are not to fail. Given under my Hand and Seal*, &c.

A Warrant to make Search for a loſt Child, &c.

Eſſex, ſs. To the Conſtable, *&c.*

WHEREAS S. R. *has given Information, that* G. R. *his infirm Child, hath the laſt Night, about Eight o'Clock, wandred away from his Houſe, and is in danger of being loſt in the Wilderneſs, to the great Grief of his Parents: Theſe are therefore, in his Majeſty's Name, to require you, and every of you, upon Sight hereof, to make an Alarm in your ſeveral Precincts, and to inform the Inhabitants the moſt likely Method in finding the above-ſaid Child, and to return him to his Parents, for which this ſhall be your ſufficient Warrant. Given,* &c.

A Warrant to whip a Vagrant.

WHEREAS *C. D.* an idle Perſon, pretended to be lame, was this Day Begging in the Streets, and continu'd to aſk Alms after forbidden by the Conſtable: Theſe are therefore to require you to ſtrip the ſaid *C. D.* from the Waſte upwards, and to whip him or cauſe him to be whipp'd 'till his Back be Bloody, for the Offence aforeſaid. Given, *&c.*

No one or more Juſtices of Peace, can make a Warrant upon a bear Surmiſe, to break any Man's Houſe to ſearch for a Felon or ſtolen Goods: There muſt be a Felony actually committed and ſworn to, whereon to ground their Warrant. *Shaw's Juſt. 2 V. p.* 381.

A Warrant directed by the Juſtice of Peace to the Sheriff, he may by Word command his Under-Sheriff, Bailiff, Servant, or other known and ſworn Officer, to ſerve it, without any Precept by writing. *Dalt.* 577. *cap.* 169.

But if the Sheriff will command another Man who is a Stranger, to ſerve it, he muſt deliver him a Precept in Writing; otherwiſe falſe Impriſonment will lie for the Arreſt. *Ibid.*

It is not ſafe for a Juſtice to grant a blank Warrant; and if he does, he may be fined. *Cromp. Aut. des Courts* 34.

And he ought not to grant his Warrant againſt a Felon without examining the Perſon upon Oath, who deſires it, and binding him over to give Evidence. *Dalt.* 579.

The Warrant, in Writing, of the Juſtice of Peace, ſhould be under his Hand and Seal, unleſs where the Statute ſays it may be under the Hand only of the Juſtice of Peace. *Ibid.*

Where a Juſtice of Peace commands one being preſent, to arreſt another, who is alſo in his Preſence, it is good, and is reputed as an Arreſt made by the Juſtice himſelf. *Br. Faux. Impr.* 33.

A Warrant directed by a Juſtice of Peace to any Perſon but the Sheriff, he to whom it is directed muſt ſerve it himſelf; for he can command no other to do it, neither by Word or Writing, nor make any Deputy. *Dalt.* 578. *cap.* 169.

The

The Officer to whom the Warrant is directed and delivered, ought with all Speed and Secrecy to find out the Party, and execute the Warrant; and if it be a Warrant for the Peace or good Behaviour, or in any Caſe where the King is Party, the Officer may break open Doors to take the Offenders; and if he is reſiſted or aſſaulted, he may juſtify the Beating and Wounding, *&c.*

If the Warrant ſay it was dated at one Place, and it be dated at another Place in the ſame County; yet the Warrant is good, and it ſhall be taken to be dated where the Warrant doth ſay it was dated.

A general Warrant, to ſearch for Felons or ſtolen Goods, ſeems illegal; for it is hard to leave it to the Diſcretion of a common Officer to arreſt what Perſons, and ſearch what Houſes he pleaſes. *Hawk. P. C.* Part 2. *cap.* 13.

WATCH.

IN walled Towns, the Gates ought to be ſhut from Sunſet to Sunriſing, and none ſhall lodge in the Suburbs except the Hoſt will anſwer for him. 5 *H.* 4. *c.* 5. 5 *Ed.* 3. *cap.* 5.

Any Juſtice may cauſe the Watch to be ſet; but no Man is compellable to watch, unleſs he is an Inhabitant in the Town.

If a Perſon who ought to watch, and is commanded by the Conſtable ſo to do, refuſeth, 'tis a Queſtion whether he may put him in the Stocks; but he may complain to a Juſtice of Peace, who may bind the Offender over to the Seſſions, or the Conſtable may preſent him there. *Cro. Eliz.* 204. 3 *Leon.* 208. ſame Caſe.

A Warrant for Watch and Ward, and to apprehend idle Perſons.

Eſſex, ſs. *To the High-Conſtable, &c. and the Petty-Conſtables, &c.*

WHEREAS Information hath been given unto us, That very many ſuſpicious idle Perſons do wander about the Country without Controulment or Queſtion; For the better preventing thereof for the Future, and of Robberies, and other Miſdemeanours often occaſioned thereby: Theſe are therefore, in his Majeſty's Name, to charge and command you, and every of you, to take Care of your Officers herein, and to ſee that you keep, and cauſe Watches to be duly kept in all Pariſhes and Places within your ſaid Hundred of *A.* by able and well-armed Men every Night, and Ward by Day from Sun to Sun, and command them that they do apprehend all ſuch *Rogues, Vagabonds* and *Sturdy Beggars,* and other wandering and idle ſuſpicious Perſons, as you ſhall apprehend by Day or Night, and conceive to be more than ordinary dangerous, and bring them before us, or ſome other of his Majeſty's Juſtices of the ſaid County, to be examined and dealt with according to Law. And all Perſons whatſoever are hereby commanded to be aiding and aſſiſting, and obedient to you herein. Hereof fail not. Given under our Hands, *&c.*

A Warrant to appoint a Watch.

Eſſex, ſs. To all the Conſtables, and other his Majeſty's Officers whom theſe may concern within the Pariſh of, &c.

THESE *are, in his Majeſty's Name, to will and require you from Time to Time, to appoint and ſettle ſufficient Watches (to meet at* Nine *at Night, and not to depart till* Six *in the Morning, amongſt whom a competent Number of good Houſe-keepers are always to be preſent.) And you, and every of you, are to bring us the Names and Conditions of your reſpective Watches at our ſaid weekly Meetings, that the Performance of your Duties herein may be the better known and taken Notice of, his Majeſty (in Council) having given us ſtrict Command herein. You are likewiſe to give us an Account of all ſuch as arm themſelves beyond their Qualities, and to uſe your utmoſt Endeavours, by all the Ways imaginable, to preſerve his Majeſty's Peace during his Abſence from this City. Dated this*, &c.

A Mittimus *to the Houſe of Correction of one apprehended by the Watch.*

Eſſex, ſs. To the Keeper of the Houſe of Correction.

WHEREAS A. B. *was this preſent Day brought before me* P. L. *Eſq; one of his Majeſty's Juſtices*, &c. *the ſaid* A. B. *being taken laſt Night by the Watch ſet by the Conſtable of*, &c. *and charged with wandring abroad at unſeaſonable Times of the Night, and alſo with other diſorderly Behaviour: Theſe are therefore to require you, to take the ſaid* A. B. *into your Cuſtody, and him ſafely to keep, until he ſhall be deliver'd by due Courſe of Law from thence, and in the mean Time to make him labour, allowing him ſuch Maintenance as he ſhall earn thereby; and you are to puniſh him as by Law is required. You are likewiſe to bring him to the next Quarter-Seſſions*, &c.

A Warrant by Order of Seſſions to keep Watch and Ward.

Eſſex, ſs. To the Conſtable, *&c.*

WHEREAS ſeveral Robberies, Felonies and other Crimes, have been lately committed in the County aforeſaid; it was therefore ordered at the laſt General Quarter-Seſſions of the Peace, held at *M.* for the ſaid County, That Watch and Ward be duly ſet and kept in all and every uſual Place and Places within your Hundred: *You are therefore* to take Care, that the ſame be done purſuant to the ſaid Order: You are likewiſe to apprehend all idle and ſuſpicious Perſons, and bring them before us, or ſome other of his Majeſty's Juſtices of the Peace for the ſaid County, in order to proceed againſt them according to Law. And hereof you are not to fail at your Perils, Given under our Hands and Seals, *&c.*

Weights

Weights and Meaſures.

THERE are two Sorts of Weights, *viz. Troy* Weight, and *Averdupois*. *Troy Weight* hath 12 Ounces to the Pound; and by this are weighed, Gold, Pearl, Jewels, Silks, Silver, Wheat, *&c.* *Averdupois* hath 16 Ounces to the Pound, and by theſe are weighed Bread, Butter, Cheeſe, Drugs, Fleſh, Flax, Grocery Ware, Hemp, Iron, Steel, Lead, Pitch, Tar, Tallow, Wool, Wax, *&c.*

Theſe, and all Commodities which are garbled, and of which any *Refuſe* is made, are weighed by *Averdupois* Weight, and to every Hundred there is an Allowance of 12 Pounds, and ſo *pro Rato*.

The Buſhel muſt contain 8 Gallons, or 64 Pints of Wheat, and muſt be kept ſealed in every City, Borough or Town. 11 *H.6. c.* 8. 31 *Ed.* 1. 12 *H.* 7.

Eight Buſhels make a Quarter of Corn ſtriked. 15 *R.* 2. *cap.* 4. The Standard of Buſhels, Gallons and Ells, muſt be ſigned with an Iron Seal of the King's; and if any ſell or buy with Meaſures unſealed, he ſhall be amerced. 31 *Ed.* 1. the Statute *de Piſtoribus*.

This Standard muſt be kept by the Mayor and Bailiffs of the Town, and ſix Perſons muſt be ſworn before whom all Meaſures muſt be ſealed. 31 *Ed.* 1.

Every Meaſure is to be according to this Standard, and ſhall be ſtriked, and not heaped. 25 *Ed.* 3.

A Tun of Wine is 252 Gallons. The Pipe is 126. A Barrel of Herrings is 30. A Butt of Salmon is 40 Gallons. 2 *H.* 6. *c.* 11. 1 *R.* 3. *c.* 13.

Veſſels made contrary to that Statute, the Owner forfeits the Commodities therein contained to the Lord of the Town where found; but the Proſecutor muſt have a fourth Part.

Every City, Burough and Town, muſt have a common Ballance, and ſealed Weights, in the Keeping of the Head Officer or Conſtable there, otherwiſe the City forfeits *Ten Pounds*, the Burough *Four Pounds*, and the Town *Forty Shillings*, to the King.

Juſtices of the Peace have Power to hear and determine theſe Offences. 8 *H.* 6. *cap.* 5.

The Mayor ſhall have One Penny for *ſealing* a Buſhel, and for every other Meaſure, a Half-Penny.

If he refuſe or delay to Seal, he forfeits *Forty Shillings*, to be divided between King and Party grieved. 7 *H.* 7. *cap.* 4.

Two Juſtices (*Quorum unus*) have Authority, as well by Examination as Inquiry, to hear and determine Faults of Mayors and Head Officers, and of Buyers and Sellers otherwiſe than by the Standard, and ſet Fines at Diſcretion; defective Weights and Meaſures are forfeited, and muſt be burnt. 11 *H.* 7. *cap.* 4.

But

But now by the Statute 22 *Car.* 2. *cap.* 8. 'tis prohibited to ſell Corn, Grain, or Salt, otherwiſe than by the Standard, and the Buſhel muſt be *ſtruck even with the Brim*, and ſealed: The Forfeiture for every Offence is *Forty Shillings*; the Conviction to be by Oath of one Witneſs before one Juſtice, Mayor or Head Officer, and muſt be levied by Warrant directed to the Church-wardens and Overſeers of the Poor, for the Uſe of the Poor of the Pariſh where the Offence was committed; and if no Diſtreſs can be had, the Party may be committed without Bail, till he pay the Penalty.

If Head-Officers of Cities, Buroughs or Corporations, ſuffer any Perſon to ſell or buy by other Meaſure, and if upon Complaint do not puniſh the Offenders, then if they are convicted at Seſſions, they forfeit *Five Pounds* to the Poor and Informer; and if no Diſtreſs can be had, they may be committed till Payment.

Conſtable may ſearch and examine if any Perſon uſe other Meaſures, *&c.* and if they find any unſealed, may break them, and may preſent the Offender at the next Quarter-Seſſions.

An Indictment will lie for ſelling by falſe Weights and Meaſures, it being an Offence at Common Law as well as by the Statute.

If any Baker ſhall make or expoſe to Sale Bread wanting an Ounce of due Weight, he ſhall forfeit *Five Shillings*; and wanting leſs than an Ounce, *Two Shillings and Six Pence*; to be levied by a Conſtable. Stat. 1 *G. c.* 25.

By 22 & 23 *Car.* 2. *cap.* 12. buying or ſelling Corn or Salt without meaſuring (if required) or in any other Manner than is directed by the former Acts of 22 *Car.* 2. forfeits beſides the *Forty Shillings*, all the Corn or Salt, or the Value thereof, to the Perſon grieved; and upon Complaint to one or more Juſtices of the Peace, the Proof ſhall lie upon the Perſon accuſed, who muſt make it appear by Oath of one Witneſs, That he did buy or ſell according to this or the former Statute.

If he fail in ſuch Proof, he forfeits all the Corn or Salt, or Value thereof, which is to be divided between the Informer and Poor where the Offence is committed.

This is to be levied by Warrant from one or more Juſtices, *&c.* before whom committed.

A Warrant to warn in all Tradeſmen, and others, to have their Weights and Meaſures examined by the Standard.

Kent, ſs. To the Conſtable, *&c.*

THESE *are to will and require you, and, in his Majeſty's Name, to charge and command you, That you warn all Perſons inhabiting within your ſaid Borough, which have or uſe any* Weights *or* Meaſures, *to be tried and examined by the Standard, at the late Market-place near* H. *in the County aforeſaid, on* Thurſday *the Twenty eighth of this Inſtant* November, *by Eight of the Clock in the Forenoon; and that*

that you alſo warn to be at the Time and Place aforeſaid, Fifteen ſufficient Men of your ſaid Borough, that they, and every of them, perſonally appear before me, to do and perform ſuch Things as for his Majeſty's Service ſhall be then and there injoined them: And that you yourſelf be there preſent with this Precept, and have there the Names of all Artificers, Tradeſmen, and other Perſons whatſoever within your ſaid Borough, having or uſing any Weights and Meaſures whatſoever: Whereof fail not at your Peril. Given under my Hand and Seal, &c. 11 *H.* 7. *cap.* 4. 12 *H.* 7. *cap.* 5.

The Clerk of the Market's Warrant.

Mid. ſs. *To the Conſtables,* &c.

THESE are, in his Majeſty's Name, *&c.* to will and require you, and every of you, upon Sight hereof, to ſummon and cauſe the ſeveral Inhabitants within your reſpective Wards, that buy and ſell by *Weight* or *Meaſure*, to have their reſpective Weights and Meaſures to be tried and examined with the Standard on Monday the Fifth Day of *April* next, by Eight of the Clock in the Forenoon, at the *George* Inn in *A.* in the County aforeſaid; and at the ſame Time and Place you deliver unto me in Writing, the Chriſtian Name and Sirnames of every ſuch Inhabitant, with their reſpective Callings. Whereof you, and every of you, are not to fail, *&c.* Given, *&c.*

A Conviction of ſelling by falſe Weights and Meaſures.

BE *it Remembred, That* A. B. *on,* &c. *came before me* J. S. *Eſq; one of his Majeſty's Juſtices,* &c. *and then and there made Oath, that* C. D. *on,* &c. *laſt paſt, did ſell ten Buſhels of Wheat, in a Buſhel or Meaſure not being agreeable to the Standard in his Majeſty's* Exchequer, *but leſs than the ſame, contrary to the Statutes: I do therefore adjudge him the ſaid* C. D. *guilty of the ſaid Offence, and hereby pronounce him convicted thereof as the Laws direct. Given,* &c.

MILLERS. His *Toll-Diſh* ought to be according to the Standard, and he ought to take but one Quart for grinding one Buſhel of hard Corn brought to his Mill; but if he fetch it, and then carry it home, then two Quarts.

For *Malt*, he is to take but half the Toll he taketh for other Corn, becauſe that is eaſily grinded.

Theſe Offences are puniſhable in the Leet; but for *changing a Griſt*, a Miller may be indicted at the Seſſions, for 'tis a Wrong done by Deceit, and is, *contra Racem.*

N. B. It does not appear, that Millers in *North America*, are guided or bound by thoſe Laws; for the ſmalleſt Toll they take is two Quarts of any Grain, for grinding a Buſhel; and many take one *full Tenth*; if not more;---and never trouble themſelves with Carriage, *&c.*

The

The Form of an Affidavit againſt a Baker for ſelling Bread leſs than Weight, to be left with the Juſtices; upon which he makes the following Summons.

Bed. ſs. *A. B.* of the Pariſh of, *&c.* maketh Oath, That on the Fifth Inſtant he bought of *C. D.* of the Pariſh of, *&c.* Baker, one Half-quarter of a Peck Wheaten Loaf of Bread, and paid the ſaid *C. D.* Two Pence Half-penny for the ſame; which ſaid Loaf weighed, when new, but *two* Pounds *two* Ounces, and *four* Drams, whereas it ſhould have weighed, *two* Pounds and *four* Ounces, according to the Aſſize of Bread made the 27th Day of *January* laſt,

Sworn before me the 6th Day of A. B.
March, Anno 1749. P. L.

A Summons thereupon.

Eſſex, ſs. To C. D. Baker, at his Houſe in, *&c.*

THESE *are to Summon you perſonally to appear before me* P. L. *Eſq; one of his Majeſty's Juſtices of the Peace for the ſaid County, at my Houſe in*, &c. *To-morrow Morning, by nine of the Clock, to ſhew Cauſe why you ſhould not be convicted for ſelling Yeſterday, one Half-quarter of a Peck Wheaten Loaf of Bread to* A. B. *which weighed but* two *Pounds* two *Ounces, and* four *Drams, whereas it ſhould have weighed* two *Pounds and* four *Ounces, according to the laſt Aſſize of* 27*th of* January *laſt: Otherwiſe a Warrant of Diſtreſs will be iſſued out againſt you for the ſaid Offence, Given under my Hand*, &c.

The Warrant of Diſtreſs.

Eſſex, ſs. To the Conſtables, *&c.*

WHEREAS it appears unto me, whoſe Hand and Seal is hereunto ſet, one of his Majeſty's Juſtices of the Peace for the ſaid County, upon Information on Oath of *A. B.* That on the fifth of this Inſt. *March*, *C. D.* of, *&c.* in the Pariſh of, *&c.* Baker, did then and there ſell to him the ſaid *A. B.* one Half-quarter of a Peck Wheaten Loaf of Bread, and received Two Pence Half-penny for the ſame; which ſaid Loaf weighed but *two* Pounds, *two* Ounces and *four* Drams; whereas it ſhould have weighed *two* Pounds, and *four* Ounces, according to the laſt Aſſize of Bread of the 27th of *January* laſt, contrary to the late Act of Parliament, intitled, *An Act to regulate the Price and Aſſize of Bread*: For which ſaid Offence, he the ſaid *C. D.* hath forfeited the Sum of *Forty Shillings* to the Informer, as in the ſaid Act is mentioned; (*And being duly ſummoned, did not appear to anſwer the ſaid Offence*:) Theſe are therefore, in his Majeſty's Name, to charge and command you upon Sight hereof, to demand of the ſaid *C. D.* the ſaid Sum of *Forty Shillings*, ſo by him forfeited as aforeſaid, (he being duly proſecuted within the Space of *three* Days after the ſaid Offence committed:) And if he ſhall

refuſe

refuſe or neglect to pay the ſame, that then you forthwith levy the ſame by Diſtreſs and Sale of the Goods and Chattles of the ſaid *C. D.* which ſaid Monies, when received, you are hereby ordered and required to pay to the ſaid *A. B.* the Informer in this Caſe. Whereof you are not to fail, as you will anſwer the Contrary. Given under my Hand and Seal, *&c.*

By a new Act, the Lord Mayor and Court of Aldermen in *London*, and the Mayor or chief Magiſtrates of any other City, Town or Borough, or two Juſtices, where no ſuch Magiſtrates are, ſhall ſet the Aſſize and Weight of all Bread to be ſold, having Reſpect to the Price the Grain, Meal or Flour bear in the publick Market there, and making reaſonable Allowance to the Bakers for their Charges, Pains and Livelihood, and ſuch Aſſize is to be in *Averdupois* Weight.

WOMEN.

A WOMAN taken away by Force, is a Crime which is not mitigated, tho' the Marriage is by Conſent afterwards. 3 *H.* 7. *c.* 2. The Preamble of this Statute is, *viz. That Maids, Widows and Wives, having Subſtance in Goods, Lands and Tenements*, and ſome being Heirs at Law, have been taken *away for the Lure of ſuch Subſtance*, againſt their Wills, and married or defiled; and then 'tis Enacted, That he who taketh any Woman ſo againſt her Will, ſhall be a Felon. Alſo the Procurer, Abetter, and willful Receiver of ſuch Woman, Clergy taken away. *per* Stat. 39. *Eliz. cap.* 9.

A Man inticed the only Daughter of her Father (who would be worth 5000*l.*) to ſee a Ship, and when he had her on the *Thames*, carried her by Force and Threats into the Country, and there ſhe was married; but the Truth was, ſhe had a Brother; and this was held not to be within that Statute, becauſe the Preamble mentions the Eſtate and Condition of the Woman taken away, *&c.* and reſtrains the Purview to theſe particular Caſes.

1ſt. There muſt be a Taking by Force. 2. She muſt have Subſtance in Lands, Goods, *&c.* 3. Or ſhe muſt be Heir *apparent*. 4. She muſt be married or defiled.

Now in this Caſe, the Woman had not a preſent Subſiſtence in Goods, for her Father was living; and ſhe was not Heir apparent, for ſhe had a Brother then alive. *Hob.* 182.

But admitting a Woman hath Subſtance, *&c.* or is Heir apparent, another Queſtion hath been made upon this Statute, Whether the Taking ſuch a Woman by Force, and threatning her to make a Contract for Marriage, is Felony, or not? and held in the Negative; for tho' in the Body of the Act 'tis ſaid, That the Taking by Force

is

is Felony, yet the Intention of the Law is afterwards expounded, *viz.* It muſt not only be a Taking by Force, but marrying or defiling. It's true, Juſtice *Croke* was of a contrary Opinion, but the other is Law at this Day. 1 *And.* 115. *Savil.* 59.

There is another Statute, and 'tis the laſt of *Phil.* and *Mar.* which relates to the Taking any *Woman Child* under the Age of *Sixteen* Years, out of the Cuſtody, and againſt the Will of the Father or Mother, or the Perſon to whom the Father deviſed the Child: The Puniſhment in ſuch Caſes, is *two* Years Impriſonment without Bail, or to pay ſuch Fine as ſhall be impoſed on him by *B. R.* 4 & 5 *Phil. & Mar. cap.* 8.

If he *defile* or *marry* ſuch *Child*, he ſhall be impriſoned *five* Years, or pay a Fine, *&c.* to the King and Party grieved.

If ſuch Child is above *Twelve*, and under *Sixteen* Years, and conſenting to marry, then the next of Kin to whom her Inheritance ſhould come, ſhall enjoy it during her Life; and after her Deceaſe, it ſhall go to the Heir at Law, but never to the Huſband.

A Freeman of *London* deviſed the Cuſtody of his Daughter to *C.* and died, the Daughter then being in the Country: *C.* gets a Warrant from the Chief Juſtice to take her, which he did, but ſhe was then married to *B.* This was held to be out of the Statute, becauſe the Child was never in Poſſeſſion of the Guardian. *Sid.* 363.

This laſt Statute ſeems to be an Affirmance of the Common Law; for if (before the Statute) a Man came to the Father's Houſe and contracted with the Daughter under *Fifteen* Years of Age, and by Appointment, meeting and marrying him, this is puniſhable by Fine and Impriſonment. *Sid.* 387.

An Information was exhibited againſt the Defendant for an unlawful Practice and Combination in procuring a clandeſtine Marriage in the Night, between a Servant Maid and a young Gentleman who was an Heir to an Eſtate; and this was without Banes or Licence: And the Parſon being drunk, they were fined 100 Marks, and committed till paid. *Mar.* 52. *Cro. Car.* 557.

WRECKS.

FOR preſerving all ſuch Ships, and Goods thereof, which ſhall happen to be forced on Shore, or ſtranded upon the Coaſts of this Kingdom, or any other his Majeſty's Dominions, it is enacted, *per* 12 *Annæ*, That all the Sheriffs, Juſtices, *&c.* upon Application to them made, That any Veſſel is in Danger of being ſtranded, or run on Shore, or that is ſtranded or run on Shore, ſhall command all Conſtables neareſt the Sea-Coaſts where ſuch Ship ſhall be in Danger, to call together as many Men as ſhall be neceſſary for the Preſervation of ſuch Ship.

And

And all Officers of Men of War, *&c.* ſhall be aiding and aſſiſting on the Penalty of *One Hundred Pounds* Forfeiture.

By Stat. 3 *E.* 1. & 4 *E.* 1. *de Officio Coronatoris* (the Office of a Coroner) where a Man, Dog, or Cat, eſcape alive out of the Ship, neither the Ship, or other Veſſel, or any Thing therein, ſhall be adjudged Wreck.

Such Officers of Cuſtoms, Commanders of Ships, and all others ſo employed in preſerving ſuch Ship or Cargo, ſhall, within Thirty Days after, be paid a reaſonable Reward for the ſame, by the Commander, Maſter or Owner of the Ship in Diſtreſs, or by the Merchant whoſe Ship or Goods were ſaved; and in Default thereof, the Ship or Goods ſo ſaved, ſhall remain with the Officer of the Cuſtoms or his Deputy, till all the Charges be paid, and the ſaid Officer and his Deputy, and the Maſter and Marriners of the Ship aſſiſting, be reaſonably gratified, or good Security be given for the ſame.

And if any Difference ariſe about the Salvage, three neighbouring Juſtices ſhall adjuſt the *Quantum* to be paid to the Perſons acting therein, which ſhall be binding to all Parties, and recoverable in an Action at Law in any of the King's Courts of Record.

And if wreck'd Goods are not claimed in Twelve Months, the Chief Officer of the Cuſtoms of the neareſt Port, ſhall apply to three of the neareſt Juſtices, who ſhall put him, or ſome reſponſible Perſon, in Poſſeſſion of the Goods, the Juſtices taking an Account thereof in Writing, ſigned by the ſaid Officer; and all Goods not claimed within Twelve Months after by the right Owner, ſhall be publickly ſold, or, if periſhable, preſently ſold; and after all Charges deducted, the Reſidue of the Monies, with a fair and juſt Account of the Whole, tranſmitted to the Exchequer, there to remain for the Benefit of the Owner when appearing, who on Affidavit, or other Proof of his Property thereto, to the Satisfaction of one of the Barons of the Coif there, ſhall, upon his Order, receive the ſame out of the Exchequer.

All Perſons entering into ſuch Ships in Diſtreſs, without Leave from the Commander, Officer of the Cuſtoms, Conſtable, Headborough, *&c.* or moleſting any one in ſaving the Ship or Goods, or when ſaved, ſhall deface the Marks of the Goods before the ſame are taken down in Books, to be provided by the Commander and Chief Officer of the Cuſtoms; ſuch Perſon ſhall, within Twenty Days, make double Satisfaction to the Party grieved, at the Diſcretion of the two next Juſtices of Peace: or in Default thereof, ſhall be ſent by the ſaid two Juſtices to the Houſe of Correction, and there kept to hard Labour for Twelve Months. And every Commander, Officer of the Cuſtoms, Conſtables, &c. may by Force repel ſuch Perſons who ſhall preſs on board the ſaid Ship in Diſtreſs, without Leave, or moleſt them in preſerving the ſaid Ship and Cargo.

All

All Goods carried off from ſuch Ship, and found on any Perſon, ſhall, on Demand, be delivered to the Owner, or the Perſon ſhall be liable to pay treble the Value of ſuch Goods, to be recovered by the Owner in an Action at Law,

And any Perſon making Holes in the Bottom, Side, or in any Part of the Ship, or ſtealing any Pump, or doing any Thing tending to the Loſs of the Ship, ſhall be guilty of Felony, without Benefit of Clergy.

If any Owner or Captain, Maſter, Mariner, or other Officer belonging to any Ship, ſhall wilfully caſt away, burn, or otherwiſe deſtroy the Ship of which he is Owner, or to which he belongs, or in any Manner of wiſe direct or procure the ſame to be done, to the Prejudice of any Perſons who ſhall under-write any Policy of Inſurance thereon, or of any Merchant who ſhall load Goods thereon, he ſhall ſuffer Death. 4 *G.* 1. *cap.* 12.

By Stat. 5 *G.* 1. *cap.* 11. all Goods, *&c.* which ſhall be ſalved out of any Ship forced on Shore, or ſtranded, (not being wreck'd Goods) ſhall after Salvage and other Charges paid, be liable to like Cuſtoms, Drawbacks, and Allowances, as ſuch Goods, *&c.* would be liable to in caſe they were regularly imported.

THE OFFICE and DUTY OF SHERIFFS.

AS to the Time when and by whom the Realm of *England* was divided into Counties, Authors ſeem to differ. The Word *County* or *Shire* are certain Circuits or Parts of the Kingdom, into which the whole Realm was divided, for the more convenient Government thereof, and is governed by an Officer which we call SHERIFF, ſignifying *Præpoſitus*, or Governor. And it appears by Hiſtory, That *Earls of Counties* had the Guard of the Counties long before the Conqueſt, and which was derived from the *Romans*; and the *Sheriff* was Deputy of the *Earl*, and the *Romans* called him, *Vice-Conſul*. 1 *Inſt*. 168. By the Stat. 14 *Ed*. 3. *cap*. 7. The Judges are to nominate three Perſons of every County to be preſented to the King, that he may pick one of them for *Sheriff* or Governor of the County. But the Stat. of 9 *Ed*. 2. reſtrains not the King's Power, but he may conſtitute a *Sheriff* without Election, or grant it in Fee; for all the Acts of Grace flow from him; and the Stat. of 14 *Ed*. 3. was made to eaſe the Sovereign of Labour, and not to dreprive him of Power; the Election being meerly in the King, and the Office miniſterial only.

The *Sheriff* takes Place of every Nobleman in the County during the Time that he is *Sheriff*; and though the *Sheriff* be not a Juſtice of the Peace, yet he is a *Conſervator of the Peace*, and may impriſon Perſons upon good Cauſe, as Breach of the Peace, Suſpicion of Treaſon, Felony, Freſh-Suit, or Hue-and-Cry. Upon foreign Invaſion he may raiſe the County, ſo upon Rebellions and Inſurrections, and may command any Number he thinks fit to aid him. But by his own Authority he ſhall not arreſt a Man upon Suſpicion of Felony, except there be a Felony committed in Fact, and he himſelf have Suſpicion of him. But the Stat. 17 *Ric*. 2. *c*. 8. The Sheriff may raiſe the *Poſſe Comitatus* to ſuppreſs Rioters, and commit them to Priſon. 13 *H*. 4. *cap*. 7. And if the Rioters reſiſt, the Sheriff and his Aſſiſtance may juſtify the Killing of them, and may arreſt and impriſon all ſuch Offenders. If the Sheriff ſee a Perſon carry Weapons

pons in the High-way, *in Terrorem Populi*, he may commit him, tho' he doth not break the Peace in his Preſence. And though the King conſtitute a Sheriff *durante beneplacito*, and may determine it at Will, yet he cannot determine it in Part, nor abridge him in any Thing incident to his Office, during the Time he is Sheriff.

The Sheriff is an Officer of that Eminence, that he ought to have all Right pertaining to his Office, and to be favoured in Law before any private Perſon. And therefore though Eſcapes are ſo penal to Officers, the Judges have always made as benign a Conſtruction, as the Law will permit, in favour of them; and to the Intent that every one may bear his own Burthen, they will never judge an Eſcape by ſtrict Conſtruction. If a Sheriff be ſlain in doing his Duty, it's Murder in him who kills him, although no former Malice was between them; and if there was Error in awarding Proceſs, or in the Miſtake of one Proceſs for another, and the Officer be ſlain in the Execution thereof, the Offender ſhall not have Advantage of ſuch Error, no more than a Sheriff who ſuffers a Priſoner to eſcape, ſhall take any Advantage thereby. Nor is an Officer, if he be reſiſted, bound to fly to the Wall, as a private Man is. Every Man is bound by the Common Law, to aſſiſt the Sheriff, or his Deputy, in the Execution of the King's Writs, according to Law, (for the Deputy hath the ſame Power as his Maſter.)

Every Sheriff is to be reſident in his own Perſon within his County, during the Time he is Sheriff, except he be licenced by the King. 4 *H.* 4. *cap.* 5. A Sheriff of one County hath no Power within another County; yet the Sheriff by Force of the King's Writ, may carry the Priſoner through ſeveral Counties. And yet though the Sheriff be much favoured and reſpected in the Law, and in the Execution of Criminals, yet he ſhall be guilty of Murder for not obſerving the Order of Law in putting a condemned Man to Death. 7 *Rep.* 13. 1 *Jac.*

The Sheriff muſt take the Oath and Sacrament (as is now uſual for all Officers and Miniſters of Juſtice) Stat. *Car.* 2. and the Oaths appointed by Stat. *W.* & *M.*

Here follows the Oath of a Sheriff.

YOU ſhall Swear, That you ſhall ſerve the King well and truly in the Office of Sheriff of *A.* and do the King's Profit, in all that belongs to you to do by Way of your Office, as far forth as you can or may. Ye ſhall truly keep the King's Rights, and all that belongeth to the Crown. Ye ſhall not conſent to leſſen, or decreaſe, or conceal the King's Rights, or of his Franchiſes; And whenſoever ye ſhall have Knowledge that the King's Rights, or the Rights of the Crown be concealed or withdrawn, be it in Land, Rent, Franchiſe or Suits, or any other Things, ye ſhall do your true Power to make them be reſtored to the King again; and if ye

may

may not do it, ye ſhall certify the King or ſome of his Council thereof, ſuch as ye hold for certain will ſay it to the King. Ye ſhall not reſpite the King's Debts for any Gifts or Favour, where you may raiſe them without great Grievance of the Debtors. Ye ſhall truly and righteouſly treat the People of your Sheriffwick, and do Right as well to the Poor, as to the Rich, in all that belongeth to your Office. Ye ſhall do no Wrong to any Man for any Gift or Benefit, or Promiſe of Goods, for Favour nor Hate. Ye ſhall diſturb no Man's Right. Ye ſhall truly acquit at the Exchequer, all thoſe of whom you ſhall any Thing receive of the King's Debts. Ye ſhall nothing take whereby the King may loſe, or whereby that Right may be diſturbed, letted, or the King's Debt delayed. Ye ſhall truly return, and truly ſerve all the King's Writs, ſo far forth as ſhall be within your Cunning, Skill and Knowledge. Ye ſhall take no Bailiff into your Service, but ſuch as ye ſhall anſwer for. Ye ſhall make each of your Bailiffs to make ſuch Oath as ye make your ſelf, that belongeth to their Occupation. Ye ſhall receive no Writ by any of you or yours unſealed, or any ſealed under any Seal of any Juſtice, ſave of the Juſtice of Eyre, or Juſtice aſſigned in the ſame Shire where ye be Sheriff, or other Juſtice having Power or Authority to make any Writs unto you by the Law of the Land. Ye ſhall make your Bailiffs of the true and ſufficient Men of the Country. Ye ſhall be dwelling in your proper Perſon in your Bailiwick, for the Time ye ſhall be in the ſame Office, except ye be otherwiſe licenced by the King. Ye ſhall not let your Sheriffwick, nor any Bailiwick thereof, to Farm to any Man; nor promiſe for Reward, any Place or Office belonging thereto. Ye ſhall truly ſet, and return reaſonable and due Iſſues of them that be within your Bailiwick, after their Eſtate and their Honour; and make your Pannels your ſelf, of ſuch Perſons as be moſt able, moſt ſufficient, and not ſuſpected or procured, as it is ordained by the Statutes; and over this, in Eſchewing and Reſtrainder of the Man-ſlaughters, Robberies, and other manifold or grievous Offences, that may be done daily. Ye ſhall truly and diligently execute the good Laws and Statutes of this Realm, and in all Things well and truly behave yourſelf in your ſaid Office for his Majeſty's Advantage, and for the Good of his Subjects, and diſcharge your whole Duty, according to the beſt of your Skill and Power. *So help you God.*

The old Sheriff is Sheriff of the County until the new Sheriff be ſworn; For it is the Taking of his Oath that doth compleat him in his Office. And the Arreſt is good by the old Sheriff, till a new Commiſſion is ſhewed him, or other ſufficient Notice, or a Writ *De Exoneratione Officij* come to his Hand. And upon his Receipt of ſuch Writ, if a new Sheriff be not commiſſioned, the Coroner of the County ſupplies the Vacancy.

When

When the new Sheriff is compleat in his Office, he muſt take over from his Predeceſſor all his Priſoners and Writs preciſely by View, and by Indenture to be made between them, wherein all the Cauſes that he has againſt every Priſoner, muſt be ſet forth and delivered, or elſe the new Sheriff is not chargeable with them. But if the old Sheriff die, the new Sheriff in ſuch Caſe ſhall at his Peril take Notice of all Executions which are againſt any that he finds in Goal, and of all Writs. *Dalt.* 17. *Moore* 688. *Pop.* 85. *Meſne Caſe.* Nor is the Sheriff obliged to receive Priſoners from his Predeceſſor but in the common Goal of the County. And if upon the New Sheriff's refuſing to receive ſuch Priſoners as are not in Goal, the Priſoner eſcape, an Action will lie againſt the old Sheriff, And if the old Sheriff die, the Party who ſued Execution may help himſelf, *viz.* By a remanding the Body by a *Corpus cum Cauſa*, whereby he may be brought to be duly in Execution.

The Form of an Indenture for Setting over Priſoners and Writs, *&c.*

Kent, ſs. THIS *Indenture made*, &c. *between* A. B. *Eſq; late Sheriff of the aforeſaid County, of the one Part, and* C. D. *Eſq; now Sheriff of the ſaid County, of the other Part, Witneſſeth; That the ſaid* A. B. *by Virtue of his Majeſty's Writ of Diſcharge (of his late Office) to him directed, hath delivered and ſet over unto the ſaid* C. D. *theſe following Writs: That is to ſay, A* Capias *againſt* W. H. *returnable at the Supreme Court, &c. to anſwer* J. S. *&c. together with the Bodies of* J. N. *in Execution, at the Suit of* G. H. *for the Debt of* Twenty Two Pounds; *and* J. H. *at the Suit of* E. F. *in Execution for* Twelve Pounds; *and* R. G. *in Execution as well at the Suit of* L. M. *for a Debt of* Fifty Pounds, *as alſo at the Suit of* N. K. *for a Debt of* Forty Pounds, *&c. In Witneſs*, &c.

All the Writs which are ſet over in the Indenture between the Sheriffs, if they have been executed by the old Sheriff, then they muſt be returned by him, or in his Name, and endorſed under by the New Sheriff, thus:

This Writ, as endorſed, was delivered to me by A. B. *Eſq; late Sheriff, my Predeceſſor, at his going off his Office.* *per* C. D. *Vice Com'*

Proceſs in ſome Caſes may be to the old Sheriff, to bring the Body of a Priſoner, and that is, where before he hath made a Return of *Cepi Corpus & parat' habeo*, and afterwards he is removed, and a new Sheriff made; on Non-Appearance of the Priſoner, Proceſs ſhall go to the old Sheriff, as *Diſtringas*, &c. The Difference is, if the Sheriff, at the Day, return *Cepi Corpus*, and have not the Body ready, he ſhall be amerced, and a *Diſtringas* ſhall be awarded to the Coroners. But if the old Sheriff, at the Day, return *Cepi Corpus*, and before the Day of Return he is removed, and a new one is made, the *Diſtringas* here ſhall be awarded to the new Sheriff, if it appear on Record that he has taken the Body.

A Sheriff

A Sheriff on a *Fieri Facias*, ſeized Goods in his Hands to the Value of the Debt, and paid Part of the Debt, and the Goods not being ſold, nor the Writ returned, the Sheriff was diſcharged; and afterwards ſold the Reſidue of the Goods without any *Venditione exponas*; and *per Curia*, the Sale is good; for the Writ *Fieri Facias* gave him Authority to ſell without any other Writ. 2 *Cro.* 73. *Ayer & Aden.*

If Money be paid to the old Sheriff, and he is diſcharged before the Return of the Writ, the Party ſhall not be compelled to pay it again, and the Plaintiff may have his Remedy againſt the old Sheriff. *Cro. El.* 209. *Rook & Wilmot.*

If an Attachment may be granted againſt a Sheriff for Contempt, after he is removed out of his Office, the Juſtices ſaid, they cou'd not do it; for now he is no Officer, and cannot now be fined, and without Fine they do not uſe to impriſon. 2 *Brwol.* 144.

A Writ of Aſſiſtance for a Sheriff.

George the Second, *&c.* To Archbiſhops, Biſhops, Dukes, Earls, Barons, Knights, Freemen, and all others of the County of *B. Greeting:*

WHEREAS *we have granted to our well-beloved* A. B. *Knight, the Office of* SHERIFF *of our County aforeſaid, with the Appurtenances, to enjoy the ſame during our Pleaſure, as in our Letters Patent made to him thereof is more fully expreſſed: We command you, That you be aſſiſting, and give your Advice to the ſaid* A. B. *as Sheriff of our County aforeſaid, in all Things which belong to that Office. In Witneſs, &c.*

Of UNDER-SHERIFFS.

AS in former Times, the *Earls* had the Juriſdiction of the Counties, and the Sheriff was their Deputy, ſo now the *High-Sheriff* comes in the Place of the *Earl*, and has his Deputy or *Under-Sheriff*, if he ſee Cauſe to depute one, and may diſcharge ſuch Deputy, and appoint another when, and as often as he ſees Cauſe.

Every Under-Sheriff, before he meddles with his Office, ſhall, before one of the Juſtices of Aſſize, or two of the Juſtices of the Peace of the County (*Quorum unus*) take the Oaths appointed by Law, and ſign the Teſt, on Pain to forfeit treble Damages to the Parties grieved, if he commit any Act contrary to the ſaid Oaths, or either of them.

The Oath of an Under-Sheriff, ſee under Title *Oaths*, page 215.

The High-Sheriff in making an Under-Sheriff doth implicitly give him Power to execute all the ordinary Offices of the Sheriff himſelf, that be transferred by Law, as ſerving Proceſs, Execution, and the like. But in Caſes where the Words of the Writ are, *That the Sheriff ſhall go in his own Perſon*, as on a Writ of *Partition*, *Waſte*, *Redifſeiſin*,

Accedas ad Curiam, there the Under-Sheriff cannot do it, that is, if Exception be taken at the Bar before the Return be received; but if the Sheriff return, That he was there in proper Perſon, and this Return be received, and the Writ filed, then the Court cannot examine it, and the Party can have no Averment againſt the Return, nor can have any Error. *Cro. El. Clay's Caſe. Hob. p.* 13.

And though the High-Sheriff may make an Under-Sheriff, or not appoint one; or when made, remove him at Pleaſure; yet during the Time he is Under-Sheriff, he cannot abridge his Power, no more than the King can in Caſe of the High-Sheriff himſelf. If the Sheriff will make an Under-Sheriff, provided he ſhall not ſerve Executions above *Twenty Pounds*, without ſpecial Warrant, this Proviſo is void. Nor can the Under-Sheriff reſtrain himſelf by Covenant.

If the Under-Sheriff make a Return amerciable, there the High-Sheriff ſhall be amerced; for the Return is made expreſly in his Name; but if it be a falſe Return, whereupon an Action of Debt lies, in that Caſe it may be brought againſt the Under-Sheriff. *Dr. and Stud. cap.* 42.

As to ſerving Writs, it's ſaid, a known Sheriff need not ſhew his Warrant at firſt, although it be demanded, nor a ſpecial Under-Sheriff without demand; but when he has peaceably ſubmitted to the Arreſt, he ought to read the Writ, or tell him the Contents, that he may know at whoſe Suit the Proceſs is, out of what Court, for what, and of what Return, that the Party may know what to do. 6 *Rep.* 52. The Sheriff muſt not diſpute the Authority of the Court, tho' the Proceſs be erroneous.

If the Officer come to arreſt a Man, and he flieth, the Officer may purſue him, and take him in another County, but he can't beat him, becauſe he was not arreſted.

If a Special Sheriff, by Force of a Warrant, on a *Capias* in Proceſs, enters into the Houſe of *J. D.* the Door being open, and there takes *J. E.* againſt whom the Writ is, the Proceſs is as well ſerved as to *J. E.* and all Strangers. And if any Stranger reſcue him, he at whoſe Suit he is arreſted ſhall have Action againſt him. 2 *R. Ab.* 272.

A *Capias* was returnable on *All-Souls-Day*, which is *non Dies Juridicus*, which the Sheriff returned, and ſo let the Party go; it is a bad Return: The Writ was good, and the detaining of the Parties lawful, and he was commanded to bring him into Court. *Pop.* 205.

If a Sheriff arreſt a Man before a Writ be delivered to him, it is a Treſpaſs. If a *Latitat* returnable the 10th of *July*, come to the Sheriff to arreſt *J. S.* he may arreſt him on the ſaid 10th of *July*. But upon a *Capias* in Proceſs, he may not arreſt the Party after the Day of Return.

An Arreſt in the Houſe, the Door being open, at Six o'Clock at Night, is good enough.

By a late Act of Parliament, none can be arreſted on a *Sunday*, except for Treaſon, Felony, or Breach of Peace.

As to the Arresting one Person for another; the Sheriff had Process against one *Adderly*, and he took one *Adderby*; if he was known by one Name or the other, it is good, otherwise not. *Moore* 407. *N.* 548.

If a Sheriff executes a *Capias*, and there is no Original to warrant it, he is excusable; but he must take Notice, at his Peril, of the Person and Goods that he arrests; for he is not to examine whether the Original be sued out or not. But if he arrests *J. S.* instead of *J. N.* he does it without Warrant.

An Under-Sheriff who had two Warrants against one at the Suit of *J. S.* laid his Hands on him, and said, *I arrest you by Force of a Writ that I have*, but did not shew it him, nor had it in his Hands, nor told him at whose Suit; yet the Court resolved,

1, This Arrest, without shewing the Warrant and telling at whose Suit till the other demanded it, was good and legal.

2, This Arrest, without having the Warrant in his Hand, and having both Warrants about him, is well enough, although he did not shew by which of them he arrested him.

If the Sheriff, Bailiff, or other Officer, say to the Person against whom he has a *Capias* or Warrant, *I arrest you in the King's Name*, though he lay no Hands on him, it seems this is a good Arrest, especially if it be a known sworn Officer, and the Party at his Peril ought to obey him; and if the Officer hath no lawful Warrant, the Party may have an Action of false Imprisonment against him. *Co.* 5, 66, 69.

An Arrest in the Night is lawful, be it at the King's or another's Suit. *Co.* 9. 65. *Shep. Abr. Part* 2. *p.* 302.

Where Sheriff, Bailiff, Constable, or other such like Officer or Ministers of Justice, in the doing of their Offices, as in the *Execution of Writs*, *Warrants of the Justices of the Peace*, *Keeping the Peace*, *Apprehending of Felons*, or the like, do require or command others that are no Officers, to assist them in that Work or Service, such Persons must aid and assist such Officer; and then what they do is lawful and justifiable therein, as if the Officer or Officers had done it. 11 *H.* 7. *c.* 15. *Westm.* 1. *c.* 9. *Winton* 3 *H.* 7. *Co.* 8. 96.

The Sheriff or Bailiff is bound at his Peril to arrest the right Person against whom the Warrant is, otherwise he is liable to an Action of false Imprisonment. *Shep. part* 2. *p.* 308. *Mine Case.* 600, 602. *Brow. false Imprif.* 38. *Law* 49.

High-Sheriff may be fined, but not imprisoned for the Act of Under-Sheriff.

Of BAIL.

BAIL is so called, bacause the Party bailed is delivered by Law into the Custody of those that are his Bail, and who are to answer the Party, if they do not produce the Principal to do it.

At Common Law, if the Sheriff had taken any Man by the King's Writ, he muſt not be delivered but by *Breve de Homine replegiando*, and was not compellable to take Bail. But by the Statute of 23 *H.* 6. he is compelled to take Bail, and the Deſign of the Statute is to prevent the Extortion of Sheriffs, who uſed to extort great Sums for granting Bail. And this Statute preſcribes the Form of the Bail-Bond, and enacts, "That no Sheriff nor any of his Officers, "ſhall take or cauſe to be taken, or make any Obligation for any "Cauſe aforeſaid, or by Colour of their Office, but only to themſelves, of any Perſon, nor by any Perſon which ſhall be in their "Ward, by the Courſe of the Law, but by the Name of their Office, "and upon Condition written, *That the ſaid Priſoners ſhall appear at "the Day contained in the Writ or Warrant, in ſuch Places as the ſaid "Writ ſhall require*:" And any other Obligation taken by them in any other Form, ſhall be void.

The Sheriff is Judge of the Sufficiency of the Sureties, and he may take one or two.

A Condition was, That if he appeared at *Weſtminſter* ſuch a Day to anſwer, *&c.* The Defendant pleads, That before the Day of the Return of the Writ, the Term was adjourn'd to *Hartford*, and that there he appeared. The Plaintiff demurs *Per Cur'* he ought to conclude his Plea, *Prout patet per Recordum*; for though he appeareth, yet if his Appearance be not entered of Record, he forfeits his Obligation, and he ought to conclude his Plea ſo, otherwiſe the Plaintiff cannot Anſwer thereunto, as to ſay, *Nul tiel Record. Cro. El.* 466. *Corbit and Cook.*

After the Statute 23 *H.* 6. the Sheriff cannot make a ſpecial Return in a *Capias*, but only a *Cepi Corpus*, or *Non eſt inventus*. And tho' the Statute compels him to take Bail, yet it does not alter the Return.

The Return of a *Paratum habeo*, is, in Effect, no more than he hath the Body ready to bring into Court when the Court ſhall command him. And for ſuch Return he is amerciable to the Court till he bring in the Body.

If a Sheriff refuſe to take reaſonable Bail, an Action of the Caſe lies againſt him; or if a Sheriff refuſe to take Bail, he is liable to an Action of falſe Impriſonment. But if he take inſufficient Bail, no Action lies againſt him by the Party, for he is Judge of the Bail.

An Action of the Caſe againſt the Sheriff for not taking reaſonable Sureties, not having ſufficient Eſtates in the County, and returning *Cepi Corpus*, and yet not having the Bodies ready by the Day, lies not; for he is compellable to let to Bail; and if he have not the Body, he ſhall be amerced. And becauſe he ſhall be amerced, the Statute gives him Advice to take ſufficient Sureties for his own Indemnity. 2 *Saund.* 59. *Poſtern and Hanſen.*

By

By these Words in the Statute, That *if the Sheriff return a* Cepi Corpus, *he shall be chargeable to have the Body by the Day of the Return*, &c. it is intended only, that he may be amerced to the King for not having the Body at a Day. 2 *Sand.* 60.

If the Defendant appears not to the Sheriff's Bond, according to the Condition thereof, the Plaintiff may, by Leave of the Sheriff, sue the Bond in the Sheriff's Name; but it's in the Plaintiff's Election to sue the Sheriff; and the Sheriff shall be amerced, till he assign the Obligation to the Plaintiff. But by the Statute 4 & 5 of *Q. Anne*, the Plaintiff upon the Sheriff's Assignments may sue the Bail-Bond in his own Name, if he see Cause so to do.

A Bond given to be a true Prisoner (as by Law he ought) is good, and not within the Statute of 23 *H.* 6. But a Bond of one in Execution, to be a true Prisoner, is within the Statute and void. So also a Bond or Covenant for Fees is void. And so is a Bond for Chamber-Rent. 3 *Keb.* 133.

But by the Statute of 13 *Car.* 2. *cap.* 2. Persons arrested by Process out of the King's Bench or Common Pleas, not expressing the Cause of Action in the Writ, Bill or Process, and which are bailable by the Statute of 23 *H.* 6. shall give Bail-Bond not exceeding the Sum of *Forty Pounds*. If the Sheriff take Bond for more, the Party shall have an Action upon the Statute against the Sheriff; but the Bond is not void. And upon the Defendants Appearance at the Return, he shall discharge such Bail-Bonds. But this Statute extends not to Arrests upon *Capias utlagat' Recous, Contempt* or *Privilege*, nor to Popular Action, or Action on any Penal Law, Indictment or Information. See more, Title *Bail*.

Of Return of WRITS.

A Return is but a Certificate made by the Sheriff to the Court from whence the Writ issued, of that which he hath done touching the Execution of the same Writ.

There is a Difference between the *Teste*, and the Return of Writs. A Return may be on the Essoyn Day. A Writ shall not abate if the Return be *quarto Die post*. If a Man be bound to appear the first Day of the Term in Court, if he appear the first Day of the Essoyn, and then have his Appearance recorded; this is good. 2 *Bulst. Bedo & Piper*.

Deputies are allowed in all ministerial Offices; but all Returns made by them, are to be made in the Name of the principal Officer. And the Sheriff is to put his Name to every Return made by him, or the Return is to be void. 3 *Bulst.* 78. None can make a Return of a Writ, but such a Person who at the Time of the Return remains an Officer to the Court.

Against the Return of a Sheriff, there is not any Traverse, Averment or Answer.

Generally

Generally all Writs of Execution, (except *Elegit*) as *Capias ad ſatisfaciend. Habere fac' Seiſinam, Habere fac' Poſſeſſionem, Fieri fac, Liberate,* &c. which are the final Proceſs, and after which no Judgment is given, nor no further Proceſs, and when Matters *en fait* are only to be done, as, Land to be delivered, Seiſin had, Goods ſold, *&c.* are good, though the Writs be not returned or filed, if the Execution be duly made.

But in Caſe of an *Elegit* otherwiſe, becauſe the Extent is to be made by Inquiſition, to the Intent that the Court may be Judge of the Sufficiency of it, and every Inquiſition ought to be of Record.

If a Writ directed to the Sheriff be executed, and after a New Sheriff is choſen, the new Sheriff ought to return the Writ in this Manner, *viz. Recepi hoc breve Prædeceſſori meo directum, ſic indorſatum*; i. e. *I received this Writ directed to my Predeceſſor, ſo indorſed.* But if a Writ be not executed by the old Sheriff, before he is removed, the Writ muſt be removed to the new Sheriff, and by him executed and returned without any Mention of his Predeceſſor.

If a *Capias* comes to the Sheriff to take a Man, its no Return that he was not found within his Bailiwick after the Delivery of the Writ, *Prout ſibi conſtare poterit.* This is not good, but he ought to return expreſly, *Quod non eſt inventus.* 9 *H.* 6. 57.

The Sheriff returned a Reſiſtance on *Habere fac' Seiſinam*, and he was amerced 20 Marks, becauſe he did not take the *Poſſe Comitatu*, and an *Alias awarded. Hill.* 19 *Ed.* 2. *Execu.* 147.

Its no good Return for the Sheriff to ſay, The Party will not pay his Fees, and therefore he would not ſerve his Writ, 34 *H.* 6. becauſe he may recover his Fees by Action, when he has done his Duty.

The Sheriff of *Yorkſhire* returned a Protection on Arreſt. It was ſet aſide *per Cur'* in Regard the Sheriff can return nothing elſe but *Non eſt inventus*, or *Cepi Corpus*, at his own Peril, and the Sheriff was ordered to return his Writ on Pain. 2 *Keb.* 168.

Where the Sheriff takes Bail, according to the Statute 23 *H.* 6. and returns *Cepi Corpus*, though the Party do not appear at the Day, yet the Sheriff ſhall not be charged in an Action on the Caſe for a falſe Return. *Siderfin p.* 22.

Note. A *Venire* ought to be delivered to the Sheriff four Days before the Return of it, if the Jury dwell Forty Miles off, and eight Days if they dwell further from the Place where the Trial is to be. *Prac. Reg.* 87. 333.

The Name of the Sheriff ought to be to the *Diſtringas*, and *Tales* are of Neceſſity, and to the Return of the *Habeas Corpora.* 12 *E.* 2. *c.* 5.

Tales not returned by the Sheriff or his Deputy, but by a Clerk of the Court by general Appointment of the Sheriff, it is well enough, and the Sheriff is anſwerable for it. 1 *Keb.* 357.

Of

Of Juries, and their Returns.

JURORS are of two ſorts, Juries to enquire are *Grand Juries* at the Aſſizes or Quarter Seſſions. So *Juries* returned before Juſtices of the Peace, to enquire of *Riots, Forcible Entries*, the Sheriff is to ſummons them.

If it be conceived an indifferent Jury will not be returned, the Court, on Motion, will order the Sheriff to attend the Secondary of his Office with his Book of the Freeholders, to have an indifferent one returned. *Pract. Reg.* 163.

When Trial is to be for a Thing which concerns the Under-Sheriff, there the High-Sheriff ſhall return the Jury; but if the Trial concern the High-Sheriff, the Coroner ſhall return the Jury. *Pract. Reg.* 164.

The Sheriff ought not to return *Privilege* to be exempt from Juries, but to return them ſummoned, and the Party claiming *Privilege* ought to appear in Perſon to claim the ſame, and not the Sheriff for him.

But Peers in Parliament are not to be impannelled, nor Tenants in Ancient Demeſn.

By Statute 11 *H.* 7. No Indictment ſhall be found by any Perſons named to the Juſtices, without due Return of the Sheriff, and by Inqueſt of lawful liege People returned by the Sheriff.

The Juſtices of Goal-Delivery, or Juſtices of the Peace (*Quorum unus*) in open Court, may alter the Pannel returned by the Sheriff, to enquire of the King only, by Addition or Subſtraction of any of the Jurors ſo returned; and they have Power to command the Sheriff to put other in the Pannel, according to their Diſcretion. And the Sheriff ought to return the Pannel ſo reformed, upon Penalty of the ſaid Act. *Coke* 12 *Rep.*

By the Statute 4 & 5 *W & M.* all Jurors are to have *Ten Pounds per Annum.* It is very needful for the Sheriff to have a Book containing the Names of all the Freeholders in his County, and their Sufficiencies, that he may be able to make the Pannels according to his Oath, and better know Pledges and Sureties.

If any Perſon be returned on a Jury of leſs Eſtate than *Ten Pounds per Annum*, he may be diſcharged by Challenge, or upon his own Oath; and the Sheriff, Coroner, or other Officer, returning any one of leſſer Eſtate, ſhall forfeit *Five Pounds* to the King, for every Perſon ſo returned. And a Jury muſt be ſummoned Six Days before the Day of their Appearance. And none ſhall take a Reward to excuſe a Juror's Appearance, on Pain to forfeit *Ten Pounds*, to the King. But this Act extends not to Cities, Burroughs, or Towns corporate.

If any one or more of the Jury be returned at the Denomination of the Party, Plaintiff or Defendant, the whole Array ſhall be quaſhed.

If

If the Plaintiff or Defendant have an Action of Battery or Debt againſt the Sheriff, or if the Sheriff have a Parcel of Land depending on the ſame Title: or if the Sheriff or his Deputy be either of Counſel or Attorney, or Servant, or Goſſip of either Party, all the Array ſhall be quaſhed.

Conſanguinity or *Affinity* are the principal Cauſes, but its no Challenge to the Array, if all the Jurors be of Affinity.

Malice between the Sheriff and one of the Parties, or that one of the Parties has brought an Action of Debt againſt the Sheriff, is good Cauſe of Challenge.

Challenge to the Polls, *i. e.* to the particular Jurors, are of four Sorts; 1. *Peremptory*, without ſhewing any Cauſe, and this for Treaſon is, Thirty-five; Felony, Twenty. 2. *Principal Challenge* to the Polls; ſo called, becauſe it ſtands of it ſelf, without leaving any Thing to the Conſcience or Diſcretion of the Tryers. 3. Challenger to the Poll muſt ſhew Cauſe *preſently*. After one hath taken Challenge to the Poll, he cannot challenge the Array. 4. If the Plaintiff alledge a Cauſe of Challenge againſt the Sheriff, the Proceſs ſhall be directed to the Coroner; and if any Cauſe againſt the Coroner, then the Court ſhall appoint *Eliſors*. Sometimes the Court appoints two of them that be impannelled.

All Challenges muſt be taken before the Jurors are ſworn. No Challenges ſhall be admitted againſt the Tryers appointed by the Court.

Of a Writ of Enquiry of Damages.

IF upon the Executing of a *Writ of Enquiry of Damages*, the Sheriff refuſeth to ſwear and examine ſome of the Witneſſes produced on either Part, and yet doth execute the Writ, the Court will grant a new Writ to the Party grieved, for the old Writ was not well executed. *Bract. Regiſ.* 348.

A *Writ of Enquiry of Damages*, cannot be executed by a Deputy, or Bailiff, but by an Under-Sheriff it may.

If a *Writ of Enquiry of Damages* be returnable the 29th *Sept.* the Sheriff may take the Inqueſt and enquire the Damages the Day of the Return, and after he returns it the ſame Day; this Writ is well executed. If the Inqueſt be impannelled the Eſſoyn Day, and hear their Evidence two or three Days after; yet this Writ is well executed: *Mich.* 11. *Car.* 1.

The Jury cannot find *That no Treſpaſs is done*, neither may the Sheriff make ſuch Return; but if the Jury will find no Damages, the Sheriff muſt make his Return accordingly.

A Return of a Writ of Enquiry of Damages.

THIS *Inquiſition indented, taken at* C. *in the County of* W. (ſuch a Day and Year) *before* A. B. *Eſq; Sheriff of the ſaid County, by Virtue of a certain Writ of our Lord the King, to the ſaid Sheriff directed,*

and

and to this Inquisition annexed, by the Oath of R. S. T. G. *&c. (to the Number of Twelve Jurors) who say upon their Oaths, That* A. P. *in the Writ to this Inquisition annexed, named, hath sustained Damage by Occasion (of the within named Trespass) by* H. *in the aforesaid Writ named, as in the same Writ is mentioned, to* Forty Shillings, *and for the Costs and Damages of the same,* A. P. *about his Suit in that Behalf expended, to* Forty Shillings. *In Testimony whereof, &c.*

N. B. The Sheriff and all the Jurors must sign and Seal this Inquisition.

Of Returns of a Devastavit.

THE Defendant pleads *plene Administravit*, and the Verdict is for the Plaintiff; this estops the Sheriff of the County where the Trial was to return *Nulla bona*; for he is concluded by the Verdict to make any Return contrary to it; but the Sheriff of another County shall not be so concluded. But the Sheriff of the County where the Writ is brought ought to return a *Devastavit*, and thereupon the Plaintiff shall have Process into another County. 2 *Lutw.* N. 90. *p.* 67.

Of PRISONS.

ALL Prisons are the King's, but a Subject may be Keeper. The Custody of County Goals is incident to the Office of a Sheriff, and inseparable from the Sheriff; and therefore if the King grant the Custody of such Goal to another, it's void; for the Sheriff is the immediate Officer of the King's Courts, and shall be answerable for Escapes, and be subject to Amercements, and therefore he shall put in such Keepers as he shall answer for.

The Sheriff may remove his Goal from one Place to another within his Bailiwick, but not in a particular Place without Prescription.

No Prisoner shall be put in Irons, but Traytors, or those taken for Felony or Trespass *in parcis & vivariis*, &c. A Prisoner in Execution shall not be in Fetters, but for criminal Causes. A Prisoner (while he is such) is under the Protection of the Law, and accordingly is to be used. And therefore where a Prisoner, by Duress of the Goaler, comes to an untimely End, it is Murder in the Goaler. 3 *Inst.* 52. 91. And the Law implies Malice in him, in respect of the Cruelty. And therefore if a Man die in Prison, the Coroner ought to sit upon him, to the End it may be inquired, if he came to his Death by the Duress of the Goaler. 3 *Inst.* 91.

If the Sheriff or other Officer, where he ought to hang the Party attainted, according to the Judgment and Charge, will burn or behead him, &c. The Law in this Case implies Malice in him.

By the Statute 14 *Edw.* 3. *cap.* 10. If a Keeper, or Under-Keeper of a Prison, by too great Duress of Imprisonment, or by Pain, make a Prisoner become an Appellor, *viz.* An Approver against his Will, it's Felony.

If

If a Priſoner is in Execution, and the Goaler or Sheriff die, he is in Abeyance and Cuſtody of the Law.

A *Goaler* is not bound to deliver his *Priſoner*, who is diſcharged by the *Court*, until he pay his Fees.

Every *Sheriff*, and other *Perſon*, having *Authority* of keeping Goals, or of *Priſoners* for Felony, ſhall certify the Names of every ſuch *Priſoner* in their Keeping, at the next general Goal-Delivery in every County, there to be kalendered before the Juſtices of the *Delivery* of the ſame Goal, whereby they may, as well for the King as the Party, proceed to made Delivery of ſuch Priſoners, according to the Law, on Pain of *Five Pounds*. 3 *H.* 7. 3.

If the *Goaler* ſuffer an Eſcape, the *High-Sheriff* or *Goaler* are chargeable *therefore*.

Of FIERI FACIAS.

FIERI FACIAS is a judicial Writ lying for him who hath recovered Debt or Damage, directed to the *Sheriff*, commanding him to levy the ſame of the Defendants Goods: As it lies within a Year and a Day; but after a Year and a Day there muſt be a *Scire facias*.

This Writ of *Fieri Facias*, is only againſt the Goods and Chattles of a Man, *viz.* Leaſes for *Years*, Corn *growing* or ſown upon the Land, or moveable Goods, as *Corn in the Barn*, *Houſhold Goods*, *Money*, *Plate* and *Apparel*. *Co.* 1 *Inſt.* 296. 6.

Goods pawned, ſhall not be taken in Execution for the Debt of him which pawned them, during the Time they are pawned. *Kitchin* 226.

The Sheriff upon a Writ of Execution, may not ſeize and ſell to the Party a Furnace annexed to the Freehold, for this would be Waſte in the Leſſee. 37 *El. B. C. Day & Auſtin.*

If one ſell any Goods to another in the Time of Action depending againſt him; theſe Goods ſhall not afterwards be taken in Execution; for they were lawfully bought (if done *bona Fidæ*, and for valuable Conſideration.) But if a *Fieri Facias* be directed to make Execution of Goods, and after the *Teſte* of the Writ, and before the Sheriff executes it, the Party ſells his Goods *bona Fidæ*, they may nevertheleſs be taken in Execution (*aliter* now by the *Statute of Frauds and Perjuries*,) *Cro. El.* 174.

If the Party dies after the Writ of Execution awarded, and before it be ſerved, the Sheriff may ſerve it on the Goods in the Hands of the Executor; for by the Execution awarded, the Goods are bound, and the Sheriff needs not take Notice of his Death. *Cro. El.* 181. *Parker & Moſs.*

The Plaintiff (being Sheriff) ſeizeth the Goods in Execution by Force of a *Fieri Facias*, and after, before the Sale of them, the Defendant takes an Opportunity to remove them, and converts them

to

to his own Uſe; and the Plaintiff (being Sheriff) brings his Action of *Trover*; and adjudged the Action lies well. For by the Seizure of the Goods in Execution, the Sheriff hath a Property in them, ſo that he may re-ſeize them and ſell them, as well when he is out of his Office, as before. *Mod. Rep.* 2. *Sand* 47. *Willbabam & Snow.*

After the Debt levied, the Sheriff is Debtor to the Plaintiff, and capable of a Releaſe from him, the Action ceaſing againſt the Defendant, is *ipſo Facto*, by the Law transferred to the Sheriff, having both the Judgment to make it a Debt, and the Levy to make him anſwerable; and though the Action of Account will properly lie in this Caſe, yet the ſame will many Times bear both Actions, though the Money be received by *Auter Manis*, or the like. *Hob.* 206, 207. *Speak & Richards.*

If the Sheriff in executing a *Fieri Facias*, doth not miſbehave himſelf, he ſhall not be charged in Debt, or *Scire Facias*; but if upon the *Fieri Facias*, the Sheriff return, That he hath levied the Money, and doth not pay it to the Plaintiff at the Return of the Writ, the Plaintiff may have a *Scire Facias* againſt the *Sheriff*, to ſhew Cauſe wherefore the Money ſhould not be levied of the Goods of the Sheriff. 2 *Sand.* 344, 345.

So if in *Fieri Facias*, to levy *Two Hundred Pounds* Debt, the Sheriff returns, That he had made his Warrant to his Bailiff, who had ſeized divers Goods to the Value of *One Hundred and Sixty Pounds*, and that they were reſcued out of his Cuſtody, *ita quod*, he could not levy the Debt, and that *R. nulla alia habuit bona.* The Plaintiff may bring a *Scire Facias* to have Execution againſt the Sheriff for the Monies, according to the Value returned, and the Sheriff ſhall pay it out of his own proper Goods. 1 *Anderſ.* 247.

On *Fieri facias* the Sheriff ſeized ſeveral Goods, which were Mercery Ware, and returned *Fieri facias ad Valentiam*; which Return was filed. The Sheriff appears, and prays to amend the Return, becauſe ſome of the Goods were impaired by lying, and he could not get Buyers. *Per Curia.* 1. Such Return may not be altered, after it it is returned and filed. 2. Where the Sheriff returns *Fieri facias ad Valentiam*, this ſhall be no Excuſe of his Payment of the Money, becauſe he might have returned, he had ſeized the Goods, and that they remain *pro defectu emptorum*, and then he may be excuſed, if *Bona peritura*, they periſh. *Siderfin. p.* 40. *Needham & Bennet.*

As to Amendment of Returns, Matter of Form in a Return is amendable, but not Matter of Fact; which goes to Juſtification of Impriſonment. 2 *Bulſt.* 259.

If the Sheriff have a *Fieri facias* againſt a Man's Goods, and before Execution he pay him the Money; in this Caſe he cannot do Execution after, and if he do, an Action of Treſpaſs or falſe Impriſonment lies againſt him. *B. R. p.* 12. *Jac.* 1.

The

The Sheriff upon a *Scire facias* cannot deliver the Defendants Goods to the Plaintiff in Satisfaction of the Debt, but muſt return the Execution in Court. *Cro. El.* 504.

On *Fieri facias* againſt *J. M.* who has the Goods of *A.* in his Poſſeſſion, if the Sheriff ſells theſe Goods, Trover or Treſpaſs will lie againſt him; and to prevent this, all the Sheriffs in *England* take Security. *Keb.* 693. *Sander's Caſe.*

Therefore in this Caſe, the ſafeſt Courſe is for the Sheriff to enquire by a Jury, in whom the Property of the Goods is, or elſe not to meddle with ſuch Goods which do not plainly appear to him to be the Defendants; and it being found by a Jury, that excuſeth the Sheriff.

If Goods remain in the Sheriff's Hands for want of Buyers, and there periſh, the Sheriff ſhall not be chargeable; but if the Sheriff refuſe a Buyer, Action on the Caſe lies. 2 *Keb.* 464.

There is a Difference between the Sale of a Term on a *Fieri facias*, and Extent on an *Elegit*; for the *Elegit* is, That they appraiſe the Goods and Chattles of the Debtor, and extend his Lands; and therefore if they are not appraiſed by the Jurors, he cannot ſell them (*vid. Dyer, fol.* 100. and ſo in 5 *Rep. Palmer's Caſe.*) Execution by *Elegit* ought to be *per Inquiſitionem per Stat. W.* 2. *c.* 18. which ſaith, (*per Rationabile Pretium*) which extends to Chattels, and *per Extentum*, which refers to Lands. In *Elegit* the Goods are to be delivered to the Party *per Rationable Pretium*, but in *Fieri facias* the Sheriff muſt ſell the Goods. 1 *Keb.* 566. *Glaſwel & Morgan.*

In *Elegit* the Term may not be extended without ſhewing the Certainty of the Commencement; for after the Debt ſatisfied, the Party is to have his Term and Remainder. But upon *Fieri facias* the Sheriff may ſell, and his Return is general, *quod fieri feci de Bonis & Catallis.* 5 *Rep. Palmer's Caſe.*

Now the Sheriff is to be careful in the Sale of a Term in *Elegit*, if he make particular Recital, that there be no Miſtake. But a general Recital is better. As,

In *Ejectment*, it was found by ſpecial Verdict, That the Sheriff upon an *Elegit* impannelled a Jury, who found that the Defendant was poſſeſſed of a Leaſe for a Hundred Years, which began *Mic.* 2 & 3 *P. & M. ubi revera*; it was found it begun *Mic.* 3 & 4 *P. & M. Cujus quidem H. Statum intereſſe & terminum in Tenementis prædictis prædict. Juratores appretiarunt ad* 80 *l.* and the Sheriff ſold it to the Leſſor of the Plantiff for 80 *l.*

Now the Inqueſt found one Thing, and he ſells another (as this Caſe was) and the Sale not being warranted by the Inqueſt, is void. But had the Inqueſt found he had been poſſeſſed of ſuch Land generally for the Term of divers Years to come, and they had appraiſed it for ſo much, without ſhewing the certain Beginning or Determination, it had been well enough; for they ſhall not be compelled to find

find a Certainty, nor having Means to be informed thereof. Or if the Sheriff ſells all ſuch Intereſt which the Defendant had in the ſame Term, the Sale had been good. 5 *Rep. Palmer's Caſe.*

So in *Dr. Sidenham's* Caſe in *B. R.* the Inqueſt on a *Fieri facias* found that the Defendant was poſſeſſed of ſuch a Term, and miſtook the Date, and the Sheriff ſold it; the Sale was not good. And on the new *Fieri facias* the Court directed that it ſhould be found, That he was poſſeſt of a Leaſe for Years generally, and yet continuing; and that he ſold it. *Cro. El.* 584.

W. had Execution out of the King's Bench by *Scire facias* of a Term, which was ſold by a Bailiff of a Liberty. After, upon another Judgment, the Bailiff delivers this Term to another, pretending that the firſt Judgment and Execution was fradulent. But *per Curia*, it is not well done; for he is not a Judge of Fraud, and the Court will not allow ſuch Pretence to Sheriffs and Officers. *Latch. p.* 53. *Warrington's Caſe.*

If a Sheriff extend or ſell a Leaſe, this Sale ſhall bind the King (as to his Debt) becauſe it is but a Chattel, and there was no Coven, 8 *Rep.* 171.

Of Writs of Poſſeſſion.

IN all Caſes where the Execution of a Judgment, in which the Demand is of a Thing *certain*, if the Sheriff do this Thing, he is not any *Diſſeiſor*. But where the Execution is in the Generality, without mentioning of any Thing in *particular*, there the Sheriff ought to make Execution of the right Thing, at his own Peril, otherwiſe he ſhall be a Diſſeiſor; for he is bound to take Notice of it. As if a Man recover in Aſſize divers Houſes, and after the Tenant reverſeth it in a *Writ of Error*, and a *Writ of Execution* iſſues to the Sheriff, to put him in Poſſeſſion of the Houſes, which he had loſt by the Judgment, although the Tenants are Strangers to the Recovery; and for this they ought not to be ouſted without *Scire facias* againſt them; yet if he do Execution by putting them in Poſſeſſion by Force of this Writ, he ſhall not be any Diſſeiſor, for that he hath the direct Authority of the Court to do it. *Paſch.* 15. *Jac. Lloyd & Bethel.*

So in Judgment for the caſual Ejector for ſeven Houſes, and an *Habere facias Poſſeſſionem* turns out theſe ſeven Tenants, and eight other Tenants, without any Proceſs or Plea againſt them. *Per Curia*, We will not grant any Writ to ſupercede the Execution againſt the eight Tenants; for if it ſhould be, it ought to be *quia Erronice*, and there was not any Error in the Proceeding againſt them, becauſe there was not any Proceedings. But they did adviſe, that every one ſhould bring Treſpaſs againſt the Sheriff, 2 *Siderfin.* 155. So Treſpaſs lies againſt the Sheriff, if he does not execute on the right Places.

If

If the Sheriff do deliver more Acres than are in a Writ, this makes not the Writ erroneous, but in ſuch Caſe, Action on the Caſe lies againſt the Sheriff for doing it; or an Aſſize againſt him that hath the Poſſeſſion delivered to him for the Surpluſage of the Land. But if the Writ of *Habere facias Poſſeſſ.* to deliver Poſſeſſion to the Plaintiff, of Lands recovered by him in Ejectment, contains more Acres of Land than were in the Declaration, the Writ is erroneous. *Pract. Regiſt.* 131, 132.

If a Man brings *Ejectione firmæ* of Forty Acres of Land, and recovers Thirty, and not the Reſidue, upon the Writ of Execution the Sheriff may deliver to him any three or more, in the Name of all, without ſetting out the Land in Metes and Bounds, although the Plaintiff had not recovered all the Acres, whereof he had brought his Action, and whereof he had ſuppoſed the Defendant Tenant.

But if a Man be to be put in Poſſeſſion of divers Meſſuages upon a Writ of Execution, and the Houſes are in Poſſeſſion of ſeveral Men, he ought to go to every Houſe particularly, and to deliver Seiſin of it; for the Delivery of Seiſin of one, in the Name of all, is not ſufficient; for he ought to deliver *Plenarium Seiſinam*, *Trin.* 15 *Jac. Floyd & Bethel's Caſe.*

In *Formedon* on Non-Tenure of three Meſſuages, the Jury found he was Tenant of one of the Meſſuages, and not of the other, the Plaintiff may have Judgment, and a Writ to the Sheriff to deliver Seiſin; and the Plaintiff at his Peril is to ſhew to the Sheriff what Meſſuage it was the Jury did intend; for the Jury is not tied to ſet Bounds to it. *Cro. Eliz.* 256. *Scriven & Prince.*

Upon *Habere facias Poſſeſſionem* the Sheriff returned, That in Execution of the ſaid Writ he came to the Houſe recovered, and removed out all the Perſons he could find, and delivered to the Plaintiff Poſſeſſion, and departed; and ſoon after, three Perſons ſecretly lodged in the Houſe, expelled the Plaintiff: On Notice whereof he returned again to the Houſe, to put the Plaintiff in full Poſſeſſion, but the others reſiſted him, ſo that without Peril of his Life he could not do it. 1 *Leon. p.* 145. *Upton & Wells.* On this Return the Court awarded a new Execution.

A Writ of *Habere facias Poſſeſſionem* was directed to the Sheriff; a *Writ of Error* was brought, and a *Supercedeas* granted, directed to the Sheriff to ſtay Execution; and the *Supercedeas* was ſhewed to the Sheriff as he was going to do Execution, yet he refuſed to obey it, and did Execution notwithſtanding. This is a great Contempt in a Sheriff, and the Court ordered a Writ of *Reſtitution* to be granted. 2 *Bulſt.* 194. *Thomas & Owen.*

N. B. The Sheriff in Caſes where Land is recovered, is to put the Party in Poſſeſſion and Seiſin by a Twig, Clod, *&c.* of an Houſe by a Key, *&c.* of Rent by Corn or Graſs growing on the Land, out of which the Rent iſſues. 6 *Rep.* 52.

It

It is no good Return, That another is Tenant of the Land by Right, or that he has nothing in the Land.

Seisin of the Land in one Vill, in the Name of all the Land in three Vills, is good.

A Return of a *Fieri facias.*

BY *Virtue of the within Writ, I have caused to be made of the Goods and Chattles of the within named* A. B. *the within named* Two Hundred Pounds, *the which* Two Hundred Pounds, *I have ready at the Time and Place within contained, to render unto the within named* C. D. *as within I am commanded.* J. S. Vice Com'.

A Return of a *Scire facias.*

BY *Virtue of the within Writ to me directed, by* A. B. *and* C. D. *good and lawful Men of my Bailiwick, I have made known unto* J. S. *That he be before his Majesty's Justices, &c. at the Time and Place within written, to, &c. as within I am commanded.* J. S. Vice Com'.

A Return of a *Habere facias Possessionem.*

BY *Virtue of the within Writ to me directed (such a Day and Year within written) I have caused the within named* A. B. *to have Possession of his within written Term of, and in, the Tenements within written, with the Appurtenances, as I am within commanded.*

J. S. Vice Com'.

A Return of a *Habere facias Seisinam.*

BY *Virtue of the within Writ to me directed, I do hereby make known unto the within Justices, That (such a Day and Year within written) I have caused the within named* A. B. *to have full Seisin of one Messuage with the Appurtenances in* M. *within named, in all Things as by the said Writ I am commanded.* J. T. Vice Com'.

The Sheriff makes his Warrant to a Bailiff, to take the Body of, &c. upon a *Capias satisfaciend*, and before the Warrant executed, the Sheriff receives a *Supercedeas*, and the Bailiff having Notice, proceeds; yet the Arrest is not lawful, but the Bailiff is excusable in Trespass. *Moore p.* 677. *Prince & Allington.*

Of ELEGITS.

ELEGIT is a judicial Writ, given by the Statute *W.* 2. *cap.* 18. either upon a Recovery for Debt or Damage, or upon a Recognizance in any Court. By this Writ the Sheriff shall deliver to the Plantiff, *Omnia Catalla Debitoris (exceptis Bobus & Aris Carucæ) Mediatatem Terrarum*, and this must be done by Inquest taken by the Sheriff, for the Valuation of the Goods and Lands ought to be first found by the Inquisition of a Jury. *W.* 2. *cap.* 18. gives the *Elegit* a

so

If the Sheriff do deliver more Acres than are in a Writ, this makes not the Writ erroneous, but in such Case, Action on the Case lies against the Sheriff for doing it; or an Assize against him that hath the Possession delivered to him for the Surplusage of the Land. But if the Writ of *Habere facias Possess.* to deliver Possession to the Plaintiff, of Lands recovered by him in Ejectment, contains more Acres of Land than were in the Declaration, the Writ is erroneous. *Pract. Regist.* 131, 132.

If a Man brings *Ejectione firmæ* of Forty Acres of Land, and recovers Thirty, and not the Residue, upon the Writ of Execution the Sheriff may deliver to him any three or more, in the Name of all, without setting out the Land in Metes and Bounds, although the Plaintiff had not recovered all the Acres, whereof he had brought his Action, and whereof he had supposed the Defendant Tenant.

But if a Man be to be put in Possession of divers Messuages upon a Writ of Execution, and the Houses are in Possession of several Men, he ought to go to every House particularly, and to deliver Seisin of it; for the Delivery of Seisin of one, in the Name of all, is not sufficient; for he ought to deliver *Plenarium Seisinam, Trin.* 15 *Jac. Floyd & Bethel's Case.*

In *Formedon* on Non-Tenure of three Messuages, the Jury found he was Tenant of one of the Messuages, and not of the other, the Plaintiff may have Judgment, and a Writ to the Sheriff to deliver Seisin; and the Plaintiff at his Peril is to shew to the Sheriff what Messuage it was the Jury did intend; for the Jury is not tied to set Bounds to it. *Cro. Eliz.* 256. *Scriven & Prince.*

Upon *Habere facias Possessionem* the Sheriff returned, That in Execution of the said Writ he came to the House recovered, and removed out all the Persons he could find, and delivered to the Plaintiff Possession, and departed; and soon after, three Persons secretly lodged in the House, expelled the Plaintiff: On Notice whereof he returned again to the House, to put the Plaintiff in full Possession, but the others resisted him, so that without Peril of his Life he could not do it. 1 *Leon. p.* 145. *Upton & Wells.* On this Return the Court awarded a new Execution.

A Writ of *Habere facias Possessionem* was directed to the Sheriff; a *Writ of Error* was brought, and a *Supercedeas* granted, directed to the Sheriff to stay Execution; and the *Supercedeas* was shewed to the Sheriff as he was going to do Execution, yet he refused to obey it, and did Execution notwithstanding. This is a great Contempt in a Sheriff, and the Court ordered a Writ of *Restitution* to be granted. 2 *Bulst.* 194. *Thomas & Owen.*

N. B. The Sheriff in Cases where Land is recovered, is to put the Party in Possession and Seisin by a Twig, Clod, *&c.* of an House by a Key, *&c.* of Rent by Corn or Grass growing on the Land, out of which the Rent issues. 6 *Rep.* 52.

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A Return of a *Habere facias Poſſeſſionem.*

BY *Virtue of the within Writ to me directed (ſuch a Day and Year within written) I have cauſed the within named* A. B. *to have Poſſeſſion of his within written Term of, and in, the Tenements within written, with the Appurtenances, as I am within commanded.*

J. S. Vice Com'.

A Return of a *Habere facias Seiſinam.*

BY *Virtue of the within Writ to me directed, I do hereby make known unto the within Juſtices, That (ſuch a Day and Year within written) I have cauſed the within named* A. B. *to have full Seiſin of one Meſſuage with the Appurtenances in* M. *within named, in all Things as by the ſaid Writ I am commanded.* J. T. Vice Com'.

The Sheriff makes his Warrant to a Bailiff, to take the Body of, &c. upon a *Capias ſatisfaciend*, and before the Warrant executed, the Sheriff receives a *Supercedeas*, and the Bailiff having Notice, proceeds; yet the Arreſt is not lawful, but the Bailiff is excuſable in Treſpaſs. *Moore p.* 677. *Prince & Allington.*

Of ELEGITS.

ELEGIT is a judicial Writ, given by the Statute *W.* 2. *cap.* 18. either upon a Recovery for Debt or Damage, or upon a Recognizance in any Court. By this Writ the Sheriff ſhall deliver to the Plantiff, *Omnia Catalla Debitoris (exceptis Bobus & Aſris Carucæ) Mediatatem Terrarum*, and this muſt be done by Inqueſt taken by the Sheriff, for the Valuation of the Goods and Lands ought to be firſt found by the Inquiſition of a Jury. *W.* 2. *cap.* 18. gives the *Elegit* a

ſo

ſo that in *Elegit*, the Sheriff may take in Execution the Moiety of the Lands of the Conizor, &c. and all his Goods and Chattels, (except as aforeſaid) and was to deliver them to the Coniſee, or he who recovers, upon a reaſonable Extent or Price, until the Debt be ſatisfied; and the Sheriff ſhall deliver him the Seiſin of the Land, and he is called *Tenant by Elegit*, and ſhall do no Waſte. 4 *Rep.* 47.

The *Elegit*, as to Goods, is in Effect but a *Fieri facias*; and therefore if there be no Lands, and Execution be upon Goods, and they are not ſufficient, he may have a *Capias*, *aliter* if Lands be extended.

As to what Things may be extended, or not, you muſt know, That all Goods and Chattels, in which are included Leaſes for Years, ſhall be extended (except Oxen and Beaſts of the Plow) the Moiety of the Lands.

Rent ſeck, where there is not any Reverſion, cannot be delivered *ut liberum Tenementum*.

Annuity certain is extendable by *Elegit*. *Cro. Jac.* 78.

Lands in *Ancient Demeſne* may be delivered in Execution by the Sheriff, by Force of an *Elegit* out of the King's Court.

If Lands deſcend to an Infant, the Sheriff may ceaſe to extend.

A Leſſee had a Leaſe to the Value of *One Hundred Pounds*, and after the Teſte of the *Elegit*, and before the Sheriff had executed the *Elegit*, aſſigns his Term to one, who aſſigns over to the Plaintiff in the *Scire facias*; and afterwards the Sheriff executes the *Elegit*, and delivers the Leaſe to the Plantiff *Tenend.* &c. for the Satisfaction of the Debt, which came to but 43 *l.* *Per Cur.* The Sheriff could not deliver the Leaſe at another Value than what the Jury had found it at. And the Sale made by the Sheriff is as ſtrong as if it had been made in open Market, and all the Goods and Chattels are bound after the *Teſte* of the *Elegit*, and cannot be ſold by the Owner after. 1 *Brownlow* 38. *Conyers & Brandling*.

Upon *Elegit* there needs no *Liberate*. *Aliter* upon a *Statute*.

In every *Elegit* the Sheriff muſt return, and ſet out the Monies diſtinctly, unleſs they be Tenants in common, and in that Caſe he muſt return the ſpecial Matter.

On Inquiſition of a Leaſe, which is but a Chattel, the Sheriff may ſell it as Goods; but if he extends it, there ſhall be no other Benefit than as of a common Extent.

Two Perſons recovered ſeverally againſt one in Debt; he who had the firſt Judgment ſued firſt an *Elegit*, and had the Moiety of the Land delivered in Execution; afterwards the other ſued the *Elegit*, and the Sheriff prayed the Advice of the Court. *Per Cur.* He ſhall deliver the Moiety of that Money which he had at the Time of the Writ awarded. *Cro. Eliz.* 482. *Huit & Cogan.*

Actual Poſſeſſion ought not to be delivered on *Elegit*, the Sheriff ought only to deliver Seizure, to enable the Plaintiff to maintain an Ejectment, and the Tenant may plead on the Ejectment; elſe the Tenant

Tenant won'd be turned out unheard, and be remediless; yet if actual Possession be delivered, it is remediless. 3 *Keb.* 243. *Jefferson & Dawson.*

In *Elegit* the Sheriff ought to deliver the Moiety by Metes and Bounds. *Hutton. p.* 16.

Upon *Elegit* the Sheriff ought to return the Extent, and also that he hath delivered the Lands.

Elegit needs not to be returned: Therefore if the Sheriff by Force of an *Elegit*, delivers to the Party the Moiety of the Lands of the Defendant, and does not return the Writ; if now the Plaintiff will bring Action of Debt, *de Novo*, the Defendant may plead in Bar the Execution aforesaid, though the Writ of Execution was not returned. *Earl of Liecester's Case*, 1 *Leon. p.* 280.

The Sheriff returns upon *Elegit*, that the Party had not any Lands, but only within the Liberty of St. *Alban's*, and that *J. R.* Bailiff there, hath the Execution and Return of all Writs, who enquired and returned an Extent by Inquisition, and that the Bailiff delivered the Moiety to the Party, and the Plaintiff by Virtue of the Extent entered.

Per Cur. 1. The Bailiff may make such Inquisition by Warrant from the Sheriff. 2. When a Jury by the Inquisition find the Seisin and Value of the Land, the Jury shall extend all the Land; and the Bailiff in a Franchize, and the Sheriff where there is none, shall deliver the Moieties, and not the Jury. *Cro. Car.* 317. *Sparrow and Matterfoch.*

On an *Elegit*, averring no Goods were seized, it hath been held, no *Scire Facias* lieth; but upon a *Fieri facias*, bare Seizure is an Execution. 2 *Keb.* 789. 821. *Smith and Mildmay.*

An Extent upon a *Statute Merchant*. The Plaintiff put the Conisee in Possession of Parcel of a House and Lands, and suffered the Conisor to continue in the Rest of the House; by reason whereof the Conisor kept the Possession of the whole, and held the Conisee out. The Conisee, to the Intent he might have a full [illegible] Possession of the whole, caused the Sheriff that he did not return the Writ of *Extent*, on which it is entered on the Roll, *Quod Vicecomes nihil inde fecit nec misit breve*: An *Alias brevve extendi facias* may well be awarded. And the Sheriff cannot return, that the Land was formerly extended by the old Sheriff, because by the Entry upon the Roll it appears, that no Execution was done; but if the Entry be not, the same is an Execution for the Party, tho' it be not returned. 2 *Leon.* 12. *N.* 20. *Colesbill and Hastings.*

If more than a Moiety be delivered upon the *Elegit*, 'tis for the Whole. *Siderf. p.* 91.

The Sheriff may extend or sell a Lease, and this Sale shall bind the King, because but a Chattel, and no Coven in the [illegible] 8 *Rep.* *Sir George Fleetwood's Case.*

Where the Sheriff extends a Mannor by the Name of Acres, Land, Meadow, Wood, no Advowſon p. ſſeth.

If one extends a *Statute Staple* at the Suit of *A.* the Sheriff extends the Lands, and takes the Goods, and ſeizeth them into the Hands of the King; but does not make Livery; and after a *Writ of Prerogative* of the King iſſues out of the Exchequer, and commands the Sheriff to levy the King's Debt of *B. viz. One Hundred Pounds*, of the Goods of the Debtor; and if he had not ſufficient, then to extend the Lands; and this is delivered to the Sheriff after the firſt *Writ of Extent*, but that was not returned. The Sheriff ought in this Caſe to execute the *Extent* for the King's Debt, becauſe the Property of the Goods and Lands were not in *A.* before they were delivered to him by *Liberate*; and the Goods being ſeized into the Hands of the King for the Uſe of the Party, were privileged from all other Executions but that of the King. 2 *Roll. Ab.* 158. *Dyer* 67.

Where the Officer without any Warrant or Authority, ſhall levy any Duty for the King, and after ſhall account for the ſame in the Exchequer, or otherwiſe pay the ſame to the King's Uſe, there the Officer ſeemeth chargeable but as a Treſpaſſer; but if he ſhall convert the ſame to his own proper Uſe, it is Felony.

N. B. When Lands are extended and the Debtor in Priſon, the Creditor out of the Profits of the Lands is to find the Debtor Bread and Water in Priſon.

By Virtue of the Writ on the *Statute Merchant*, the Sheriff may deliver the Lands and Goods preſently, upon the *Extent*, to the Party. But by the Writ on the *Statute Staple*, or Recognizance in the Nature of it, he is to extend the Lands and Goods, and to ſeize them into the Hands of the King; but not to deliver them to the Party without a *Liberate*.

The Proceedings in a *Statute Merchant*, is a *Capias*, and if the Sheriff thereupon return a *Cepi Corpus*, then he ſhall remain in Priſon a Quarter of a Year, within which Time he may ſell his Goods and Lands to pay the Debts, and this by the expreſs Words of the *Statute* of 15 *H.* 7. But if the Sheriff return, *Non eſt inventus*, Execution ſhall be granted of his Lands and Goods.

But in a *Statute Staple* and Recognizance, the firſt Proceſs is to take his Body, Lands and Goods, all in one Writ, which is a more ſpeedy Remedy than the *Statute Merchant*.

Now on a *Statute Staple* and Recognizance, the Writ of Execution upon the Return of the Coniſor dead, is to extend the Lands, *nec non Catalla*, which were of the Coniſor at the Time of his Death: And this is the conſtant Courſe, as appears by the Records of *Extents*, which are in the Rolls.

On *Extent* of a *Statute Merchant*, the Sheriff returns, That the Body cannot be found, and that he had extended the Lands, and delivered them to the Plaintiff. *Reg.* 146.

Extent

Extent on a *Statute Merchant* iſſued out againſt *R.* the Coniſor, the Sheriff returned, That the Coniſor, was poſſeſt of divers Goods, and ſeized of Lands, which he delivered to the Coniſee, and that the Coniſee accepted the Land. But becauſe the Sheriff did not return, That he had not any other Lands, Goods or Chattels, it was adjudged inſufficient, and a new Writ awarded; though ſome held it was well enough in the Caſe of a Coniſor, but not in the Caſe of a Purchaſer. 1 *Brownl.* 37. *Fletcher and Robinſon.* If the Coniſor be returned dead, Execution ſhall be granted againſt the Executor, without *Scire facias* to have Execution of his Goods, ſo againſt the Heir and Tertenants.

If the Sheriff does not return the *Capias*, or return *Tarde*, or that he directed it to a Bailiff of a Franchiſe, he ſhall be puniſhed, and yield Damages to the Party grieved, according to the *Statute de Mercatoribus. W.* 2. *c.* 39.

Two Inquiſitions taken at ſeveral Days by ſeveral Juries, upon one *Statute Merchant*, were adjudged naught. One was taken of the Lands, the other for the Lands and Goods. 1 *Brownl.* 38.

If another had theſe Lands in Execution by *Elegit*, or is in by Deſcent; in ſuch Caſes the Sheriff ſhall return the ſpecial Matter, *i. e.* In the firſt Caſe, That he hath extended the Land of the Defendant, but he cannot deliver the ſame to the Plaintiff, for that another had the ſame in *Extent* before.

The Sheriff having an *Extent* upon a *Statute*, may gather the Goods all into one Place, to be viewed and appraiſed by the Jurors, and he is not a Treſpaſſer. *Mo.* 563.

Of Returns on Scire Facias.

SCIRE FACIAS is a judicial Writ directed to the Sheriff, *&c.* and is uſually to warn a Man to come and ſhew Cauſe to the Court, why Execution of a Judgment ſhall not be done.

Coniſor in a Recognizance dies, *Scire Facias* goes againſt his Executors and Heirs of his Land, *&c.* The Sheriff returns, That he had no Executor, *& ſcire feci W. H. Filio & Hæredi predict. M. (le Coniſor)* This Return agrees not with the Writ, yet it may be good. 3 *Rep.* 15. *Sir William Herbert's Caſe.*

Scire Facias on a Recognizance in Chancery againſt *D.* who was returned dead: Then a ſecond *Scire Facias* iſſued againſt the Heir of *D.* and againſt the Tenants of the Land of *D.* which he had *Tempore Recognitionis, vel poſtea.* The Sheriff returned *D.* Tertenant, and omitted to return any Thing againſt the Heir. This is a Non-Return of the Sheriff, and not a Miſ-Return, and is not aided by any of the Statutes.

The Tenant without the Heir ought not to be charged: Therefore the Heir ought to be ſummoned; for the Heir may have a Releaſe to plead, or other Matter to bar the Execution. Or if the

Heir be within Age, the Parol ſhall demur, and the Tertenant ſhall have the the Advantage thereof: And a new *Scire Facias* iſſued *ad informand. Curiam*, and the Return was, That he had not any Lands in his Bailiwick that deſcended to his Heir, nor any Heir within his Bailiwick, and good enough; though it had been better if he had returned who was Heir, and that he was warned, or that there was not any Heir within the ſaid County. *Cro. Car.* 295. *Eyer & Taunton.*

The Writ commands the Sheriff to give Notice to the Tenants of the Land in Fee-ſimple, and the Sheriff returns not, *That thoſe which he had returned were Tenants of the Land in Fee-ſimple*; and ſo the Words of the Writ are not anſwered. t *Brownl. Rep.* 145, 146.

The Sheriff may return Twenty-four Tertenants of the Whole, and every Tenant may plead in Diſcharge of himſelf, or he may return, That each is Tertenant of ſo many Acres.

Of Reſcous, *and in what Caſe Action lies againſt the Sheriff for a* Reſcous.

IF in the Arreſting, the Party is reſcued being on Execution or mean Proceſs, no Action for this lies againſt the Sheriff. And if the Priſoner be arreſted on mean Proceſs, and as he is bringing to the Goal is reſcued, no Action lies againſt the Sheriff, for the Sheriff cannot be ſuppoſed to have the *Poſſe Comitatus* upon every mean Proceſs; *aliter* if it be upon Execution, there *Caveat Vicecomes*. But if he be arreſted upon mean Proceſs, and brought to the Goal, then its no good Return for him to ſay, *The Goal was broken, and he was taken away from him.*

The Reſcuer ſhall be doubly puniſhed by the King, and by the Party, or Sheriff; he ſhall be fined to the King, and Attachment ſhall iſſue out againſt him; and the Party ſhall have a Writ of *Reſcous* againſt him, and ſo ſhall the Sheriff too. 2 *Keb.* 340. *Hopping's Caſe. Cro. Car.* 109. *Myn and Coughton's Caſe.*

No *Reſcous* can be on a *Scire Facias* for Goods, but in ſuch Caſe the Party ſhall have Action on the Caſe. And a Reſcous lies only on a *Capias*, which lies againſt the Perſon, for which *Vide Cro. Car. Sly & Finch's* Caſe; which is as follows:

Scire Facias was brought againſt *Finch* Sheriff of *Glouceſter*, for that the Plaintiff having brought a *Fieri Facias* directed to *Finch*, he returned, That he had taken Goods into his Hands to the Value of *Seventy Two Pounds*, and had ſold as much of them as amounted to *Eleven Pounds*, and the Reſidue remained *pro defectu emptorum*, till ſuch a Day, at which Time he putting them to Sale, they were reſcued from him. Upon which Return the *Scire facias* was brought to ſhew Cauſe why the remaining Debt ſhould not be levied on his Goods. To this the Defendant demurs. All agreed that the Return is not good. And *per Curiam* he is chargeable by this Return. If he

he had returned only, *quod remanent pro defectu emptorum*, therein he had done his Office; and in such Case, on the Election of a new Sheriff, a Writ shall issue to sell the Goods, and to deliver the Money to the new Sheriff. But when he saith further, That they were rescued out of his Hands, therein he hath misdemeaned himself. And by *Dodderige*, the Sheriff hath charged himself by this Return, as well in Regard of his Misdemeanor, as also that he hath his Remedy against the Rescousers; nor can the Court award a Writ of *Venditioni exponas*, because it's against his own Return.

By *Hutton*, upon mean Process the Sheriff never had Remedy for the Rescous, but he shall return the Rescous. And upon Execution he shall not return the Rescous, but have an Action, and the Party is not prejudiced; for he shall have an Action against the Sheriff, though in Point of Law the Party is liable.

Of ESCAPES.

ESCAPE is, where one Man that is arrested, or imprisoned on the Arrest, comes to his Liberty before he is delivered by Order of Law.

If a Man in Execution be suffered to go at Large out of the County, or within the County, or within the Town where the Prison is, and though it be upon Bail, it is an Escape; for he ought to be kept *in arcta Custodia*. *Plowd.* 36 *b. Plat's Case.*

If a Sheriff remove Prisoners without Command, for Ease, Delight or Benefit of them, it is an Escape. To suffer a Prisoner to walk in the Town, though with a Keeper, it is an Escape, unless it be by a *Habeas Corpus* from a Court of Justice.

Upon this Point of the Prisoners going at Large, there is a Diversity to be well heeded, *viz.* Between One in *Execution*, and One only taken by a *Capias*; for when the Sheriff is commanded by Writ to have the Body at *Westminster* such a Day, he may be Keeper of him in another County, or in what Place he please.

But if one in Execution at the Suit of the King, or of a common Person, and (by the Licence of the Lord Chancellor, or Treasurer) be suffered to go into the Country with a Keeper, to gather Money, the sooner to pay the King; this is an Escape; for the King himself cannot license a Man in Execution to go so at Large. *Dyer* 12 & 13 *Eliz.* 297.

If one be in Execution at the Suit of the King in the *Fleet*, the Warden may suffer him to go to his Council with his Keeper, but not so in the Case of a common Person.

A Man is in Execution for Debt, and a Woman being Warden of the *Fleet*, marries the Prisoner: This is an Escape, for that he cannot be his own Prisoner, nor a Prisoner to his Wife.

It was referred by the King to the Judges. *Trin.* 12 *Car.* 1. Whether in regard of the Plague, *Habeas Corpora* may be granted for

for the Priſoners in Execution, in the Priſons of the *King's Bench* and *Fleet*, upon Judgment in the *King's Bench* and *Exchequer?* And it was certified by them to the Lord Keeper, That if upon *Habeas Corpus* granted, the Goaler ſuffers the Priſoners to go at large, that this is an Eſcape, and that no *Habeas Corpus* ought to be by Law for that Purpoſe. Which the King well approved of.

The Sheriff delivers a Priſoner upon a void *Audita Querila*. This is no Eſcape, and there the Priſoner may be taken again in Execution. But if a *Scire Facias* had in it the Words of *Audita Querila*, it's againſt Law, and is an Eſcape. *Mo.* 344. *N.* 479. *Collin's Caſe.* 1 *Roll. Rep.* 383.

If a Man recover againſt *Baron* and *Feme*, and take both in Execution, and the Wife is ſuffered to eſcape; though the Huſband continues in Priſon, yet Debt lies in this Eſcape againſt the Sheriff; in which all the Debt ſhall be recovered. 2 *Bulſt.* 320. 1 *Roll. Abr.* 810.

But if the Sheriff takes a Man in Execution, as on a *Capias ad ſatisfaciend*, and he is reſcued before he brings him into Priſon, tho' he returns the Reſcous, yet this ſhall not excuſe him, for that he is to take the *Poſſe Comitatus*, and the Party cannot have a new Execution. *Proby & Lumly.*

If the Priſon be broken by the King's Enemies, this ſhall excuſe the Sheriff from Eſcape, for the Goaler could not reſiſt them; and he can have no Remedy over. But if a Priſon be broken by Rebels and Traitors within the Realm, ſo as the Priſoners eſcape, this ſhall not excuſe the Eſcape; for the Goaler may have his Remedy over.

But if Priſoners eſcape by ſudden Fire, this ſhall excuſe the Sheriff, for it is the Act of God. *Dyer Pl.* 66.

If a Man upon a *Capias ad ſatisfaciend.* be taken in Execution, and after reſcues himſelf from the Sheriff, and eſcapes, the Plaintiff may have a new *Capias* againſt him, and take him again, the firſt Writ not being returned or filed, nor any Record made of the Award; and this on a *Scire Facias* after a Year; becauſe he ſhall not take Advantage of his own Wrong. 1 *Roll. Abr.* 904. *Mounſon & Clayton.*

So if one in Execution eſcape, and the Sheriff makes freſh Purſuit after him, and takes him again, although it be a long Time after and in another County, yet he ſhall be in Execution, becauſe he ſhall not take Advantage of his own Wrong.

A Priſoner eſcapes, the Goaler makes freſh Purſuit, and before he hath taken him the Priſoner dies: This is the Act of God; and yet becauſe it was once an Eſcape, the Action of Eſcape lies againſt the Goaler. *Popb. p.* 186.

Upon Eſcape, the Sheriff may not in freſh Purſuit, enter into the Houſe of *J. N.* and break the Cheſt of *J. D.* to ſearch for the Priſoner. 2 *Roll Abridg.* 564.

All Priſoners are ſuch, either by Matter of Record or Matter of Fact.

By

By Matter of Record, when one preſent in Court is committed to Priſon by the Court. There, if the Goaler have him not ready, it's an Eſcape without more Enquiry (unleſs he has reaſonable Excuſe) and the Judges will ſet the Fines preſently.

By Matter of Fact a Man is a Priſoner when he is arreſted by the Sheriff, Bailiff, Conſtable, *&c.* and eſcapes, there the Jury ought to find it, and preſent it before the Juſtices, and then the Juſtices aſſeſs the Fine.

Upon a *Capias* for Felony, the Sheriff returns *Cepi Corpus*, and hath not the Body at the Day, the Sheriff was amerced *Fifty Pounds* for the Eſcape.

By ſome it is Felony in the Sheriff to ſuffer a Priſoner to eſcape. *Vid. Stat. de frang. Priſonam.* If the Goaler ſuffer the Eſcape, it's Felony in him, and a Forfeiture of his Office. 6 *H.* 7. 11. 10 *H.* 7.

If a Priſoner in the Goal attempts to eſcape, and having broke his Irons, ſtrike the Goaler (coming in the Night to his Priſoner) and the Goaler ſlayeth him, it is no Felony. 22 *Aſſ.* 35.

The Stat. 4 *Ed.* 1. *de frang. Priſonam*, mitigates the Rigour of the Common Law; for before that Statute, the breaking of Priſon was Felony in every Caſe; but now it is not Felony, but where the Party was committed to Priſon for Felony. 2 *Leon. p.* 161. *Holcroft's Caſe*

What Acts of the Sheriff ſhall amount to Falſe Impriſonment.

IF a Bailiff arreſt one after the Writ is returned, Falſe Impriſonment lies.

A Precept to arreſt from an illegal Court, will not ſave an Officer from an Action of falſe Impriſonment. *Hob. p.* 61.

Treſpaſs, *&c.* will not lie againſt the Sheriff for executing Proceſs, though it was erroneous.

Sheriff aſks another if his Name be *J. H.*? He ſays, Yes: On which he arreſts him by a Warrant which he had to arreſt *J. H.* yet Falſe Impriſonment lies, if he be not the right Perſon. *Mo.* 457.

One had a *Capias ad ſatisfaciend.* delivered to the Sheriff, who made a Warrant to his Bailiff to do Execution. Afterwards a *Superſedeas* was awarded, and delivered by the Sheriff, the Defendant being his Bailiff, who eſcaped, and the Defendant re-took him, and detained him in Execution. The ſecond is a falſe Impriſonment: For although the firſt Impriſonment was legal (he having taken him by Virtue of a Warrant made before the *Superſedeas* awarded and delivered) he not having Notice of a *Superſedeas*, was excuſable. But the Detainment in Priſon was afterwards a Wrong. For he being the Sheriff's Servant, and by Intendment having Time given him ſufficient to have Notice from his Maſter, ought at his Peril to take Notice thereof. *Cro. El.* 918.

If

If a Man be in the Hands of the Under-Sheriff in Execution for Debt, and the Debtee tells the Sheriff, That the Priſoner has ſatisfied him; If the Sheriff releaſe not the Priſoner, it's falſe Impriſonment, as in the Caſe reported in *Bulſt.* 3. 96, 97. *viz.*

A. in Execution at the Suit of *B.* afterwards *B.* comes to the Sheriff, and tells him, He had made and ſealed a Releaſe of the Debt to the Priſoner, and that therefore he ſhould deliver him out of Execution. The Sheriff does not ſo, but keeps him ſtill in Priſon. *B.* brings Action of falſe Impriſonment. It lies.

By *Coke*, Detinure after this by the Space of one Hour, is falſe Impriſonment.

Remedy againſt SHERIFFS, &c.

IF the Sheriff in his Court quaſh an *Eſſoyn* erroneouſly, without the Conſent of the Suitors, Action on the Caſe lies againſt him. 26 *Aſſize* 45.

If a *Diſtringas* iſſues to the Sheriff to diſtrain the Defendant in the Action, by all his Lands and Chattels, *&c.* and the Sheriff returns *Too ſmall Iſſues*, although an Averment lies by the Stat. *W.* 2. *c.* 44. yet the Plaintiff may well have his Action on the Caſe againſt the Sheriff, becauſe it appears by the Words of the Statute, that this is a falſe Return. The Statute ordains, That the King ſhall have the Iſſues, but reſtrains not any Remedy that the Plaintiff had at Common Law. 3 *Car.* 1.

If the Sheriff embezzel an *Exigent* delivered to him at my Suit, Action on the Caſe lies *tam pro Dom. Rege, quam pro meipſo*, 14 *Aſſize* 12.

Action on the Caſe lies againſt the Sheriff, for that he levied ſuch a Sum of Money on a *Fieri facias*, at the Suit of the Plaintiff, and brought not the Money into Court at the Day of the Return.

It may not be improper here to inſert a Bail-Bond, and an Aſſignment of it by the Sheriff to the Plaintiff, purſuant to the Statute 4 *&* 5 *Ann.*

The Form of a *Bail-Bond* to the Sheriff.

KNOW *all Men by theſe Preſents, That we* C. D. *of*, &c. E. F. *of*, &c. *and* J. D. *are held and firmly bound to* G. H. *Eſq; Sheriff of the County aforeſaid, in* Forty Pounds *of good and lawful Money of* Great Britain, *to be paid to the ſaid Sheriff, or to his certain Attorney, his Executors, Adminiſtrators, or Aſſigns; for which Payment to be well and truly made, we bind ourſelves, and every of us by himſelf for and in the whole, our Heirs, Executors, and Adminiſtrators, and of every of us, firmly by theſe Preſents, ſealed with our Seals. Dated the—— Day of*, &c. *in the Year of the Reign of the Lord* George *the Second, by the Grace of* GOD, *of* Great-Britain, France *and* Ireland, *King, Defender of the Faith*, &c. *the Twenty-third, and in the Year of our Lord* 1749.

The

THE Condition of this Obligation is such, That if the above-bound C. D. do appear before the Justices of our Lord the King at Westminster, *on the Day, &c. to answer unto* A. B. *Gentleman, of a Plea of Trespass, and also in a Plea of Debt for* Twenty Pounds *upon Demand; then this present Obligation to be void and of none Effect, or else to stand and remain in full Force and Virtue.*

Form of the Sheriff's *Assignment* thereon.

KNOW all Men by these Presents, That I G. H. *Esq; the Sheriff within named, do hereby for myself, my Executors and Administrators, assign and set over unto* A. B. *(the Plaintiff named in the Condition of the within written Bond) his Executors and Administrators, the within mentioned Bond, pursuant to an Act of Parliament for the Amendment of the Law and the better Advancement of Justice.* In Witness *whereof I have hereunto set my Hand and Seal, this Day of, &c. in the Year of our Lord One Thousand Seven Hundred and Forty-nine.*

The Sheriff's Office about Partition.

TO execute a Writ of Partition, the High-Sheriff must be upon the Land in Person: And if Exception be taken at the Bar before the Writ be returned and filed, a new Writ shall be awarded; but if the Sheriff in such Case returneth, *That he was there in proper Person,* and this Return be received, and the Writ filed, the Party cannot aver against the Return, nor shall have Error. *Cro. El.* 9. *Clay's* Case.

The Office of a Goaler, and concerning Escapes.

HAVING here before in this Treatise upon several Emergencies, occasion to mention the Goalers and Keepers of Prisons, and the Houses of Correction, which as they be necessary Officers in the Commonwealth, so is their Office full of Danger and Trouble: For the Keepers of Goals give great Security to the Sheriff for his Indemnity, for that he is in Law charged with all such Prisoners committed to his Charge. To the End therefore that such as are of a mild and gentle Nature may not be abused, and may know what they may lawfully do; and that such as are of a more rigid and cruel Nature may likewise know what they ought not to do: I think it convenient to say somewhat more (though it will not be much) concerning their Duty and Office; which is,

FIRST, that they must receive all Offenders sent unto them by *Mittimus*, or other Warrant from any of the Justices of the Peace of the County, or brought unto them by any Constable or other known Officer, but from any other they are not bound to receive them, nor take them in Charge.

But when they have any Person in actual Possession, they shall be answerable for their Escapes, according to the Quality of the Offence.

And

And Mr. *Dalton* tells us, That the Lord Chief Juſtice *Popham* did cauſe one *Staver* (a Goaler at *Cambridge*) to be indicted, arraigned, and hang'd, for an Eſcape of a Felon ſuffered by him.

But we muſt preſume that this was ſome notorious Felon, and that the Offence was very Capital, and that the Eſcape was voluntary, otherwiſe the Judgment had been over ſevere; for let a Goaler do what he can, and uſe all poſſible Induſtry that can be required or imagined; yet ſuch Art may be uſed by a Priſoner, and ſuch Helps and Aſſiſtances may be given him, that he may make an Eſcape tho' he be laden with Irons, which may be taken off by Devices.

This Difference therefore is made, *viz.* If the Eſcape were by Default (which we call a negligent Eſcape) the Judges and Juſtices, &c. may charge the Goaler, if they will, or the Sheriff upon the Statute. 14 *Ed.* 3. *cap.* 9. and the Judges do in theſe Caſes make as favourable an Expoſition as with Conveniency and Safety they may.

Or elſe voluntary, which two ſorts of Eſcapes are thus differenced and defined.

A negligent Eſcape, according to Mr. *Stamford* in his Pleas of the Crown, *fol.* 33. 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.

And the ſame learned Man makes this Difference, that if the Eſcape be of a Priſoner attainted, the Fine ſhall be *One Hundred Pounds*; but if only indicted, *One Hundred Shillings*, and where taken upon Suſpicion only, ſeems diſpenſable.

A voluntary Eſcape is where one doth arreſt, or hath impriſoned another for Felony or other Offence, and afterwards voluntarily let him go at Liberty where he will.

And if the Eſcape be willful in the Goaler (which is Felony in him) the Sheriff ſhall not be bound to anſwer to the Felony, but may be fined to the Value of his Goods, *Stamf. pl. Coron.*

And in Caſe of voluntary Eſcape, if the Arreſt or Impriſonment were for *Treaſon*, it ſhall be adjudged Treaſon in him, which did voluntarily ſuffer the Priſoner to eſcape, and if it were *Felony*, then it ſhall be adjudged Felony; and if for *Treſpaſs*, it ſhall be adjudged Treſpaſs.

In Caſe of Treſpaſs or other Offences whatſoever (being under Treaſon or Felony) there is no Difference whether the Eſcape ſuffered by the Officer be voluntary or negligent, but that the Officer in both Caſes ſhall be fined for the Eſcape according to the Default, by the Diſcretion of thoſe that be Judges thereof.

Queen *Elizabeth* pardoned one who killed another; the Wife of the Man ſlain ſuing an Appeal, was detained in Priſon at her Suit; the

the Goaler after ſuffers the Man-ſlayer voluntarily to go at large, and he made an Eſcape; which in Mr. *Plowden* that famous Lawyer, his Opinion was, Felony in the Goaler, though he was no Felon as to the Queen, in Regard of his Pardon from the Queen.

This I believe is a Caſe known to few Goalers, in Regard whereof I thought good to ſet it down, that knowing it, they may be the more circumſpect when ſuch a Caſe ſhall happen, *Plowd*, 147.

And it is ſaid that a voluntary Eſcape in Felony is no Felony, if the Act done was no Felony at the Time of the Eſcape made: As if one Man ſtrike another and hurt him mortally, whereupon the Conſtable arreſts him that gave the Stroke, and after ſuffers him willingly to eſcape; and after the Man ſo hurt dieth of that Stroke, this Eſcape is no Felony either in the Conſtable or the Priſoner, yet the Conſtable ſhall be fined at the Diſcretion of the Judges.

If a Man be wounded, and the Striker is voluntarily let go at large by the Goaler, and after Death enſueth to the Perſon hurt, yet this is no felonious Eſcape in the Goaler. 11 *H.* 4. *ca.* 12.

The voluntary ſuffering him to eſcape who hath killed another, *ſe defendendo*, or by Miſadventure, or of him that hath committed Petty Larceny, ſeemeth to be no Felony; for that theſe Offences are not Felony of Death, but he that ſuffereth the Eſcape ſhall be fined. *Cromp.* 39. yet there is a Quere, for they that ſuffered, are not a Judge whether it be Felony or not.

If a Juſtice of Peace ſhall ſend for a Felon out of the Goal, and ſhall deliver him without Bail, this ſeemeth to be a voluntary Eſcape, and ſo Felony in the Juſtice.

If the Juſtice of Peace or Sheriff ſhall bail one who is not bailable, this is an Eſcape in Law.

And if one be brought before a Juſtice of Peace for Suſpicion of Felony, and confeſs it, and yet he ſhall ſuffer the Priſoner to go at large without Bail, this is a voluntary Eſcape in the Juſtice.

If a Goaler by *dures* of Impriſonment and Pain, enforce his Priſoner to become an *Approver* (that is an Accuſer of others as Helpers with him in the Felony) this is Felony in the Goaler, although the *Appellee*, or Party accuſed, be acquit, or ſhall die before he be arreſted upon the Appeal.

If a Goaler ſhall only procure his Priſoner to accuſe another of Felony, this is Felony, 18 *Ed.* 3. yet the Statute *Ed.* 3. ſeemeth to extend only where the Goaler ſhall do this by great *Dures*, or Pain.

And if a Priſoner by *Dures* of the Goaler, cometh to an untimely Death, this is Murder in the Goaler; and the Law implieth Malice in reſpect of the Cruelty: And for this Cauſe if any Man dieth in Priſon, the Coroner ought to ſit upon his Body, to enquire whether his Death came by the *Dures* of the Goaler. *Briton, Ca.* 11. *de Priſons, fol.* 18.

If

If it ſhall be further demanded, how Priſoners for Treaſon or any other Offence ought to be uſed in Priſon, the learned *Bracton* will tell you: That laying Men in Chains, was againſt the Law, for that a *Priſon* was a Place to keep, not to puniſh Priſoners. *Lib.* 3. *fol.* 154.

And in another Place he ſaith, when a Priſoner is to be brought before a Judge, he ought not to be brought manacled, tho' ſometimes for fear of eſcaping, they be ſhackled. And *Briton* ſaith, If Felons come in Judgment to anſwer, they ſhall be out of Irons, and all Manner of Bonds, ſo that their Pain ſhall not take away any Manner of Reaſon, nor them conſtrain to anſwer, but at their free Will. *Cap.* 5. *fol.* 14.

And *Flata* ſaith, That albeit it be lawful for the Sheriff to keep Offenders in Priſon, yet not to puniſh them, but to keep them.

And the *Mirror* ſaith, It is an Abuſe that Priſoners be charged with Irons, or put to any Pain before they be attainted. *Ca.* 8. *ſect.* 1.

And whereas in the Eighth Year of the Reign of *Ed.* 2. a Precedent is brought, that a Prieſt was arraigned and put himſelf upon his Country, and ſtood at the Bar in Irons, but by Command of the Judge, he was freed from his Irons. Sir *Ed. Coke*, who voucheth it, ſaith, There is no Difference in Law between a Prieſt and a Layman, as to Irons, and thereupon concludes,

That where the Law requires that a Priſoner ſhould be kept in *Jakon & arcta cuſtodia*, yet that that muſt be without Pain or Torment to the Priſoner.

And Sir *Ed. Coke* (who cites theſe Opinions in the Concluſion of his Diſcourſe of Petty Treaſon) ſaith, That it is againſt *Magna Charta*, *ca.* 29.

And that all the ancient Authors are againſt Pain or Torment to be inflicted upon the Priſoner before his Attainder, nor after, but according to the Judgment, and that there is no Opinion in the Law-Books, or any judicial Record, for the Maintenance of Tortures or Torments.

But how theſe Opinions will ſecure a Goaler againſt his Priſoners (who will venture hard for their Liberty rather than lie in a ſtrait Priſon) becauſe I cannot determine, muſt be left to their Diſcretion, who muſt anſwer for their Eſcapes.

The

The Office and Duty of the Clerk of Aſſize and Clerk of the Peace:

SHEWING,

The Manner and Form of Proceedings at the Aſſizes and General Goal-Delivery, and at the Court of General Quarter-Seſſions of the Peace.

WHEN the Judges ſet out for any County, to hold the Aſſize, the Sheriff ſends his Bailiff to the Edge of the County, to bring them the beſt Way to the Place where the Aſſize is to be held; and before they come there, the Sheriff with his Under-Sheriff and Bailiffs, with their white Staves, and his Livery-Men with their Halberts in their Hands, and attended with the Chief of the Gentry of the County, do wait upon the Judges at the uſual Places, and conduct them to their Lodgings at the Town where the Aſſizes are appointed to be held. When the Judges have repoſed themſelves at their Lodgings, the Sheriffs and Bailiffs with their white Staves, and Livery-Men with their Halberts, two by two, wait on the Judges to Church, where the Miniſters reads Prayers, *&c.* and from thence to the uſual Place, where the Aſſizes or General Goal-Delivery are held.

When the Court is ſet, the Clerk of Aſſize muſt make three Proclamations, and cauſe the Cryer to ſay as follows, *viz.*

O Yes, O Yes, O Yes; My Lords the King's Juſtices do ſtrictly charge and command all Manner of Perſons to keep Silence, and hear the King's Majeſty's Commiſſions of Aſſize and Niſi Prius, *openly read, upon Pain of Impriſonment.*

Which being read, the Clerk muſt ſay, *God ſave the King*, and the Cryer with a loud Voice repeat it after the Clerk.

Then the Clerk delivers a Roll of all the Juſtices of the Peace to the Judge, and then cauſes the Cryer to make Proclamation and ſay, *All Juſtices of the Peace for this County of* H. *anſwer to your Names at the firſt Call, and ſave your Fines.*

Then the Clerk muſt name them as they are returned in the Calender.

When the Juſtices are all called, the Clerk ſhall cauſe the Cryer to make Proclamation and ſay, *All Sheriffs and Coroners of our Sovereign Lord the King, within this County of* H. *anſwer to your Names as you ſhall be called, every Man at the firſt Call, and ſave your Fines.*

Then

Then the Clerk ſhall cauſe the Cryer to call the chief Conſtables, Petty-Conſtables, *&c.* which being done, the Clerk muſt cauſe the Cryer to make Proclamation and ſay, *All Juſtices of the Peace, Sheriffs, Coroners and other Officers, that have taken any Inquiſitions or Recognizances, whereby you have let any Man to Bail, put in your Records thereof forthwith, that my Lords, the King's Juſtices may proceed thereon.*

Then the Goaler muſt give the Clerk of Aſſize an Account what Priſoners have been bailed by any Juſtices of the Peace after they were committed, that the Clerk may call to the Juſtices that bailed them for their Recognizances.

Then muſt the Clerk cauſe the Cryer to make another Proclamation, and ſay,

You good Men that be returned to enquire for our Sovereign Lord the King, and the Body of this County of H. *anſwer to your Names, every Man at the firſt Call, and ſave your Fines.*

If there do not appear enough to make up a Jury, then muſt the Clerk call them over again, *A. B.* Gent. (the Cryer repeating the ſame after him) and if he do not appear, the Sheriff or his Bailiff certifying the Court, upon Oath, that he was ſummoned, and no reaſonable Excuſe appearing to the Court, he muſt be fined. But if any reaſonable Excuſe appear to the Court, the Clerk ſhall mark him, *ſpared.*

If it ſo happen, that a full Jury do not appear at the ſecond Call, the Sheriff muſt return ſome of the Freeholders of the ſame County, that are preſent, or ſuch as he ſhall meet with.

Note, There ought to be at leaſt Thirteen upon a Grand Jury, that there may be a caſting Vote, and there is commonly Fifteen, Seventeen, Nineteen, and ſo from that Number to Twenty three.

Then the Grand Jury muſt be called in order, every Man by his Name, and Addition, as they are returned. When the Jury is full, the Clerk ſhall ſwear them after this Manner: The Foreman by himſelf muſt lay his Right Hand on the Book, and the Clerk ſhall give him the Oath, as followeth, *viz.*

You, as Foreman of this Inqueſt, for the Body of this County of H. *ſhall diligently enquire, and true Preſentment make, of all ſuch Matters and Things as ſhall be given you in Charge. The King's Counſel, your Fellows and your own you ſhall keep ſecret; you ſhall preſent no Man for Hatred, Envy or Malice, neither ſhall you leave any Man unpreſented for Love, Fear, Favour or Affection, or Hope of Reward; but you ſhall preſent Things truly, as they come to your Knowledge, according to the beſt of your Underſtanding.* So help you God.

The reſt of the Grand Jury, by three at a Time, in order, are ſworn as followeth:

The ſame Oath which your Foreman hath promiſed to obſerve and keep on his Part, you, and every one of you do promiſe to obſerve and keep on your Parts. So help you God.

When

When the Grand Jury are all thus ſworn, then the Clerk doth ſay to the Cryer, *Count theſe.* And as the Clerk doth name them, the Cryer ſhall count them. Which being done, the Clerk ſhall ſay, *Good Men and True, ſtand together and hear your Charge.*

Then the Clerk ſhall direct the Cryer to make Proclamation and ſay, *The King's Juſtices do ſtraitly charge and command all Manner of Perſons to keep Silence whilſt the Charge is in giving to the Grand-Jury, upon Pain of Impriſonment.*

Then the Chief Juſtice gives the Charge to the Jury.

Whilſt the Charge is giving, the Clerk ſhall file the Recognizances and figure them in order to proſecute, and thoſe to anſwer upon another File, and the Informations and Examinations upon another File.

When the Charge is given, two Conſtables are ordered to attend upon the Grand Jury.

Then the Clerk ſhall order the Cryer to make another Proclamation, and ſay, *All Manner of Perſons that are bound by Recognizance to proſecute, and prefer any Bills of Indictment againſt any Priſoners, or others, let them come forth and proſecute, or elſe they ſhall forfeit their Recognizances.*

When any Perſons are to give Evidence to the Grand Jury, the Clerk ſhall ſwear them after this Manner:

The Evidence which you ſhall give to the Grand Inqueſt, ſhall be the Truth, the whole Truth, and nothing but the Truth. So help you God.

And if upon the Evidence given, the Grand Jury have Cauſe to find an Indictment, they write on the back Side thereof, *Billa vera*; but if they have not ſufficient Evidence to find the Indictment, they write on the Back Side thereof, *Ignoramus.*

When the Court riſes, the Clerk directs the Cryer to make three Proclamations, and ſay, *All Manner of Perſons that have appeared here this Day before the King's Juſtices, at theſe Aſſizes and General Goal-Delivery, may take their Eaſe at preſent, and attend here again at Two o'Clock in the Afternoon* (or To-morrow in the Forenoon). And then he ſays, *God ſave the King.*

When the Court ſits in the Afternoon (or the next Morning) the Clerk ſhall cauſe the Cryer to make three Proclamations, and call the Court after this Manner.

All Manner of Perſons, who are adjourned over to this Hour, and have any Thing here to do before my Lords the King's Juſtices of Aſſize and General Goal-Delivery, let them now draw near and give their Attendance, and they ſhall be heard.

Then (if the Court ſee Cauſe) they ſend for the Grand Jury, and when they appear, the Clerk ſhall call them by their Names, and then aſk them, if they be agreed of any Bills of Indictments, or Preſentments? If they ſay, *Yea*, the Clerk ſhall bid them preſent them to the Court, and upon the Delivery of them, the Clerk ſhall ſay,

say, Thefe Indictments or Presentments you do find, and are content the Court shall put the Presentments into Form, altering no Matter of Substance? Then the Grand Jury shall say, *Yea*: And so they shall go together again. Then the Clerk out of Respect to them, shall bid the Constables to *make Way for the Gentlemen of the Grand Inquest.*

Then the Cryer makes Proclamation again, and shall say, *My Lords the King's Justices do straitly charge and command all Persons to keep Silence, for now they will proceed to the Pleas of the Crown, and the Arraignment of Prisoners upon Life and Death. And all Persons that are bound by Recognizance to give Evidence against any Prisoner that shall be at the Bar, draw near and give your Evidence, upon Pain of forfeiting your Recognizances.*

If any Prisoners be let to Bail, and not in Prison, then the Clerk shall cause the Cryer to call him on this Manner.

A. B. *of the Parish of* C. *Labourer, come forth, save thee and thy Bail, or else thou forfeitest thy Recognizance.* If he appear not, then call the Sureties on this Manner; D. E. *and* E. F. *bring forth* A. B. *whom you undertook to have here this Day, or else you forfeit your Recognizance.*

If he appears not, then the Clerk passeth by that Indictment, and calleth to the Goaler to set forth the Prisoner named in the next Indictment. And when he is at the Bar, the Clerk saith unto him,

A. B. *Hold up thy Hand.* Which done, he then shall say, *Thou standest here indicted by the Name of* A. B. *of*, &c. *for that thou*, &c. (And so read all the Indictment) And then ask him, *What sayest thou? Art thou guilty of this Felony whereof thou standest indicted, or not guilty?* If he saith, *Not-guilty*, the Clerk shall say, *Culprest*, and then shall ask him, *How wilt thou be tried?* If he say, *By God and the Country*, the Clerk shall say, *God send thee a good Deliverance*; and shall write in the Indictment, *Po Se.*

If the Prisoner upon his Arraignment shall confess his Fact, the Clerk shall write over his Head in the Indictment *(Cogn.)* and so he is set by till the Time of giving Judgment.

And if the Prisoner upon his Arraignment will not confess the Felony, whereof he stands indicted, nor plead *Not-guilty* thereunto, but stand mute; or otherwise will plead such Matter, as shall be no direct Answer to the Offence: In these Cases he shall be put to his Pennance for contemning of the Law, and refusing the ordinary Trial devised by the Law, and the Clerk shall write over his Head in the Indictment, *Stat Mutus*, and he must be set by till Judgment be given, unless he will plead in the mean Time, *Guilty*, or else put himself upon his Country.

Upon the Prisoners pleading *Not-guilty*, and putting himself upon the Country, the Cryer, by Direction of the Clerk, shall call the Petty Jury thus;

You good Men that are returned to enquire between our Sovereign Lord the King, and the Priſoner at the Bar, anſwer to your Names, every Man at the firſt Call, upon Pain and Peril that ſhall fall thereon.

And then he ſhall call every one of them in order by his Name.

The Jury appearing, the Clerk ſays, *You the Priſoner at the Bar, hear what is ſaid unto you: Theſe good Men that were laſt called, and do now appear, are thoſe that ſhall paſs between our Sovereign Lord the King, and you upon your Life and Death. If therefore thou wilt challenge them, or any of them, thou mayeſt challenge them as they come to the Book to be ſworn, before they are ſworn, and thou ſhalt be heard.*

If the Priſoner be arraigned for *High-Treaſon*, he may challenge peremptorily, in Favour of his Life, Thirty-five, without ſhewing Cauſe; but if he be arraigned for *Pettit-Treaſon, Murder, Felony*, he cannot challenge peremptorily above Twenty; but if he ſhall challenge above Twenty, and under Thirty-ſix, he ſhall not forfeit his Goods and Chattels.

Then the Clerk ſhall direct the Cryer to make Proclamation, and ſay,

If any Man can inform the King's Juſtices, or the King's Attorney, or this Inqueſt now to be taken, between our Sovereign Lord the King and the Priſoner at the Bar, of any Treaſon, Murder, Felony, or other Miſdemeanor, committed or done by the Priſoner at the Bar, let them come forth and they ſhall be heard; for the Priſoner ſtands now at the Bar upon his Deliverance, And all others that are bound by Recognizances, to give any Evidence againſt the Priſoner at the Bar, let them come forth and give their Evidence, or elſe they forfeit their Recognizances.

Then muſt the Clerk call the Jury to be ſworn, every Man ſeverally, and bid every one look upon the Priſoner, and ſwear them ſeverally on this Manner:

You ſhall well and truly try, and true Deliverance make, between our Sovereign Lord the King, and the Priſoner at the Bar, whom you have in Charge, and a true Verdict ſhall give, according to your Evidence. So help you God.

When all are ſworn, the Clerk ſhall ſay to the Cryer, *Count theſe*; and then he calls every one of the Jury over by their Names, and the Cryer counts them. That done, the Clerk muſt aſk them, *If they be all ſworn?* If they ſay, *Yea*; then he muſt call to the Priſoner, and bid him, *Hold up his Hand*; and then ſay to the Jury, *Look upon the Priſoner, you that be ſworn, and hearken to his Cauſe. You ſhall underſtand, that he ſtands indicted by the Name of* A. B. &c. (as in the Indictment) *for that he*, &c. (and reads the Indictment.) That done, the Clerk ſhall ſay, *Upon this Indictment he hath been arraigned, and upon his Arraignment he hath pleaded* Not-guilty, *and upon his Trial hath put himſelf upon God and the Country, which Country you are: So that your Charge is to enquire, whether he be guilty of this Felony whereof he ſtands indicted, or not guilty. If you find him guilty, you ſhall enquire*

what Lands, Tenements, Goods or Chattels he had at the Time of the Felony committed, or at any Time ſince. If you find him Not-guilty, *then you ſhall enquire if he did fly for it, or not. If you find that he did fly for it, then you ſhall enquire what Goods and Chattels he had at the Time that he did ſo fly for it, or at any Time ſince. If you find him not guilty, nor that he did fly for it, you ſhall ſay ſo, and no more. And hear your Evidence.*

Then muſt the Clerk direct the Cryer to call the Witneſſes. That being done, and the Witneſſes for the King do appear, the Clerk ſhall bid them lay their Right Hands upon the Book, and give them this Oath, viz.

The Evidence that you, and every of you, ſhall give to this Inqueſt againſt A. B. *the Priſoner at the Bar, ſhall be the Truth, the whole Truth, and nothing but the Truth.* So help you God.

When all the Witneſſes for the King have been heard, then if the Priſoner deſires, that any Witneſſes ſhall be heard for him, they muſt be called alſo, but they ſhall ſpeak without Oath, unleſs the Fact be under Felony, or that ſome Statute direct the ſame.

After the Jury have heard their Evidence, and the Judge has ſummed up the ſame to them, the Clerk ſhall ſwear a Conſtable in this Manner:

You ſhall well and truly keep every Perſon ſworn of this Jury together, in ſome convenient Room, without Meat, Drink, Fire, Candle or Lodging; and you ſhall not ſuffer any Perſon whatſoever to ſpeak to them, or any of them; neither ſhall you your ſelf ſpeak to them, until ſuch Time as they be agreed of their Verdict, unleſs it be to aſk them, if they be agreed of their Verdict. So help you God.

Then the Conſtable attends the Jury to ſome convenient Place, where they may conſult of their Verdict, and continue at the Door till they be all agreed.

When they have agreed on their Verdict, they return to the Court, and the Clerk calls them over by their Names, and aſks them, *If they be all agreed of their Verdict?* If they ſay, *Yea*; he aſks, *Who ſhall ſay for them?* They ſay, *The Foreman.* Then he calls the Priſoner to the Bar, and bids him hold up his Hand. Then he ſays to the Jury, *Look upon the Priſoner, you that be ſworn; What ſay you, Is he guilty of the Felony whereof he now ſtands indicted, or not guilty?* If they ſay, *Guilty*, Then the Clerk aſks them, What Lands or Tenements, Goods or Chattels, he had at the Time of the Felony committed, or at any Time ſince: If the Jury find any, then the Goods muſt be recorded. But their common Anſwer is, *None to our Knowledge.* Then the *Clerk* ſaith, *Look to him, Goaler.*

If the Jury ſay, *Not-guilty*, then the Clerk muſt ſay to the Priſoner, *Down upon your Knees and ſay, God ſave the King and this honourable Bench.*

Whe

When the Clerk has entered their Verdict, he muſt ſay to the Jury, *Gentlemen, Hearken to your Verdict as the Court has recorded it.* And then reads it to them in this Manner: *You ſay that* A. B. *is guilty of the Felony whereof he ſtands indicted. And ſo you ſay all.*

When the Judge is ready to give Judgment, the Clerk of Aſſize cauſeth the Goaler to ſet the Priſoner found guilty to the Bar, and ſaith unto him;

A. B. *Thou may'ſt remember, that before this thou haſt been indicted for this Felony by thee done and committed: Thou haſt been arraigned, and pleaded not guilty; and for thy Tryal thou haſt put thy ſelf upon God and thy Country, which Country hath found thee guilty; What can'ſt thou ſay for thy ſelf, why, according to the Verdict paſs'd againſt thee, thou ſhouldeſt not have Judgment to ſuffer Death? What ſayeſt thou,* A. B.

Then if he prays his Clergy, and may have it by Law, the Ordinary muſt be called to ſhew him the Book, and when he has ſhewed it to him, the Clerk muſt ſay, *Legit ut Clericus, vel non.* If the Ordinary ſays, *Legit*, then the Form of the Entry muſt be, *Et Tradito ei Libro, Legit ut Clericus*; and then muſt the Priſoner be burned in the Hand. But if the Ordinary ſaith, *Non legit ut Clericus*, the Priſoner muſt be executed.

The Court are the proper Judges of the Criminal's Reading. *Shaw, Vol.* 1. 191.

Memorand. That all Indictments upon Riots, Treſpaſſes and other Miſdemeanours, under the Degree of Felony, muſt be tried after the Felons. And thoſe that are found guilty, the Judge impoſeth a Fine upon them, or other Puniſhment, as he findeth the Nature of the Offence.

If a Woman be indicted and arraigned of Felony, it is no Plea for her to ſay, ſhe is with Child; but ſhe muſt plead to the Indictment, *Guilty*, or *Not-guilty*. And if ſhe be found guilty, then ſhe may alledge that ſhe is with Child. And then the Clerk of Aſſize may order the Sheriff to return an Inqueſt of Twelve Women before the Juſtices. And when the Sheriff hath returned them, the Clerk ſhall call over their Names, and when they all appear, he ſhall ſwear them ſeverally, after this Manner:

You, as Fore-Matron of this Jury, ſhall ſwear, That you will ſearch and try the Priſoner at the Bar, whether ſhe be quick with Child of a quick Child, and thereof a true Verdict ſhall return, according to the beſt of your Judgment. So help you God.

Then ſhall he give to the Reſt of them (every one by herſelf) this Oath:

The ſame Oath which your Fore-Matron hath taken on her Part, you ſhall alſo take and obſerve on your Part. So help you God.

When they are all ſworn, the Conſtable ſhall convey the Jury and Priſoner to a Chamber, where they ſhall ſearch and try if ſhe be quick with Child, *&c.*

When they have agreed upon their Verdict, they ſhall return to the Court, and deliver in their Verdict in the ſame Manner as is before related.

If they find that the Priſoner is quick with Child of a Quick Child, then Execution ſhall be ſtayed till ſhe be delivered; but if they find that ſhe is not quick with Child of a quick Child, ſhe ſhall be hanged preſently, for it will not avail her to be young with Child.

Then the Clerk ſhall direct the Goaler to ſet thoſe Priſoners only to the Bar who are to die; that done, he ſhall cauſe the Cryer to make Proclamation, and ſay,

My Lords the King's Juſtices do ſtraitly charge and command all Manner of Perſons to keep Silence, while they proceed to give Judgment againſt the Priſoner at the Bar.

Judgment being given, and other Tryals over, and the Judge having heard ſuch Grievances as are complained of unto him, concerning Miſdemeanours and the like, the Cryer maketh three Proclamations to adjourn the Aſſizes, and ſaith,

All Manner of Perſons, that have here appeared before the King's Juſtices at theſe Aſſizes and general Goal-Delivery for this County of H. *may depart at preſent, and attend at, &c.* God ſave the King.

Note, The Proceedings on the *Niſi prius* are the ſame with the Proceedings at the Court of Aſſize, only the Words *Niſi prius* muſt be added; as for Example, in calling the Jury, *You good Men of the* Niſi prius, *ſummoned to appear here this Day*, &c.

The Court of General Quarter-Seſſions *of the* Peace *is held after the ſame Manner as the* Aſſizes, *only altering the Term.*

THE Juſtices of the ſaid Court of Quarter Seſſions of the Peace are to hear and determine by Jury, or otherwiſe, according to their Power, of Cauſes within their Commiſſion, and the Statutes referred to their Charge.

The Court being ſet, the Clerk ſhall cauſe the Cryer to make Proclamation, and ſay,

His Majeſty's Juſtices of the Peace do ſtraitly charge and command all Manner of Perſons to keep Silence, and hear his Majeſty's Commiſſion of the Peace openly read, upon Pain of Impriſonment.

Then the Clerk ſhall cauſe Proclamation to be made three Times, *viz.*

All Manner of Perſons that will ſue or complain, or have any Thing here to do at this Court of general Quarter-Seſſions, holden here this Day, before his Majeſty's Juſtices of the Peace for this County of H. *draw near and give your Attendance, and you ſhall be heard.*

Then he ſhall cauſe another Proclamation to be made, *viz.*

A. B. *High-Sheriff of the County of* H. *return the Precepts and other Proceſs to you directed and delivered, returnable here this Day, that his Majeſty's Juſtices of the Peace may proceed thereon.*

Then he ſhall make another Proclamation, and call the Conſtables by their Names, to anſwer at the firſt Call, and ſave their Fines.

Then the Clerk ſhall cauſe another Proclamation to be made, and ſay,

All Juſtices of Peace, and other Officers, who have any Inquiſitions, or Recognizances, whereby you have let any Perſons to Bail, or taken any Examinations, or other Things, ſince the laſt Seſſions, put in your Records thereof, that the King's Juſtices of Peace may proceed thereon.

Then he ſhall make another Proclamation, *viz.*

You good Men that be returned to enquire for our Sovereign Lord the King, and the Body of this County of H. *anſwer to your Names, every Man at the firſt Call, and ſave your Fines.*

When the Grand Jury is full, he ſhall cauſe the Foreman to lay his Right Hand on the Book, and take the Oath as in *P.* 366.

When the Jury is ſworn, the Clerk ſhall cauſe Proclamation to be made, and ſay,

His Majeſty's Juſtices of the Peace do ſtraitly charge and command all Manner of Perſons to keep Silence whilſt the Charge is giving, upon Pain of Impriſonment.

The Charge given by the Judge of the Court many Times varies, according to the Circumſtance of the County where the Court is held.

Then muſt the Clerk direct the Cryer to make Proclamation, and ſay,

All Manner of Perſons that be bound over by Recognizance to proſecute, or prefer any Bill of Indictment againſt any Perſon or Perſons, before his Majeſty's Juſtices of the Peace, let them come forth and proſecute, or elſe they ſhall forfeit their Recognizances.

When any Evidence appears, he ſhall in Preſence of the Court lay his Hand on the Bible, and the Clerk ſhall ſwear him in this Manner:

The Evidence which you ſhall give to the Grand Inqueſt, ſhall be the Truth, the whole Truth, and nothing but the Truth. So help you God.

Then ſhall the Clerk proceed in the ſame Manner as is directed in Page 367.

When any Perſons are diſcharged upon their Appearance upon Proceſs, the Clerk of the Peace ſhall forthwith put ſuch Perſons out of Proceſs, and enter their Names in his Book, and ſhew the ſame to the Court, before another Proceſs ſhall be called.

When all Proceſſes be diſcharged, then the Traverſes ſhall follow next in Courſe.

When the Parties do appear who ſtand indicted of *Treſpaſſes, Maybems, Batteries, Riots, Routs, Converſions*, and the like Offences, the Party indicted ſhall not hold up his Hand at the Bar, but the Clerk

Clerk ſhall call the Perſon indicted, and when he appears, ſhall ſay unto him.

Thou ſtandeſt here indicted by the Name of F. E. *in the Pariſh of* G. *in this County, Labourer, for that thou*, &c. (and ſo read the Indictment.) And then ſhall aſk him, *What ſayeſt thou? Art thou guilty of this Treſpaſs whereof thou ſtandeſt indicted, or not guilty?*

If he ſhall ſay, *Not-guilty*, and ſhall traverſe the Indictment, then he ſhall enter into Recognizance to proſecute his Traverſe at the next Quarter-Seſſions; which Recognizance ſhall be taken after this Manner:

F. E. *Thou doſt acknowledge thy ſelf indebted unto our Sovereign Lord the King in the Sum of*, &c. *to be levied of thy Lands and Tenements, of the Goods and Chattels, and this upon Condition, That thou ſhalt appear at the next General Quarter-Seſſions of the Peace, to be holden before his Majeſty's Juſtices of the Peace for this County, and ſhalt then and there proſecute thy Traverſe, which is taken with Effect; and ſhalt not depart the Court without Licence.*

But if the Party will not confeſs the Offence whereof he ſtands indicted, or will not plead *Guilty*, or will plead ſuch Matter as ſhall be no Anſwer to the Indictment, Judgment ſhall be entered againſt him, according to the uſual Courſe uſed in Actions at Common Law.

Note, That the Party indicted may, by his Counſel, before Plea pleaded, take Exceptions to the Inſufficiency of his Indictment; and if the Court ſhall quaſh the ſame for *Error*, the Clerk of the Peace ought forthwith to indorſe the Cauſe of the *Error*, wherefore the Indictment was quaſhed, on the Back-ſide thereof; but if the Court ſhall ſee Cauſe when the Indictment is quaſhed, they may give Order that a new Indictment be drawn againſt the Offender.

Then the Clerk ſhall call the Parties bound by Recognizance to proſecute their Traverſe; and if any of them do not appear, then the Cryer ſhall call him Thrice, and ſay,

A. B. *Come forth and proſecute thy Traverſe with Effect, elſe thou forfeiteſt thy Recognizance.*

Then the Clerk ſhall cauſe the Cryer to call the Proſecutor three Times, in this Manner:

D. L. *Come forth and proſecute thy Indictment againſt* A. M. *and thou ſhalt be heard.*

If the Proſecutor do not appear to proſecute his Indictment, and Affidavit be made in Court that he had timely Notice of the Tryal, the Jury ſhall be ſworn, and the Clerk ſhall charge them with the Indictment, concluding thus:

That to this Indictment he has pleaded Not-guilty, *and for his Tryal has put himſelf upon his Country, which Country you are: And now appearing to prove the Fact againſt him, unleſs you do know upon your own Knowledge, that* A. B. *is guilty of the Matter of Fact charged in the Indictment, you ſhall find him* Not-guilty.

And

And upon such Verdict the Court shall discharge him. But if the Prosecutor do appear, the Clerk shall cause the Cryer to call the Jury in this wise:

You good Men that be returned to enquire and try this Issue of Traverse between our Sovereign Lord the King and A. M. *answer to your Names at the first Call, upon Pain and Peril that shall fall thereon.*

When the Jury is full, the Clerk shall say, *A. M. Look to your Challenges.*

Then he shall swear the Jury, every Man singly by himself, laying his Right Hand on the Book, thus:

You shall well and truly try the Issue of Traverse between our Sovereign Lord the King, and A. M. *for a Trespass whereof he stands indicted, according to your Evidence.* So help you God.

When all the Jury is sworn, the Clerk shall read their Names, and the Cryer shall count them. Then he shall ask them, *If they be all sworn?* If they say, *Yea*, he shall bid them, *Stand together and hear their Charge.*

Then the Clerk causes the Cryer to make Proclamation in this Manner:

If any Person can inform his Majesty's Justices of the Peace, the King's Attorney, or this Inquest now to be taken, of any Trespasses or other Misdemeanor acted or committed by A. M. *come forth and give your Evidence, or else he shall be discharged.*

Then the Clerk shall read the Indictment, and charge the Jury as the Indictment is, what they are to enquire. Then shall the Indictment be opened by Counsel, and the Witnesses called to prove the Matter of Fact, which Witnesses shall be sworn by the Clerk after this Manner:

The Evidence which you shall give to this Inquest against A. M. *shall be the Truth, the whole Truth, and nothing but the Truth.* So help you God.

In all Tryals the Counsel of the Prosecutor shall conclude the Evidence, and the Judge of the Court shall give the Directions to the Jury. Then shall the Jury depart to some convenient Place to agree upon their Verdict, with a Constable, to whom the Clerk shall administer this Oath, *viz.*

You shall well and truly keep every Person, sworn of this Inquest, together in some private Room, without Meat, Drink, Candle or Lodging; and you shall not suffer any Person whatsoever to speak to them, or any of them; neither shall you your self speak to them, until they have agreed on their Verdict, unless it be to ask them, whether they have agreed of their Verdict. So help you God.

When they have agreed on their Verdict, and returned into Court to deliver the same, the Clerk shall call them severally by their Names, and ask them, *If they have agreed on their Verdict?* If they say, *Yea*, then he shall say, *Who shall say for you?* If they answer, *Our Foreman*, then he shall say to the Jury, *What*

What ſay you? Is A. M. *guilty of the Treſpaſs, or Riot, or Rout, &c. whereof he ſtands indicted, or Not-guilty?*

If they ſay, *Guilty*, or if they ſay, *Not-guilty*, then the Clerk ſhall record the Verdict, and then ſay to the Jury, *Hearken to the Verdict as the Court has recorded it.*

And then he ſhall repeat it in this Manner: *You ſay that* A. M. *is guilty of the Riot, Treſpaſs, &c. whereof he ſtands indicted: And ſo you ſay all.*

When a Perſon has entered into Recognizance for the Appearance of another, if the Delinquent do not appear, the Clerk ſhall cauſe the Cryer to call them in this wiſe:

A. M. *of the Pariſh of*-----*Cordwainer, come forth, ſave thee and thy Bail, or elſe thou forfeiteſt thy Recognizance.*

But if the Delinquent do appear upon the Recognizance, then the Clerk ſhall enter a *Comparuit*, and then call the Proſecutor thus:

D. E. *come forth and proſecute the Peace againſt* A. M. *or elſe he ſhall be diſcharged.*

And if the Proſecutor doth not appear after he hath been thrice called, the Delinquent ſhall be diſcharged of Courſe.

If a Perſon be bound to appear, or bound to his good Behaviour for a certain Time, and during that Time do keep the Peace towards the King and his People, then Proclamation ſhall be made in open Court in this Manner:

If any Perſon can ſhew any lawful Cauſe why the Peace granted againſt J. B. *ſhall be continued, let him come forth, and he ſhall be heard, for he ſtands upon his Diſcharge.*

And if none come to proſecute, he ſhall be diſcharged.

When the Juſtices proceed to give Judgment upon Offenders, the Clerk ſhall cauſe Proclamation to be made, and ſay,

"His Majeſty's Juſtices of the Peace do ſtraitly charge and "command all manner of Perſons to keep Silence whilſt they "proceed to give Judgment againſt the Priſoners at the Bar."

Note, That every Judgment which ſhall be given, and every Fine which ſhall be aſſeſſed, ought to be openly pronounced and declared by the Court, to the End it may advance the more Good to the Prince in Profit, to the Juſtices in Credit, and to the People in Example.

When the Juſtices have heard all ſuch Grievances as are complained of unto them concerning Miſdemeanors, and the like, the Cryer ſhall make three Proclamations, and adjourn the Seſſions, ſaying,

"All Manner of Perſons that have any Thing more to do at this Quarter-Seſſions of the Peace, holden before his Majeſty's Juſtices of "the Peace for the County of *H.* may depart hence at this Time, "and keep their Day again here at-----

GOD Save the KING.

A GUIDE TO JURIES.

To all honeſt JURY-MEN.

GENTLEMEN,

IN *a Word*, you *are* England's Ephori, *and* Tribuni: *The Boundaries of* Prerogative *and* Privilege, *and the living Bulwark of the Laws. Your* Honour *is eclipſed, and unaccountably ſhrunk. The* Office *yet is great: Here's demonſtrated the great Privilege you be, that it may be ſeen how much all* Engliſh-men *ought, in Intereſt, to value and encourage you. Here's ſet forth* what *and how you may do, and* what *and* how *you may not do, under what Penalties: Alſo the Hiſtory of the Whole. The King is graciouſly pleaſed to declare,* He will govern by Law: *It's fit you ſhould know how to govern your ſelves according to Law. This is conciſe, and a Breviate, rather than a Book. It's chiefly about criminal Cauſes, where the King's Name is uſed for that of the Plaintiff, becauſe moſt difficult and greateſt Concern: But is ſervicable and ſufficient for others too.*

§ Learned Dr. *Cowel*, in Word *Jury*, ſpeaks of *Juries* being (in his own Words) *Aſſociates* and *Aſſiſtants to the Judges of the Court* (anciently) *in a kind of Equality; whereas now* a-days, ſaith he, *they attend them in great Humility*, &c. Citing alſo *Lamb.* & *Cuſt.* of *Normandy* agreeing with them.

IT is one of the miſerable Fallies of depraved human Nature, that it commonly ſlights preſent Enjoyments, and rarely rates the good Things it poſſeſſes at their true Value, till 'tis depriv'd of them: This grand Privilege of Trials *per Pais*, by our Country, that is, by JURIES, as it ſeems to have been as ancient as the Government, or firſt Form of Policy in *Great-Britain*; for it was not unknown to the ancient *Britains* (as appears by their Books and Monuments of Antiquity) practis'd by the *Saxons* [See King *Ethelred*'s Laws in *Lambert*, p. 218. and *Coke*, 1 Part Inſt. Fol. 155.] and confirmed ſince the Invaſion of the *Normans*, by *Magna Charta*, and continual

continual Uſage; ſo it is a Thing in the higheſt Moment, and an eſſential Felicity to all *Engliſh* Subjects. For, look abroad, in *France*, *Spain*, *Italy*, or, indeed, almoſt where you will, and obſerve the miſerable Condition of the Inhabitants, either entirely ſubjected to the arbitrary Luſts of Tyrants, who plunder, diſmember, or ſlay them, according as the Humour takes them, and many Times without the leaſt Provocation, meerly for Sport, and to gratify a ſavage Cruelty; or at beſt, you will behold them under ſuch Laws, as render their Lives, Liberties and Eſtates, liable to be diſpoſed of, at the Diſcretion of Strangers appointed their Judges, moſt Times mercenary, and Creatures of Prerogative; ſometimes malicious and oppreſſive, and too often partial and corrupt. Or ſuppoſe them never ſo juſt and upright, yet ſtill has the Subject no Security againſt Subornations, and the Attacks of malicious, falſe, and unconſcionable Witneſſes; yea, when there is no ſufficient Evidence, on meer Suſpicions, they are obnoxious to the Tortures of the Rack, which often make an innocent Man confeſs himſelf guilty, meerly to get out of preſent Pain: Or if he do with invincible Courage endure the Queſtion, as they call thoſe Torments, he is many Times ſo ſpoiled in his Limbs, as he ſcarce ever is his own Man again.

Whereas ſuch has been the Goodneſs of God, and prudent Care of our Anceſtors, that to our ineſtimable Happineſs, we were born, and live under a mild and righteous Conſtitution, where all theſe Miſchiefs may be prevented; where none can be legally condemned, either by the Power of ſuperior Enemies, or the Raſhneſs or Ill-Will of any Judge, nor by the bold Affirmations of profligate Evidence.

Of what Date Juries be, is the ſame to ſay, as when was *England* firſt inhabited, altogether uncertain. But that their Antiquity here in *England* runs to and beyond the *Norman* Conqueſt, among the *Danes*, the *Saxons*, and the *Britains*, is moſt certain.

The *Saxons* conquering the *Britains*, mixed their Cuſtoms with the *Britiſh*, ſo the *Danes* thoſe *Britiſh* and *Saxon* Ones with theirs, and the *Normans* all theſe with theirs; every Conquerer making ſome Alteration. Yet this Law was, and from Time to Time hath been preſerved and continued an Inheritance indiſputable and ſacred unto us through all Revolutions, without any Interruption.

None but muſt acknowledge this of all others, the beſt and moſt effectual Way to find out Truth. There is no other Way or Art in the whole World, ſays *Forteſcue*, ſo remote from all Danger of Subornation and Corruption, p. 75.

Aaron had, it's true, in plain Letters of Gold, *Urim* and *Thummim*, wrote on his Breaſt, ſignifying what he either had, or ought to have had, *viz.* "Ability in Parts, and Integrity in Practice." But have always all other Judges ſince had ſuch Parts and Practices? Their Intereſts, Ambition, Pleaſures, other Paſſions and Frailties influenced them too much, rather ſufficient enough to render them, as the

Prophet

Prophet *Iſaiah*, c. 33. v. 15. ſays, *Idols with Eyes, Ears and Mouths*, viz. *Such as would neither hear the People's Complaints, regard the Oppreſſed, nor pronounce a juſt Judgment.* Judges having Places and Preferments ſo extraordinary honourable and profitable: And what's their Tenure? Even during Pleaſure, a Term for ſo long as they do nothing but what and as pleaſes, *&c.* and do every Thing which and as does pleaſe, *&c.* And whoſe Pleaſure muſt it be? Truly every Ones too, that any-how has or can make any Intereſt, *&c.* Thus a ſhort Syllogiſm proclaims them little other than Bond-Slaves to ſuch Men's Pleaſures, and menaces the People with the worſt of all Miſeries, Law-oppreſſion, Oppreſſion under Colour of Law; unleſs it be conceiveable Men's Pleaſures were to have the Judges give Sentence againſt them. Judges alſo were all Lawyers we know, uſed juſt before to take Fees, it's the more therefore to forget it now. Judges are concerned in ſo many Cauſes, they are ſubject to be tempted the oftner, and every Temptation is the greater, becauſe they know, if they would yield, their Gain might be ſo often. Judges are ſo few, it's plain they may the eaſier be corrupted. Judges cannot want Courage, they think themſelves liable to no Action, *&c.* in any Caſe, do what they will, but are abſolutely diſpuniſhable. *Co.* 12. 24, 25. *Hutton.* Whereas a Jury on the other Side, if it err, in many Caſes it's liable to an Attaint, the greateſt Puniſhment they know on this Side Death. A Jury conſiſts of many Perſons. Thoſe which be Jury-men in one Caſe, yet may be in few more. They be Men of other Profeſſions, uſed never in any Caſe to take Fees, *&c.* They are not prejudiced with Fear of loſing their Offices, *&c.*

And to further manifeſt the Difference of Tryal by Judges, and of this by Juries, Jury-men all are, and muſt be free of, and from all Manner of Bondage, Obligations, Affections, Relations, Paſſions, Intereſts, and other Prejudices whatſoever, (as indeed it's ill Fiſhing in muddy or troubled Waters:) *Legales*, ones Peers or Equals. *Mag. Ch. c.* 29. *Weſt.* 1. *c.* 6. Of full 21 Years old, not out-lawed, never attainted or convicted of Treaſon, Felony, Falſe-Verdict, Perjury, any Conſpiracy at King's-Suit, nor ever adjudged to the Pillory, Tumbrel, *&c.* whereby rendered Infamous; nor any Alien (unleſs an Alien be tryed, *&c.*) But ſuch others as be moſt nigh, moſt ſufficient, and leaſt ſuſpicious. 28 *E.* 1. *c.* 9. *F. B. N.* 165. *Dy.* 50. 34 *E.* 3. *c.* 4. *Regiſt.* 177. 8 *E.* 3. 30. They were anciently all Knights, *Glanvil. l.* 2. *c.* 14, 15. *Bract.* 116. They are, and muſt be yet Perſons of honour and repute. 1 *R.* 3. *c.* 4. *Brit.* 39. *Mir.* 117. 118. 11 *H.* 7. 41. *Young* 116. 11 *H.* 4. 35. *Stonf.* 88. If an Indictment be found, but not by credible People, and thoſe of good Repute, no Body's bound to take Notice of it. *Mir.* 200. They muſt be ſuch Perſons as are named and returned at the Election of the Sheriff or Coroner. They muſt be every one ſworn every ſeveral Tryal, and

that

that by a particular Oath. If any of the Grand-Jury be as aforesaid, any wise amiss, what they do is quashed and made void on bare Motion to the Court. If any of the Petty-Jury happen so, the Party by challenging of them, as they appear to be sworn, either sets aside the *Pannel*, viz. all of them, or may any of them, by taking Exception to the Poll, *viz.* to them severally, as the Case falls out; and peremptorily, without shewing any Cause, may challenge and set aside as many as he will, under 36, in Case of High-Treason or Misprision of High-Treason; or under 21, in Case of any Felony. And shewing any such Cause as aforesaid, as many as he will, in any Case whatsoever, *Co. L.* 156. Now they are such elect and choice Men, because of the great Trust reposed in them: And must be Equals, that the Defendant may the better speak to, and expostulate with, or reflect upon them, if they do amiss. And that they may not be over-awed, by his being greater than them; whereas greater Things confound and astonish us, and Things above us dazzle our Eyes. Nor be careless or perfunctory for his being much less than them. We are apt to slight Things beneath us, as small and contemptible, or inconsiderable. And must be of the Neighbourhood, that coming from nigh where the Question arises, the Defendant, in all Probability, may have the better Knowledge of them, to accept against, or to approve of them; and such may also the more likely know somewhat themselves of the Party, of the Matter, of the Credit of the Witnesses, and all Circumstances. *Co. L.* 78. Thus if the Place happen disputable, whence the Jury shall come, they shall come from whence the Matter is like best to be known, 21 *E.* 4. 8. Besides, in this Way of or by Jury, where Life or Member is concerned, or in any Danger, and in all other criminal Causes, is required two Trials of the Party before he can be said Guilty, or any Judgment can be given against him: And the Party must also be found to be guilty on both these Trials, else all is nothing. The Grand-Jury must first examine the Matter, and the Petty-Jury after examine all again, to prevent and secure against all Surprizes of the Party, and Mistakes or Errors in the Jury. It seems as if very anciently the Number on a Jury was indefinite, but it was all the Persons present, come as would come, *Brit. N. Bacon, &c.* Like as of old it was here of those we now call the House of Commons: *Concil. Brit.* 350. *Ingul. &c.* And in the Trials at *Rome*, where *Vox Populi* was the Verdict, (except in Case of a Senator, which indeed was tried by his Peers, other Senators.) Hence probably it was, that all Courts were at first to be open, and so accessable. Likewise *Deut.* 19. and some other Texts of the Old Testament, seems as if the Tryal amongst the *Jews* were so: But in Analogy of late it's reduced to the Number of Twelve, like as the Prophets were Twelve, to foretell the Truth, the Apostles Twelve to preach the Truth; the Discoverers Twelve, sent into *Canaan* to seek and report the Truth; and the Stones

Twelve,

Twelve, that the heavenly *Jeruſalem* is built on. And as the Judges were Twelve anciently to try and determine Matters of Law, and always when there is any waging Law, there muſt be Twelve to ſwear in it; and alſo as for Matters of State, there were formerly Twelve Councellors of State. And any Thing now which any Jury can be ſaid to do, muſt have the joint Conſent of Twelve. *Weſt.* 2. *c.* 13. Elſe it's in Conſtruction of Law, not the doing of the Jury, but of private Perſons, and void. 6 *H.* 4. 2. 21 *E.* 3. The Grand-Jury conſiſts of more Perſons commonly than Twelve, but as aforeſaid Twelve agreeing, it's enough, and ſo many of them muſt. So that by the Law of Juries Twenty-four Men in all, firſt and laſt, find one guilty, *&c.* before the Judgment can be given, or one can be puniſhed for the Fault one's accuſed of. And beſides, every Man of the latter Jury, even all the whole Twelve, muſt all and every of them agree, and be of that one and only Mind; (much to ſuſpect, unleſs one be certainly and plainly guilty. It's more for all Twelve, than for Twenty-nine out of Thirty to agree.) Any of the Grand-Jury giving in a Preſentment or Indictment, without Eleven more of the ſame Mind, and agreeing with him, ought to be impriſoned, 40. *Aſſ.* 10. which alſo for any one of the Petty-Jury to do, none will deny but to be worſe. A Judge was hanged for giving Judgment on the Verdict of Eleven Jury-men. *Mir.* 296. But on the other Side, the Judges are not ſo many at a Tryal ſcarce ever, the major Part of them agreeing, it's enough; their Tryal would be but one, or once only; they are never ſworn at the Tryal, nor ever at all, but only once, and that exceeding generally; they cannot any of them be excepted againſt, or challenged (though anciently might) be they never ſo great Strangers, profeſſed Enemies and otherwiſe ill qualified; and though the King be Party, yet he chooſes them himſelf againſt one.

Beſides, if Judges had Power of both determining the Matter of Fact, and alſo the Matter of Law, as muſt, if there were no Juries, their Latitude of Erring, *&c.* muſt then be the greater, and their doing Wrong or Miſchief might be the more, inaſmuch as they might wrong one then in both the Fact and Law; and their Encouragement ſo to do, would be improved, ſince then it muſt be harder to detect them, as whether erred in the Fact, or in the Law, or partly in both; like as it's eaſier ſeeking a Buſh than a Wood: And as it's ſaid, Opportunity makes many a Whore. But were Judges preſumed Saints, and never ſo upright, *&c.* yet who can imagine but at a Tryal, when Witneſſes are all examined, and Evidence all given, the Jury being ſo many Perſons, and probably knowing ſomething of the Matter before, they may all aſſiſting one another, better obſerve, remember, and judge upon the whole Matter, than any one or two, *&c.* others, though called Judges? Certainly one may do more with Help than without. So the Proverb is, Two to one is odds

odds at Foot-Ball: And, the fewer may the more eaſily deceive, or be deceived. It's natural for Man to err. None's without Fault, and the ſureſt Foot may ſlip.

Viſc. St. *Albans*, *Aph.* 8 ſays, That's the beſt Law, which leaves the leaſt to the Arbitrarineſs of a Judge; and *Bract.* 119. ſays, Judges repreſent the King's Perſon, they are his Officers, and act in his Stead (and hence concludes) they ought not at all be concerned in Cauſes of Life or Member, *&c.* (where the King is Party) for, ſays he, The King is thus Judge as it were in his own Cauſe.

Thus appears what is the Difference of Judges and Juries, and ſomething of the Reaſon why the Parliament has all along been ſo zealous for Trials by Juries, as no fewer than Fifty-eight ſeveral Times ſince the *Norman* Conqueſt, hath eſtabliſhed and confirmed the Tryal by Juries; no one Privilege elſe nigh ſo often remembred in Parliament.

Now, for the Power and Authority of Juries, and how the Wiſdom of the Law hath entruſted and enabled them in this Tryal. The Law ſays, in Trials, whether any Complaints are made, or any Matter is alleged to be true or not, the Judges ought not, nor can ſay, nor have any Thing at all to do therewith, but the Jury only. All the whole, or moſt they can do, or at leaſt ought, is only after and upon what the Jury, or the Parties themſelves agree firſt to be true. What the Jury does, is called, the declaring of what is the Truth in the Matter. What the Judges do, is called, The telling only of what is the Law. Thus it is, that every finding of the Jury as their Verdict, *&c.* muſt be poſitive, what the Fact and Party's Intent, *&c.* was, and not ſaying only what their Evidence is, that it was; for the Judges can't even ſo far meddle with, or take Conuſance of the Matter of Fact, as but to ſay, then the Fact, Caſe, *&c.* is ſo and ſo, if you agree your Evidence to be ſo and ſo, and accordingly give Judgment. *Co.* 9. *Downham's c. Co.* 10. As *A.* delivers *B.* Goods, and after demands them again of *B.* but he refuſes to deliver them again; if *A.* ſues *B.* for finding theſe Goods, and converting them to his own Uſe; the Judges will tell the Jury, ſince *B.* refuſes to re-deliver them, this is Evidence enough to find him guilty of converting them to his own Uſe, *&c.* and is in Law a Converſion. But if the Jury gave their Verdict, *&c.* ſpecially, as that *A.* delivered *B.* the Goods, and after re-demanded them, but *B.* refuſed the delivering of them back, without ſaying poſitively *B.* converted them to his own Uſe, or not ſaying generally, we find for the Plaintiff, which is *tantamount*, the Judges cannot ſay and judge *B.* guilty, *&c.* but muſt diſcharge him. So where in a Tryal, Fraud is pretended by one Party done, *&c.* by the other, the Judges will tell the Jury, ſuch and ſuch Parts of the Evidence prove the Fraud, or in Conſtruction of Law are Fraud. But if the Jury give their Verdict ſpecially, that ſuch and ſuch Things are true, (which the Judges ſaid prove the Fraud) and not ſaying poſitively there

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was Fraud, the Judges cannot say or judge Fraud, nor take the least Notice of any Thing as such. In the Case of *Roger Mortimer* in Parliament, *Anno* 1 *E.* 3. it was adjudged there, 28 *E.* 3. *n.* 10. that the Matters he was accused of, tho' they were notorious, and known to them all in Parliament, and all People else, yet they could not give Judgment upon this, nor any Time ought they to proceed on any Knowledge of their own. One condemned of Trespass in the Common-Pleas, the Judges seeing him in Court, and knowing him never so well, yet it was adjudged, if he deny himself to be the same Person, they cannot say he is, and so cause him to be apprehended; because they cannot judge of any Thing, nor take Notice, but only of what is upon Record before them, 33 *H.* 6. 55. Thus if *A* be indicted of stealing 5 *s.* ‖ the Jury may give a Verdict, that he is guilty of stealing the *Five Shillings*, but only to the Value of *Ten-pence*; and the Judges here cannot say, the *Five Shillings* were more worth or less, though never so apparent. King *Henry* the Fourth asking Judge *Gascoyn*, what if he saw *A.* kill *D.* and the Jury will find not that *A.* killed *D.* but that *E.* did? He answered, I can only reprieve *E.* and then intercede with your Majesty for his Pardon. *Pl.* 83. The infamous *Empson* and *Dudley*, proceeding to judge as Judges, of Matters upon Information by Witnesses, &c. otherwise than by Juries; this was one indelible Blot in their Escutcheon, though they had an Act of Parliament, 11 *H.* 7. *c.* 3. to warrant them in so doing: *Ander. l.* 1. 156. When a Prisoner is arraigned, he says, he puts himself on God and his Country, (neither of which are the Judges) for his Trial; which Country is the Jury. So it is manifest, Juries have the sole Power and Conusance of the Matter of Fact, as whether a Thing be true or not, &c. and the Judges have at most only to do with Matters of Law.

‖ In *Henry* the Third's Time, 1 *s.* was as much as 40 *s.* now, and before then, more; yet the Law was then, one must steal above the Value of 1 *s.* to be guilty of Felony: So that merciful Juries now value by the ancient Shilling, and save many not guilty of above the Value of 40 *s.* present Money.

Jury-men have also the Determination of Law, but with this Difference from that of Fact, that it's necessary they determine the Matter of Fact. But they may either refuse to meddle with any Thing of Law, and leave it to the Judges, or at their Election, may take upon them Knowledge of the Law, and determine both Fact and Law themselves. *Lit.* §. 368. and so is every Day's Experience, whereof see more anon, speaking of general Verdicts, and special Verdicts. Only if a Jury give a Verdict, setting forth specially or particularly how the Matter was, and then draw an ill Conclusion as to the Matter of Law thereupon, the Judges will judge against, and so make the Judgment of the Jury in the Matter of Law void. *Hob.* 53. As suppose *A.* be indicted of murdering *D.* the 10th of *Feb.* &c. And

&c. And the Jury give their Verdict, that *A.* gave the Wound at *E.* the 5th of *Feb.* and that *D.* died at *F.* the 10th of *Feb.* and conclude, that *A.* murdered *D.* at *E.* or on the 5th of *Feb.* Now the Law saying the Murder was on, and at the Place and Time, when and where the Party died, the Judges will judge againſt the Judgment of the Jury, *Co.* 4. 42. So *Anno* 1654. in *B. R.* between the Protector and *Sommer*, the Court ſaid, the Jury had concluded contrary to their Premiſes, finding he had killed two Men on the Road, but calling it Manſlaughter, *ſe defendendo*, and ſo the Judges ordered him to be tried again.

Thus we ſee, Judges are uneſſential and needleſs in a Trial by a Jury, further than to aſſiſt it, by anſwering and informing what the Law is, where Difficulties ariſe, or at leaſt the primitive Conſtitution might be thus. Like as alſo yet they be in the Houſe of Lords, or when any Trial is by the Lords, but Aſſiſtants only, when conſulted, and no Parties of or at the Trial, *&c.* Or as it is, and always has been in Courts Barons, Hundred Courts, Courts of ancient Demeſne, and County Courts, 6. *E.* 4. 3. *Crompt.* 232, 233. and where the Sheriff is made Judge, though by the King's Writ, *&c. Co.* 6. 11, 12. The very Form of ſpecial Verdicts to this Day, looks as if it were ſo. As in Murder, the Jury find and give their Verdict (firſt) how and in what Manner particularly the Fact was committed, and then ſay, but whether upon the whole Matter aforeſaid, the Killing aforeſaid of *J. S.* be Murder, (in Conſtruction of Law) the Jury is ignorant, and therefore aſk the Advice of the Court; and (further ſaying) if upon the whole Matter aforeſaid, it ſeem to the Judges and Court, that it is Murder, then the Jury on their Oath, ſay, The ſaid *J. N.* is guilty in Manner and Form as by the Indictment againſt him is ſuppoſed. And if upon the whole Matter, *&c.* it ſeem, *&c.* that it is not Murder, then, *&c. J. N.* is not guilty in Manner, *&c. Co.* 9. 64. So all the Judges do is but Advice, tho' in Matter of Law; and it's the Jury only that judges one guilty or not guilty of Murder, *&c.* and whether it be Murder, or what one is guilty of, by the Advice and Aſſiſtance only of the Judges, without their being any wiſe any Parties of or in giving ſuch Judgment. And the Reaſon, and only Reaſon, why it ever ſeems otherwiſe, may riſe hence, that the Judges of *Weſtminſter-Hall* keep the ſaid inferior Courts to their due Bounds, Methods, and Order. And the Lords keep the Judges to theirs, when amongſt them; but there's no Body does in Weſtminſter-Hall. The like is hinted by the Stat. of *Marlb.* *c.* 26. which ſays, Murder, *&c.* ſhall not be adjudged in the Preſence of the Judges: Shewing the Judgment always to be in the Preſence of, not by the Judges. The ancient Books call the Jury-men Judges, as *Mir.* 209. And it's not for nothing, the Law is ſo tender of them: He that ſtrikes one of them, it's perpetual Imprisonment, and Forfeiture of the offending Hand. *Judg.* 174.

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It perhaps may be pardonable in Councellors, becauſe for their Fees, and not pretending Authority: But why Judges, though apt to indulge, improve, and extend their own Power and Juriſdiction, ſhould offer to brow-beat, threaten, order, impoſe upon, or wheedle, flatter, tempt, inſinuate with, or any wiſe lead, perſuade, direct, incline or diſpoſe Juries, how to find their Verdict, unleſs only directing them ſo far as Juries require of them, it's hard to ſay. People daily rob, and ſo have done, on *Saliſbury-Plain*, but it's ne'er the more lawful. Thus are Judges Trumpets, and Juries the Eccho; let who will blow. Thus are Juries but an empty Name: Thus is turned topſy-turvy all the whole Thing of Juries. Thus might the Judges draw, and ingroſs to themſelves the whole Power in the Trial, and be in Effect Judges and Juries too. Thus is the Trial by Juries a Colour, a Sham, and really no Trial at all by Jury. Was this allowable by Law, we ſhould never have had any; the having them would thus be only an unneceſſary Trouble, *&c.* whereas the Law never ſets up or requires any Thing ſo vain or fruitleſs.

But ſome will ſay, the Jury can do nothing, but on the Evidence given in Court, which the Judges hear as well as the Jury, and ſo may ſee the Truth, and know how the Verdict ought to be, as well as the Jury, and conſequently they may inſtruct, and aſſiſt the Jury. It's true, they may be helpful, and they may aſſiſt, but however, it's no Matter for their being as aforeſaid, too officious. And beſides, as aforeſaid, that the Jury is Neighbours of the Fact, of the Party, of the Witneſſes, *&c.* but the Judges Strangers; and the Jury be more Perſons, and the Judges fewer, *&c.* The Jury alſo is not bound up to the Evidence only given in Court, or that the Judges hear, but may go upon their own private Knowledge. Suppoſe *A.* ſues *B.* on a Bond for *Ten Pounds*, and *B.* pleads Payment, but at Trial proves Nothing: The Judges themſelves ſay to the Jury, You muſt find for *A.* unleſs you know the Money is paid your ſelves: Which ſhews, the Jury may find for *B.* if they know the Money is paid, tho' the Judges knew nothing of it. 4 *H.* 7. 29. So *Hob.* So if one be arraigned, and no Witneſſes produced againſt him, the Court ſays the like; as was ſeen one *Michaelmas* Term, 81. in *B. R. Bradley*'s Caſe, and by daily Practice. They uſe their own Knowledge beſides, and often againſt the Evidence in Court. *Cro. El.* 616. *Grove*'s and *Short*'s Caſe. So in *Plowd.* 410, 411. So a great Caſe adjudged in *B. R. Hill.* 21 *C.* 1. And another there, 21 *C.* 1. And ſo ſays *Stanf.* If a Jury know any Thing themſelves, it's as much as by Evidence, 130. So *Plowden* ſays, a Petty-jury is ſometimes bound to give their Verdict, tho' they have no Evidence, *f.* 12. Hence in all Caſes at Common Law, one Witneſs is accepted of as ſufficient; and doubtleſs any Verdict is good, though in ſuch Caſes, without any Evidence given in Court, becauſe the Jury is preſumed to know ſomewhat of themſelves. Whereas in all other Countries

in the World, where Juries are not uſed, and here when the Trial is without a Jury, there muſt be at leaſt Two, as hereafter ſhall be ſaid more at large. Thus in any Attaint brought againſt a Jury, more Evidence may be given on that Side the Jury paſſed of or for, or in Behalf of the Jury, than was given before, *Dy.* 53. b. which could not be, if their own Knowledge were not Evidence, as well as that given in Court. *Styles* ſays, 23 *C.* 1 in *B. R.* it was adjudged, that the Grand Jury are not bound to find an Indictment, tho' they have Evidence, ſince they may know ſomething of themſelves to overbalance it. So in *Plowden*. A Jury may ſometimes go againſt their Evidence given in Court, 8. b. And one may read, Juries were anciently puniſhed for going according to the Witneſſes, if they happened to be falſe Ones, *Mir.* 48. The Evidence to a Grand Jury is ſeldom heard by the Judges, which yet could not be, if none were Evidence but what is given in Court. Likewiſe, a Jury knowing of a Record, Statute, *&c.* may give their Verdict, *&c.* according to it, though never given in Evidence. *Moor* ſays, a Jury-man delivered his Companions a certain Paper concerning the Queſtion out of Court, yet the Verdict was adjudged good, *Caſe* 656. Beſides, if it happen they have no other Evidence but what the Judges know as well as they, yet they ought by, and according to the true Purport and Meaning of their Oaths, to proceed on it in their own Senſe, and as they apprehend or underſtand it themſelves, and no otherwiſe, though the Judges differ with them; elſe how can they diſcharge their Conſcience? And it often falls out, they may differ. No two Lawyers, nay, Judges, reading or hearing the very ſame Caſe, but preſently make different Inferences, Deductions, Collections, Concluſions and Arguments, yea, the ſame Perſon at different Times; like as the Philoſophers hold our Senſes and Sentiments as different as Phyſiognomies. And why ſhould *A.* impoſe his Opinion on *B.* rather than *B.* on *A*? So of Judges and Juries. One cannot ſee by another's Eyes. And this is certain, every Thing any Jury does, as a Jury, is on Oath, and they ſwear to be true by Virtue of the Oath firſt adminiſtred them; therefore if any of them happen to join in a Verdict, *&c.* with the Reſt, againſt his Opinion, or not thoroughly ſatisfied in their own private Judgment, ſuch a Verdict, *&c.* though never ſo true and good in itſelf, yet makes the Party or Parties, as aforeſaid, not ſatisfied, certainly forſworn, at leaſt as to their Conſcience: For Perjury is not only a Lye confirmed by Oath, but likewiſe either when any one being deceived, believing that to be true which is not, raſhly or unadviſedly ſwears it to be true. Or either when any one thinking a Thing not true, ſwears it is true, though indeed it be true, *Bract.* 288, 289, and all the Caſuiſts. So it's ſeen in *Palmer*'s Reports. One was indicted and puniſhed for ſwearing a Thing ſo and ſo, becauſe he did not know it to be true as he ſwore. So that upon the whole, one may

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ſee a Judge ought not to meddle at all with the Jury: If he differ not with them, it's needleſs and troubleſome: if he differ, they are not to mind him; take it which Way one will.

But perhaps it will be urged, that this muſt be underſtood only as to trying Matter of Fact, and that however, as to Matter of Law, the Jury ought always to be adviſed and governed by the Judges, though not as to Matter of Fact: No, no further than a mannerly Deference is payable to the Judges, as more learned in the Laws. For if the Judges ſay, or any Witneſs ſwear the Law to be ſo and ſo, no Jury is by Law bound, or any wiſe obliged beyond their own Reaſon, *&c.* at leaſt to believe them in it, 9 *H.* 6. 38. *Finch* 58. If an Attaint be brought againſt a Jury, it's no Excuſe, that the Verdict is according to the Judge's Directions. *Cro. El.* 309. 18.

Now ſays a timerous ignorant Juror, *Oh! but whether the Law be thus or not, the Judges will puniſh the Jury if they do not comply with them.* This ſure would be pretty! A Jury, perhaps forſworn, and liable to an Attaint, if they do comply, and puniſhable if they do not: No, no, the Law (which is nothing but improved and refined Reaſon) was never ſo unreaſonable as to ſuffer this. *A.* levied a Fine of Lands to *D.* and *D.* paid *A.* the Purchaſe-money: But after, *A.* ſaid, he was then at levying the Fine under the Age of One and Twenty Years old, and therefore the Fine was void. The Law ſays *The Judges ſhall determine by looking on the Party, whether he were of full Age or not, and the Jury ſhall not*; (the true Reaſon being, that if the Party ſeem of full Age, though he be not, he ſhall not avoid the Fine, to prevent cheating, *&c.* Whereas, if the Jury were to try it, they muſt not go according to the ſeeming, but real true Age, and ſo if he want but a Day of One and Twenty Years, he muſt thus be adjudged under Age, as much as if he wanted Twenty Years, and *D.* ſhould be cheated.) This Fine was after reverſed by King's Bench, becauſe *A.* did appear, and was alſo proved by four Witneſſes to be under Age: But the Validity of the Fine coming after to be diſputed in Common Pleas, on a Trial by Jury, tho' the Court told the Jury, that notwithſtanding ſome Witneſſes prove to you that *A.* was of full Age at levying the Fine, yet you ought not to heed them, for the Judges have the ſole and only Power of determining whether of full Age or not, and the Judges of the King's Bench have already determined it; nevertheleſs, the Jury being ſomewhat extraordinary, and not ſo very leadable Men, gave their Verdict contrary to the Direction of the Court, and as if *A.* were then of full Age: And an Attaint being after brought againſt the Jury, the Jury was acquitted and commended, *Dy.* 201, & 301. And the Jury is the more juſtifiable in it, ſince the Judges firſt altered the Law, in trying by Witneſſes, and not only by Inſpection, as Juries alſo do, which in Trials by Witneſſes are, as aforeſaid, the more competent, *&c.* Of this Nature is a memorable Caſe of *Buſhel*, reported by Lord Chief

Juſtice *Vaughan*, where *Meade* and *Penne*, two Quakers, were indicted at the *Old Baily* for their Meetings; and the Jury whereof *Buſhel* was the Foreman, would not find them guilty: The Court being mighty angry, fined and committed the Jury, alledging for Cauſe, that they, (the Jurors) againſt the Law of the Realm, againſt full and manifeſt Evidence, and againſt the Direction of the Court in Matter of Law, to them in Court openly given and declared, had acquitted the ſaid *Meade* and *Penne*: But upon long and ſerious Debate, it was after adjudged, the Commitment, Fining, &c. was unlawful, and accordingly the Jury were diſcharged, &c. Another Time alſo a Jury-man diſſenting from all the Reſt, and that no leſs than two Days, the Judges aſked him, *what he would do?* Says he, *Rather ſtarve and die in Priſon than conſent*; the Court fined and committed him: But on better Conſideration, diſcharged him without more ado: All the Court can do, being only to (carry them in Carts, if in the Circuit, along with them and) keep them without Meat, Drink, &c. till they agree, 41 *Aſſ.* 11. ſays *Mir. Jurors ought not to be threatned, but to be free, differing in Opinion*, &c. 273. And it was reſolved in Parliament, *Anno* 1677. *That the Precedents and Practices of Fining*, &c. *Juries, in or for giving their Verdicts, are illegal.* And *Keeling*, Chief Juſtice of *B. R.* was called to Queſtion in Parliament for ſuch Practices.

Coke upon *Lit. f.* 369. ſays, *If any labour a Jury, inſtruct them, or put them in Fear, or the like, it's puniſhable, as Maintenance or Embracery, either at the King's Suit, or the Parties*; and perhaps, it would puzzel one to ſhew, why a Judge is not within this Law; for how can he be ſaid to do this as a Judge, when to do ſo is no Part of his Office? And why ſhould any Uſage alter the Caſe here, any more than in other Caſes of breaking the Laws? It's much too, any Judge ſhould offer ſuch a Thing, conſidering he that judges without a Jury, certainly judges without Authority: And he that judges with a Jury, but governed or led by him, judges only by Colour of a Jury, and by Colour of Authority; and thus makes himſelf forſworn in and by the Oath taken at his being created Judge; makes all the Jury forſworn; violates the greateſt Privilege of the Subject; infringes the moſt often confirmed Law of the Kingdom; and alſo does particularly the Party offended, the greateſt Wrong imaginable; in as much as by Colour of Law, he makes all the Jury Acceſſaries to the whole.

Hence it's improbable any Judge ſhould offer the Contrary: But however, a Jury in any Indictment, Preſentment, or Information, ought, and may give their Verdict, &c. according to their own Conſcience, without any Fear of Puniſhment one Way or other.

And in any other Caſe, as where the King is no Party, but an Attaint happens to lie, they may be puniſhed no other Way. Alſo no Puniſhment whatever lies for or againſt a Jury, which conſiſts of

above

above Twelve Men, 14 *H.* 7. 13. Nor does Attaint ever lie where the Witneſſes are not on Oath, or for going againſt what any ſuch Witneſs ſays; nor in any Appeal of Maim, Murther or Felony, *F. N. B.* 107. Nor in other Appeals, as *Regiſt.* 122. *Attaint.* 59, 62. & 22 *Aſſ.* 82. ſay. Nor does ever any Action lie againſt any Jury for going againſt their Evidence: And where an Attaint is brought, it muſt be tried by a Jury of Twenty four Men.

The only Caſes the Judges have any Power over Juries in, are, where in their Behaviours they become guilty of any ſuch Thing as the Judges may juſtly call an unlawful Contempt, 4 *E.* 4. 27. 36 *H.* 6. 27. Or be guilty of Embracery, 5 *E.* 3. *c.* 10. 34 *E.* 3. *c.* 8. as receiving Bribes, Promiſes, *&c.* before or at the Trial, *&c.* *Or in Caſe of Concealment, the Juſtices of the Peace of every Shire,* &c. *may take by their Diſcretion an Inqueſt,* &c. *to enquire of the Concealments of other Inqueſts taken before them, and before others, of ſuch Matters and Offences as are to be inquired and preſented before Juſtices of Peace, whereof Complaint ſhall be made by Bill or Bills,* &c. *And if any ſuch Concealment be found of any Inqueſt,* &c. *had or made within one Year,* &c. *The Juſtices may amerce or fine them at Diſcretion.*

3 *H.* 7. *c.* 1. *viz.* as much as is reaſonable for ſuch Offence, as is ſaid in a like Caſe by Lord *Coke,* 10. 140. and in *Dalton, p.* 541, 23. If any refuſe to be on a Jury, not offering ſufficient Excuſe, he is finable, 7 *H.* 6. 12. So if any of either Jury give a Verdict, *&c.* as aforeſaid, Twelve not agreed. So the Grand Jury may not diſcover Evidence given them, *Inſt.* 3. 107. *Mich.* 15 *Jac.* in *B. R. Smith* and *Hill*'s Caſe, 27 *Aſſ.* 63. *Lamb.* 402. *Chron.* 207, 272. *Finch.* 29. So the Petty-Jury, if without Licence of Court, depart any whither upon any Occaſion whatſoever, after ſworn, before Verdict given: Or that while, but eſpecially after Evidence given, eat or drink: Or out of Court receive any Evidence from either Side, may expect Fine and Impriſonment.

Thus much for what a Jury may do: Now ſomething more how, and what it ought to do. The Oath it ſelf, but that it's ſo general, would elſe be Inſtruction as well as Obligation ſufficient.

The Scripture teaches one his Duty upon an Oath; It ſays, *One muſt ſwear in Truth, in Juſtice, and Judgment, Jer. c.* 4. *Deut. c.* 16. *Exod. c.* 20. *Dan. c.* 5. *Levit. c.* 14. *Zach. c.* 13. *Acts c.* 5. and the *Proverbs* in ſeveral Places. *In Truth,* with one's Eyes, neither in a Teleſcope or Microſcope; not proceeding by Appearance or Seemingneſs of Things, not by adding nor diminiſhing, not by aggravating or palliating, not by Equivocation or Reſervation, not by repreſenting or accepting the Matter otherwiſe than really and trully it is; not preſenting, *&c.* Things, *&c.* doubtful, or not certainly true, as true; not omitting any Thing certainly true, but always as the naked Truth is, ſo and ſo. In *Judgment,* not at a Venture,

Venture, as by casting Dice, &c. not as Matter of Form, not rashly, perfunctorily, or negligently passing or running-over Things; not by implicit Faith, or in complemental Obedience, &c. not upon Trust or Belief, further than with and upon good and great Deliberation, Considerateness, Reasoning, and Satisfaction according to one's own Conscience, and because one's mature and settled Judgment is so and so. In *Justice*, proceeding fairly, impartially, with Integrity, and according to the Merits of the Cause, without charging one with Murder that's guilty but of Manslaughter; and without Malice, Fear, Hope, Pity, Favour, Affection, Passion, Corruption, or private or sinister End or Design: But all throughout purely, because it is so and so more than otherwise. And consonant to Scripture, as well as generally in all other Things, so also in this are even Morals and Politicks. The wise Men (so called) of *Greece*, were called so from their living prudently, justly and honestly, such also are they *Aristotle* calls so, 1 *Metaph.* &c. The *Stoicks* say, *He's the wise Man that sticks to Truth, and abhors and banishes every Thing else, not so much as admitting of any Stories, Fictions*, &c. *whatsoever. Machiavel* says, *Judges must not be moved for the Power of any one, nor for any one's Sake, one way or other, nor with Pity or Ill-will, but always go according to Law, truly and without Biass. Justinian* speaking of Judges, says, *They must be inoffensive to God, the King, and the Law. No Acclamations of the People, no Honours of the King, neither of these move them. Against the common Good or an Oath, no Man will stir an Inch, if honest, though it be for a Friend's Sake. Judge* Hales *is a Friend as* Hales, *but none as a Judge. What a Judge does at the Request of his Friend, is really and truly no Friendship, but is making himself and Friend both guilty of a Crime.* The *Areopagites* were Judges that heard Causes only in the Dark, that they might take Notice what was said, and not who spoke. And what is said of Judges by these Authors, must by us in like Manner be applied to Juries. The Book whereon Swearing one lays one's Hand, is God's everlasting Truth, and most holy Word; so that if one forswears one's self, one virtually in so doing utterly forsakes God, and his Mercy and Truth. Says a learned Man, part of the Oath is, *So help me God, viz.* I pray God he will never help me, if I shall not sincerely and faithfully keep this my Oath. *Cajetanus* says, 2 *Qu.* 98, *Perjury is of it's Nature a Contempt of God.* And as the Proverb says, *it's ill jesting with edg'd Tools.*

By the Oath of the *Grand-Jury*, one's bound to observe as well the Charge which shall be given by the Court, as the Form of the Oath it self. But this it's plain must be understood, so far as the Charge is according to Law, and not contrary or repugnant to the Oath itself, and no further or otherwise.

Anciently the Charge was given in writing to the *Jurors*, *Brit.* 9. *Bract. l.* 3. *c.* 1. *Dalton p.* That the Jury might easier remember it, their Minds be refreshed, and perhaps, themselves edified, &c.

What

What the *Grand-Jury* does, is by Way either of Preſentment or Indictment. By *Preſentment*, when they know of a Crime or Fault themſelves, and give a ſhort Note of the Party's Name, place of Abode, and Fault, without Form, referring it to the Court to put into Form. By *Indictment*, when the Party and Fault are ready brought them in Parchment, drawn up in Form: And indeed, the moſt true Difference is only, that the one is in Form, and the other not.

In an Indictment, firſt they muſt conſider and underſtand it well and thoroughly: And if they can't underſtand it, aſk the Aſſiſtance of the Court, either to give them a Clerk on Oath to *Engliſh* it for them, or otherwiſe as Need ſhall require. Then they muſt conſider, if the Fault, as alledged, with the Circumſtances and Aggravations, amount to and be a real Fault or not, and alſo worth complaining of; for *the Law minds not every little Thing*, and this is daily experienced in Indictments and Actions of Caſe. If it be no Fault, or one not worth complaining of, which in Law, as aforeſaid, is all one, they reject the Bill, and meddle no more with it. If they find it a Fault, and conſiderable, as aforeſaid, then they conſider, if they know it true ſo of themſelves; which if they do, or other Evidence ſatisfie them it is, they indorſe, or write on the Back-ſide of it, *Billa vera*, this Bill is true: But if they do not know it themſelves, nor be ſatisfied by the Evidence, then inſtead of *Billa vera*, they write *Ignoramus*, we know not: And afterwards thus deliver all the Indictments into Court.

The Clerks of the Court, to get Fees, and perhaps, ſome others for one ſiniſter End or other, will be apt to ſay, that the *Grand-Jury* ought to find an Indictment, or make a Preſentment againſt any ſuppoſed Offence or Offender, tho' they have but Colour of Evidence, or a Probability of the Thing being true, and that what they do is but Matter of Courſe, and a Ceremony; Matter of Form, barely an Accuſation, *&c.* But that this is not ſo indeed, is apparent; for what End then is a *Grand-Jury?* Only for Show. The Law would certainly then have never required one to be at all. We ſee they are obliged to be ſworn, and they are as much on their Oath as any other Jury, which then ſhould be the Contrary. The very Form of the Oath teaches us better. The Oath is, *Diligently enquire*, &c. not *negligently*, &c. *True Preſentment make*, not *probable*, &c. *Nothing for Lucre*, &c. not excepting the Clerks, &c. *According to Evidence*, not *Preſumption*: *The whole Truth, and nothing elſe but the Truth*, which how can be at ſuch a Rate as the Clerks ſpeak of?

But then they object, that theſe Words, *According to the beſt of one's Knowledge*, are added. If they be, it's againſt Law, *Mir.* 304. *Brit.* 2. 135. And altering an Oath, is impoſing a new one, which cannot be without an Act of Parliament, *Inſt.* 2. 479, 658, 719. But however, may Jurors in ſuch Caſe wink, *&c.* that they may

not

not know, &c. These Words are *best of*, &c. and not *worst*; they are *Knowledge*, not *Ignorance*; they imply the *best* one *can* know or find out: And not only what one already *does* know, for then what need the Word *best*? And besides, they relate to the Word *enquire*, as well as any other Word, &c. So the more one considers them, the less one shall find they really alter the Oath.

Then say they, all the *Grand-Jury* does, is but presenting in Form, and not in Form as aforesaid, and is only suppositious as it were, and nothing positive or certain, grounding themselves only on this, That the Form of the Indictment is, *The Jury upon their Oath present*, instead of, *The Jury upon their Oath say*; and so infer, that if any Thing in the Presentment or Indictment be false, yet it's no Perjury. Alas! to see Men in Extremity, what Hold they'll catch at! Could *Argus* himself have seen this Exception? No, unless blind. *Present* and *say* are undoubtedly here, and in such like Cases, synonimous Terms. To *present* on Oath, is to give the Court to understand on Oath: And to *say* on Oath, is to tell the Court on Oath; and an infinite of Indictments be *say* instead of *present*, *Rast.* 263. *Kitch.* 100. *Co.* 9. 114. And *Fleta* goes so far, as to call an Indictment a Verdict, *f.* 113. The Words also of the Oath be, *to truly present*, and not *say*. And Lord *Coke* plainly calls the Grand Jury-men all willfully forsworn and perjured, if they wrongfully find an Indictment, *Inst.* 3. 33.

Then say they, but indorsing *Billa vera*, as aforesaid, implies not that the Jury takes upon them to know, or say, the Bill, or the Contents, are true; but *vera* there signifies probable, or fit for Enquiry. But then, why not another Word used more properly and usually Latin for such a Sense than, and instead of *vera*? And what is Latin for true, if it be not? And is not *true*, the common accepted English Word of, and for *vera*? And is not *Billa vera* the Answer made to their Oath, that they shall true Presentment make? This is like the Rest.

Then say they, *This is no Tryal, but in order to bring to Tryal, and the Party is at no Prejudice if the Bill be found.* It's true, it's no determinative Trial that finally concludes either Party, because it's but one of two, which every one accused of a Crime must have as aforesaid. But it's so much a Trial, as learned *Fleta*, *f.* 113. looks upon it no less one than any other. The Form of their Indictment is the same of that of a Verdict. All Things are, or ought to be alike in the whole Proceedings, and to differ nothing, but the one to be before the other, and the latter to be final, the other not. The Stat. of 23 *H.* 8. *c.* 23. enacts, *One shall be indicted of High-Treason in what County the King pleases.* And the Stat. 1, 2. *P. M c.* 10. says, *That Trials for Treason shall be according to Common Law:* This Act repeals the other, though speaks only of Trials, and the other of Indictments, *Anders.* 1. 104, 105. *Inst.* 3. 27. which shews an Indictment

Indictment is a Trial. One of the Grand Jury can't be afterwards on the other: And why? ſays the Law; for he has once already found the Party guilty, and if he ſhould not again, he muſt perjure himſelf, *Brit.* 12. 25 *E.* 3. *c.* 3. 7 *E.* 4. 4. *Stanf.* 158. It puts the Defendant to Diſgrace, Trouble, Damage, Danger of Life, *&c.* It makes him liable to an Outlawry, to Impriſonment, *&c.* and to every Thing but very Death, *&c.* the final Judgment it ſelf. It gains Credit, and gives Authority to another Jury to find one guilty. It produces this Effect, that if the other Jury find one guilty never ſo wrongfully, no Attaint lies againſt them, nor other Puniſhment: And what's the Reaſon? The Law ſays, *becauſe he is found guilty not by theſe other Twelve only, but in all, by Twenty four or more, this latter and the other Jury too. Attaint.* 64, 60. *H.* 4. 23. *b.* 14 *H.* 7. 13. So if one be indicted, any one may bring an Appeal, tho' never ſo wrongfully, *&c.* againſt him, whereas he that brings one againſt any one that was never indicted of the ſame Offence, may be liable to great Puniſhment, if wrongfully brought, *Stanf.* 172. *b.* 40 *E.* 3. 42.

Where Peers be indicted for Treaſon, Felony, or Miſpriſion of either, they not only ſuffer in Honour, Liberty, Vexation, Danger, Trouble, Charges and other Inconveniencies as aforeſaid, another does, but muſt with a more tender Senſe, and in a much greater Meaſure, as they be ſo much greater Perſons, *&c.* And they can have no other Trial on Oath, for their future Judges or Jury are none of them on Oath, *Inſt.* 3. 89. *C. L.* 156. They can except againſt none of their Jury, though they have what Cauſe ſoever poſſible, *C. L.* 156. *b.* They muſt be tried by ſuch as ſhall be choſen againſt them; ſuch, as perhaps, ſhall not be Neighbours, but picked any where up and down the whole Kingdom; ſuch a Jury, as perhaps, ſhall not be above Twelve in all, whereof then if any Seven, or any Time the major Part agree to find them guilty, it ſhall be ſo, though the other five, or leſſer Number, be utterly againſt it: So that upon the Whole, if a Peer have but ſeven Peers among all the Reſt that bear him Ill-will, or either any Ill-wiſher, that can make him ſo many of them his Enemies, he muſt die, *&c.* fall back, fall edge. And to help the Matter, he ſhall always be ſure of the ableſt Council in the Kingdom, to manage the Cauſe againſt him.

Suppoſe one ſhould aſk any honeſt Man this Queſtion: Were he not on his Oath, yet would he find an Indictment of Courſe, *&c.* to expoſe one, and put him to ſuch Inconveniencies as aforeſaid? *Certainly*, ſays he, *No.* And the Monſter that would, does it wrongfully, becauſe he is not certain he does otherwiſe. And being on his Oath, as aforeſaid, it's not only doing wrong, but tainting himſelf Crimſon red in Perjury too; ſure a malicious Way of doing Wrong. It's doing Wrong alſo by Colour of Law and pretended Authority, the greateſt Miſchief and Injuſtice, ſays the Lord *Coke*, of

of all other, *Inſt.* 2. 48. The Damage, *&c.* too in all theſe Caſes is the greater yet, that the Party can very ſcarcely, if at all, expect any Reparation or amends: Whereas in all other Caſes he may eaſily. For againſt the Grand Jury, or any of them, no Action lies, in as much as doing what they do on their Oaths, the Law will not preſume, *&c.* any Malice, *&c.* in them. And though one be indicted at the Inſtance, or upon the Endeavours of another Perſon, (all the Jury, as aforeſaid, being ſworn to Secrecy) can one eaſily diſcover, and prove who this Perſon is, what he did, and prove it at a Trial? Which yet one muſt do fully, if they expect any Thing but making bad worſe. And might one recover Damage, *&c.* yet it's Damage to be put to the Trouble and Hazard of the Recovery. Well therefore, ſays *Fleta*, *f.* 52. *It's an exceeding neceſſary Thing, that the Grand Jury ſhould make diligent Examination, before they preſume any Thing, either in Caſe of Life or Limb.* And Juſtice *Dalton* ſays, *No leſs Care or Concern at all lies on the Grand Jury, than does on the Petty Jury.*

The Law (to ſee its Nature, how it inclines generally, that one may the better gueſs in this Manner) it is not with us like thoſe of *Draco*: It's as tender of the Lives, Liberties, and Credits of the People (none can deny in all Caſes elſe) as a Mother of her Child, and why then not in this alſo? It will preſume nothing diſhoneſt, *&c.* in any one, or any Time, but it will, and always does preſume all Perſons and Things honeſt, true, innocent, *&c.* till the Contrary be proved, *C. L.* 78. *b.* As *Lamb.* ſays, *Laws cry often Clemency and Forgivneſs as well as Juſtice.* And ſays *Coke*, *Inſt.* 2. 315, *Like the Laws of Scripture, whence it was firſt derived, which ſhews Mercy is not oppoſite to, but Part of Juſtice*, 1 *John* i. 9. *Pſal.* lxxi. 1, 2. The Laws of *England*, the Laws of Mercy. And ſays a great Man, *Juſtice leans that Way which is the Milder.* One brings an Appeal, if the Jury be doubtful, the Defendant ſhall be acquit, and the Appellor impriſoned, *Fleta* 52. *Mir.* 224, 273. So a Jury being doubtful if one were a Villain or not, was therefore free, *Fleta* 238. Says *Cicero*, *They do well, that forbid one doing a Thing when dubious, whether right or wrong; for where it's right, the Thing is neceſſarily as clear as the Sun:* But any Doubt ſpeaks the Thing not to be ſo. As if a Phyſician gives one Phyſick, he muſt give one that he is ſure will do one good, or no harm, and not what he doubts may do one harm. It's alſo plain, if I doubt, I muſt not ſay, I am certain, (as *Billa vera*) but I know not certainly (as *Ignoramus*) elſe I tell a Lie. It's very remarkable too about all Indictments, the Jury only ſays, either *it's true*, or *we know not*, and never that *it is not true*; which ſhews, if they be doubtful, or not ſatisfied, the Indictments muſt be indorſed not *Billa vera*, we know it is true, but *Ignoramus*, we do not know it is true. And the Law does not put it upon the Grand-Jury, to ſay the Bill is not true, if they do not find it,

it, though it does put it upon them to ſay poſitively, the Bill is true, if they find it, and ſo encourages the finding Indictments *Ignoramus*. *Forteſc.* ſays, *It's better Twenty ill Men were unjuſtly ſaved, than one unjuſtly condemned*, 62. For Mercy and Pity is on the one Side, but on the other Injuſtice and Cruelty. Says *Bract. It's ſafer giving an Account of one's being merciful, than otherwiſe*. The *Saxons* in doubtful Caſes only appealed to God for Diſcovery, and left all only to him, *viz.* Where the Caſe was doubtful, if guilty or not, or clear and manifeſt Proofs wanted, they had four ſorts of Trial, *Spec. Sax. l.* 1. Firſt, *Camp-Fight*, or by *Battel*. Secondly, *Fire-Ordeal*, by holding red-hot Iron in his Hands, or walking bare-foot over it. Thirdly, *Hot Water-Ordeal*, by putting one's Arms up to the Elbows, in ſeething hot Water. Or, Fourthly, *Cold Water-Ordeal*, by caſting one into the Water with a Rope under his Arms. Whereof the three laſt were uſed, one or other of them, where the Party was moſt vehemently ſuſpected; *Verſteganus* and others. But Pope *Stephen* the 2d. by his Decree, utterly aboliſhed them all, and afterwards ſo did the Parliament, 3 *H.* 3. *Memb.* 5. Judging it more fit the Party ſhould be acquitted than proſecuted, where the Caſe was doubtful. So that one muſt know beyond all Doubt, before they ſay, *Billa vera*, elſe ſay, *Ignoramus*, which is in Engliſh, we doubt, we do not know, we are not certain if it be true, *Inſt.* 4. 64. And ſays *Brit. If a Jury doubt at any Time, they muſt find for the Defendant*, 245, 130, 136, 219, 213. Judge *Frebern* was hanged for judging one to Death, where the Jury were doubtful in their Verdict, *Mir.* 298. Anciently if a Jury indicted an innocent Man, another might be impanelled to go upon this Jury, as Offenders, *&c. Mir.* 101. *Jurors that falſely indict any one, be guilty of willfully killing Men*, *Mir.* 34, 36. They ſhall be reputed and adjudged infamous, and ſuffer corporal Puniſhment, that find an Indictment againſt an innocent Perſon, *ibid.* 251, 252. Or, if an innocent Perſon be adjudged to Death, *&c.* if they could have holpen it, *ibid.* 256. An Appeal lay againſt a Jury in ſuch Caſes, *ibid.* 136. *Brit.* 14. 137, 237. If they any wiſe offend ſo, *ignorantly*, yet this excuſes not at all, unleſs they could not poſſibly know better, *ibid.* 257. And Negligence in, or of knowing better, makes their Fault the worſe, *ibid.* And the greateſt Oracle of our Laws, *Co. L.* 115, 391, 45, 94, 113. has it, *That whatever was Law, is yet, unleſs altered by Act of Parliament, which this never was.* Whereas on the other Side, if a Grand Jury do not find the Bill againſt any one, there can be no harm then to any Body; but another Indictment may ſome other Time be brought when there's better Evidence, or a worſe Jury. For though one's Life, *&c.* ſhall come but once in Danger, or on Trial, before the Petty-Jury, it may yet a Thouſand Times before the Grand-Jury, for they never ſay the Party is not guilty, but at moſt ſay *Ignoramus*, as aforeſaid.

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Any Thing any Jury does, ought to be *Quoddam Evangelium*, like what they laid their Hands on, taking their Oath. When they write *Billa vera* on an Indictment, they undeniably compare the Truth of the Contents therein, to the Truth of the Goſpel, and this upon Oath. Thus one would admire how it comes to paſs, that they of the Grand-Jury ſhould often hear but one Side: Their Oath, it's apparent, is againſt this: It ſays, *Peſent the whole Truth*, not concealing or omitting any Part of it; which implies as well all one Side can inform them as the other. And ſo appears by leſs ſtrong Caſes far, an Attaint lies againſt a Jury (ſwearing *to well and truly try the Iſſue between the Parties*) when every Word of the Verdict may yet be true, only it not being the whole Truth. As if one having had Common appendant Time out of Mind, bring an Aſſize of the Common, making his Title that he hath had Common Time out of Mind, *&c.* (without ſpeaking of the Appendency) and ſo the Jury find for him: For thus he ſhould elſe have Common in groſs, when his Right or Title is not to *ſuch*, but to Common Appendant, *F. N. B.* 107. *a.* 10 *E.* 4. 17. 49 *H.* 6. 17. So one having had a Rent in Fee, as Forreſter of ſuch a Forreſt, Time out of Mind; in an Aſſize for it, makes Title, by ſaying he had a Rent out of that Land, Time out of Mind, *&c.* (without ſaying as Forreſter, *&c.*) and the Jury find for him, for he hath not had the Rent by Preſcription, as muſt be underſtood by the Claim and Verdict, as aforeſaid, *ibid. b. Co.* 5. 78, 79. So that it is not enough for a Jury to ſay the Truth, but the whole Truth, although no ſuch Word as this of whole Truth, be mentioned in the Oath. It proceeds, and ſays, *And nothing elſe but the Truth*, which how can poſſibly, or any Jury-Man be ſatisfied in, unleſs they hear both Parties? It ſays, *You ſhall diligently enquire*, &c. not by halves, or but hearing one Side only. It's a Maxim, *He that judges or determines any Thing, when but one Side only is heard, does unjuſtly*: And the Judgment, or Determination, tho' in it ſelf be never ſo juſt or right, yet ſhall he no wiſe be accounted a juſt Judge, *&c.* Is it not a common ſaying, *One Tale is good, till another is told?* One at this Rate, might be indicted for a Cut-purſe, when but an honeſt Glover; ſo might Chyrurgions, Sheriffs, Bailiffs, Jailors, Hangmen, Attornies, *&c.* for but doing what belongs to their ſeveral and reſpective Profeſſions, as the Matter may be managed, and yet ſaying nothing but Truth neither, only not the whole Truth. Is there not in all Determinations elſe, the *Hearer* and *Defendant*, as well as *Complainant?* Thus erred Judah the Son of Jacob, in judging *Thamar* to be burnt, upon Report, when ſhe was unheard, *Gen.* 38, 24, 25, 26. So was Joſeph falſly accuſed of lying with his Miſtreſs, and caſt into Priſon, *Gen.* 39, 19, 20. So was *Mephiboſheth* falſly accuſed by *Ziba*, and deprived of all he had, 2 *Sam.* 16. Which being all Preſidents, and damned in Scripture, muſt, or ſhall any

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one be ſo hardy as to embrace and follow them now? Either one's guilty or not; if he be, let him yet have fair Play for his Life, &c. If not, why ſhould he then be indicted? So that, why ſhould he not be heard? Elſe one's condemned firſt, and heard after; or indeed hanged firſt, and tried after, or little leſs. The true Intent of the Law herein ſeems, as if Men were to be handled not thus, but that the Defendant ſhould be heard at firſt, and if he then could give Satisfaction, &c. he might be at no further Trouble. &c. And if he could not, that he ſhould have ſuch Trouble, &c. and having Notice thus, might prepare himſelf the better, and ſo not be ſurprized at the final and concluding Trial, or have any Colour of Pretence that he was ſurpriz'd, or any wiſe unprepared at this final Trial. This Method being moſt honourable for the King and the Law, and alſo moſt ſafe for the People. And the Reaſon why it was ever otherwiſe, ſeems barely a Reſult of ſome Artifice of the Clerks, to get themſelves Money, impoſing on the Juries; or from this, that Preſentments being made without the Party heard, therefore the Jury thought they might find an Indictment likewiſe. Whereas, they ought always to diſtinguiſh; for a Preſentment is on their own Knowledge, when they know all the whole Matter, even what the Defendant can ſay for himſelf; but an Indictment is found upon Witneſſes, which tell their Tale to a Hairs Breadth, &c. as makes the moſt for the Side they are produced of. And at length after ſome few Preſidents, it has now grown into Practice: All can be pretended why it ſhould be ſo now, is but Practice and Preſident. And when it's againſt Juſtice, againſt Truth, againſt any one's Judgment, ſure one ought rather to correct than approve of, or follow ſuch Practice or Precedent. At leaſt wiſe a Grand Jury ought to hear both Parties, if preſent, or eaſily, or conveniently to be heard.

It would likewiſe amaze one, to ſee how the Clerks, for their Gain, or others for other Ends, have often prevailed with Jurors to find a Bill true, &c. when in all the Circumſtances of Aggravation, or moſt of them, falſe, if not in the Fact it ſelf; and thoſe Circumſtances too altering the very Fact, as alledged about, as much as white Feathers would a black Crow.

Conſidering how true Preſentments, Indictments, and Verdicts ought to be, and that the whole Truth, and nothing but the Truth muſt, or may be in them: That the Jury undertake the Bill is altogether true, not only as to the Subſtance, &c. or in general, but even in every Particular, all the Circumſtances, Aggravations, and every individual Word, (for if it be not true in the leaſt Word, it's not true, but falſe, and Perjury.) *Stanf.* ſays well, *f.* 96. b. *To perform the Duty of one of the Grand Jury, it's neceſſary to learn and know what's called Treaſon, what Felony, &c. and what not:* Hence alſo one learns, one muſt not in an Indictment, call, or ſuffer Felony to be called Treaſon; Manſlaughter, Murder; nor one Crime by the Name of another: Or mention, or ſuffer to be mentioned, Words ſpoke, or Things done,

other

other or after another Manner than really or truly were ſaid or done; and therefore the Judges give the Grand-Jury to this Day, their Charge ſo diſtinguiſhing, particular, and directive of all, and all Manner of Crimes, their Natures, and how to call them, &c.

When the Clerks draw an Indictment, Information, &c. they'll not only alledge and inſert in it the very Fact, &c. one is accuſed of, but craftily, and full of Art, ſtuff and load it, into the Bargain, with ſeveral fictitious and ſlight Allegations of their own, to ſwell up, and aggravate the Matter; as Circumſtances of Malice, or Deſign, &c. in the Party, when he did the Fact, ſpoke the Words, &c. So that ſometimes from a Mouſe, a Mountain; from nothing, or what's inconſiderable, it will in ſuch a Dreſs ſhew and ſtrut like a Giant, a Monſter, &c. And all this, forſooth, they'll call Matter of Form, and then endeavour to perſuade a Jury, if they find the chief Matter, or that Part which they'll call the Matter of Subſtance, true, they muſt of Courſe find all the Reſt, which *they* pleaſe to call Matter of Form, true alſo. This uſual Way of wording Indictments is ſo notorious, dangerous, hurtful and grievous, that it ſeveral Times, and in all Ages, has been complained of by all Perſons whatſoever, except the Clerks and Proſecutors themſelves, whilſt Clerks and Proſecutors. It has been a Complaint in and of Parliament, by King, Lords, and Commons: See 4 *H.* 4. *c.* 2. 37 *H.* 8. *c.* 8. This is that whereof may be ſaid, as was in *Courtin Hertſey*'s Caſe; *It's the Part of the Devil himſelf to make a ſmall Fault be, or ſeem a great One.* But no Complaint, no Argument will, or can prevail with a covetous Clerk, getting Fees, or a malicious Proſecutor, troubling whom he has Envy or Malice againſt, to deſiſt their Advantage. And as the true Circumſtances of any Crime do always, or moſtly aggravate or alleviate it, and all thoſe ſuggeſted thus by the Clerk, if the Bill, &c. be found by the Jury (tho' pretended only Matter of Form) become thus as true, and the Judges muſt adjudge a Puniſhment accordingly, as if all were really true: Thus is a Trap ſet to catch the Jury and Defendant; the Jury to perjure themſelves, and wrong the Defendant, and the Defendant to be adjudged of a Crime, when perhaps guilty of none, or at leaſt of a worſe Crime than truly he is. A Jury therefore, ought firſt to conſider, as aforeſaid, if the Matter of Subſtance, or chief Matter, be criminal at all; and if it be, then if conſiderable: And if it be not criminal, or conſiderably criminal in it ſelf; then if the Circumſtances, as alledged, make it ſo: and if not, then to reject it. If it be conſiderably criminal, with or without the Circumſtances, then conſider if you know it of your ſelves, or by Evidence be ſatisfied it is true, both it ſelf and the Circumſtances: If the Matter it ſelf be not true, you reject the Bill (for where's no Body, is certainly no Shadow:) If the Matter be true, but the Difficulty be about the Circumſtances, then conſider if they be material; if not, you find the Bill, if they be, then conſider if they be conſiſtent, or the Matter will bear them; if not, then reject the Bill, &c. or at leaſt

leaſt ſtrike them out of the Bill, &c. If they be, then conſider if they be true on your own Knowledge, or by the Evidence given you; if they be, then find the Bill, &c. if not, they muſt be ſtruck out, or the Bill returned, *Ignoramus*, &c. As for Example, The Matter muſt be *criminal and conſiderable*: This partly appears before; but further: Suppoſe the Apprentice of *A.* got a Woman with Child, and ſecretly run away upon it, and *A.* procure a Warrant to apprehend him for it: But *B.* a Stranger knowing of the Warrant, lodges, comforts and aſſiſts the Apprentice in unknown Places, that the Warrant can't be ſerved; the Stranger is not puniſhable, 15 *Jac. B. R. Vaughan's* Caſe. If a Commiſſion be granted to two, and one of them execute it alone, without the other, and accordingly fine People, &c. yet no Indictment lies, for it was an Error of Judgment, 27 *Aſſ.* 23. If one ſay to a Juſtice of Peace, executing his Office at his Houſe, &c. and not on the Bench, certain ſcandalous Words, touching his Office of Juſtice, yet he may not be indicted for it, *Hides's* Caſe, *Trin.* 11. *C.* 1. *B. R.* And ſo was Sir ------- *Sackfield's* Caſe, theſe being all inconſiderable Faults. And as to whether *the Circumſtances*, or other Matter than the Principal, *be material or not:* Thoſe Words or Parts be only Words of Form, and but thoſe only which are neceſſarily implied, as that if the Principal, or the Reſt, be true, theſe muſt be ſo too, and cannot poſſibly be otherwiſe, and thus become needleſs to be proved, being before proved, as and by the neceſſary Conſequence of the other Proof; ſo he that proves a Shadow, proves alſo a Body, ſince there muſt be a Body to cauſe it; and thoſe Words be material which may cauſe a different Judgment or Puniſhment, or that aggravate the Fault, make it greater, of another Nature, or any wiſe alter it, and therefore are not to be preſumed, but muſt be proved. The Jury muſt obſerve alſo *whether conſiſtent*, as an Indictment of or for Felony, ſaying, that one ſuch a Day feloniouſly cut down ſuch Trees, and carried them away; or with Force and Arms ſuch a Day cut down ſuch and ſuch Trees, and feloniouſly carried them away; this is inconſiſtent, for Felony can never be about ſtanding Trees, *Indict.* 4. So of growing Apples, of Houſes, or any Thing fixed to the Freehold: But all it can amount to, is only Treſpaſs, unleſs the falling appear by the Indictment to be one Time, and the carrying away, another. So if a Madman, a Child, &c. which have no Diſcretion, be ſaid to do Things maliciouſly, or deſigning any Thing, this is inconſiſtent, or impoſſible, in as much as no Malice or Deſign can be in ſuch. If neceſſarily imployed, for if they be not, they muſt be proved, &c. Every Jury muſt go by *Probata*, what's proved, as well as *Allegata*, what is only alledged. Where one's accuſed of knowingly keeping a Dog wont to worry Sheep, &c. the Knowledge muſt be proved as well as the Reſt, *Cockram* and *Davies*, *c. B. R.* 17 *C.* 1. So the Lord *Shaftſbury*, when he ſued Lord *Digby*, for maliciouſly ſpeaking ſuch and ſuch Words, he proved the Malice as well as Words. If one pleads a

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Feoffment by Deed, and the other denies it, it muſt be proved to be by Deed, *Co. L.* 281. *b.* So if one be indicted of Murder, as that he with Malice fore-thought, killed ſuch a one, the Malice fore-thought muſt be proved; for in theſe Caſes the Killing might be either by Chance, as the Glance of an Arrow, *&c.* by giving Phyſick, by a Champion in Trial of Battle, by a Hangman doing his Office, or by one *Non Compis Mentis*, *&c.* In which Caſes is no Malice, and therefore the Indictment not to be found: So the Words might be ſpoke in Jeſt, or a Thouſand other Ways, and not maliciouſly. So one might keep ſuch a Dog, and not know he was ſuch, and the Fault would then be none at all in him. The Law alſo may ſeveral Times be broke in the Latter, yet without any Fault; if the Intent of the Law be not broke: As when Things are done to avoid a great Inconveniency, or by Compulſion, or for Neceſſity, or by involuntary Ignorance, *&c.* And in theſe and ſuch like Caſes, the Party ought not to be indicted, tho' the Matter be true in it ſelf. The *Romans* had a Law, *He ſhould dye that climbs over the Wall in the Night*; yet one doing ſo to diſcover their Enemies, was by the Senate adjudged Innocent, and rewarded. So it's lawful with us, to pull down another's Houſe when a Fire happens, or in Time of War, to prevent a greater Miſchief. So one being to appear to a Writ, but hindred by Floods, Sickneſs, *&c.* does not, he is excuſed. One forces and uſes one's Hand to kill a third Perſon, he is only guilty: So an Infant, or one *Non ſanæ Memoriæ*, kills another, it's excuſable. So that where any Fact or Words in an Indictment might be as well under any of theſe Circumſtances, as what other the Clerk or Proſecutor is pleaſed to alledge; theſe alledged muſt be proved, for it's plain, they are not neceſſarily implied. And yet if a Man ſhould do any wiſe thus, the Clerks will draw up the Indictment or Information, as if none of theſe Circumſtances were in the Caſe, but that it was maliciouſly, in Contempt of the Laws, *&c.* So it ſeems hard a Man ſhould be hanged for ſtealing under a Neceſſity, where the taking is upon abſolute Neceſſity indeed; and it's not the Party's Fault, but Misfortune, he fell into ſuch Neceſſity: And eſpecially if the Party whom the taking is from, have not the like Neceſſity for the Thing, or the Perſon that takes, be very ſerviceable or profitable to the Kingdom or Common Good, *&c.* yet he muſt be, though the Thing ſo taken be not of the Value of *Thirteen-pence*, if the Jury agree he did it felonioufly; whereas one guilty of Perjury, though he does one a Hundred Thouſand Times more harm, ſhall only ſuffer an inconſiderable Rebuke. And why ſhould a Jury in this Caſe find it done feloniouſly? This was done under Force and Neceſſity, to preſerve a Man's Life, *&c.* inſtead of an Houſe, *&c.* and what's ſaid felonious, muſt be, *Felleo animo*, with an ill affected Mind, with a Mind not barely to do the Thing, but an Itching alſo to do Miſchief; (only this Itching indeed ſhall be preſumed, unleſs Cauſe appear to the Contrary.) As if one takes a Thing out of another's Poſſeſſion, claiming it with ſome

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Colour as his own, &c. this is adjudged no Felony: Why? for not being done with any felonious Intent, as appears by his Claiming, &c. So the like Stealing, as aforeſaid, was not for Miſchief's Sake at all, but for Neceſſity, &c. Thus *David*, againſt the Law, took and eat that Bread which was provided for the Table of God only, *Exod. c.* 29. 1 *Kings* 21. Our Saviour and his Apoſtles plucked off, and eat the Ears of another's Corn, *Mat.* 12. And he, becauſe he had Need of an Aſs, took that which was none of his, but another's; and had *Lazarus*, ready to periſh, taken *Dives*'s Crumbs againſt his Will, &c. yet it ſeems he had no more ſinned than he miſbehaves himſelf, that he does what the Lord bids, and the Steward forbids, under the Rules aforeſaid. A Jury therefore, not obſerving the Rules aforeſaid, gives a Verdict not only againſt the preſent and immediate Defendant, but alſo in him even againſt *David*, *Chriſt*, &c. repreſented thus in his Caſe. In the Civil Law (that of the Admiralty particularly) if a diſtreſſed Ship takes Water by Force, of another where is Plenty, it's no Theft; becauſe of the Neceſſity, ſo adjudged ſeveral Times. If an Indictment mention one ſeditiouſly, and deſigning to diſturb the Government, and to withdraw from the King the Love of his Subjects, and ſaid of him ſuch and ſuch Words; here the Words might, perhaps, be ſpoken within the Privilege of Diſcourſe in Parliament, or in a jocular Way, or ironically, when one means the Contrary; or by Way of Suppoſition, in Argument, or when one meant a contrary Thing, or no Harm at all; and this perhaps too explained at the ſame Time in other Words accordingly, or the Words in the Indictment be but part of the Sentence, &c. or tranſpoſed, or ſome how elſe altered. So if a Complaint be, that one falſly and maliciouſly, and without deſigning to break his Credit and ruin his Trade, called ſuch a one a Bankrupt; here, perhaps, he was a Bankrupt then, or no Tradeſman at all; therefore in theſe and ſuch Caſes, the Circumſtances alleged not being implyed neceſſarily, though the Fact or Words were ſpoke, they muſt be proved. But to inſtance ſome Caſes adjudged by the Judges themſelves: If *A.* bring an Appeal againſt *B.* and *B.* is after acquitted; now, ſhould *B.* indict *A.* for maliciouſly, &c. bringing the Appeal, the Indictment ought not to be found, if *B.* were indicted before of the ſame Fault, he was after appealed againſt for, becauſe his being before indicted, proves there was at leaſt colourable Reaſon why the Appeal was brought, and not Malice only, *Coron* 178. 40 *E.* 3. 42. A Chyrurgion was indicted, for that he by Negligence in curing one's Hand, maimed it; the Negligence muſt be proved, 48 *E.* 3. 6. 11 *H.* 6. 18. So in Actions for Words, which holds the ſame Law as in Indictments, &c. *A.* ſues *B.* for falſly and maliciouſly calling him, being an Heir, a Baſtard; Action will not lye, if *B.* pretend himſelf Heir, for then it was not maliciouſly, but only as it were in order to get or claim the Land, &c. And it's lawful

thus to ſlander another, juſtifying one's own Title, *Co.* 4. 10. So *Molton* ſues *Clapham*, for that a Suit depending between them, upon reading certain Affidavits in Court, *Clapham* openly then and there, falſly and maliciouſly ſaid, there is not a Word true in the Affidavits, and that he would prove it by Forty Witneſſes: here the Words, though they were agreed falſe, yet not being ſpoke maliciouſly, but out of another Deſign, as in his Defence, *&c.* as aforeſaid, Action does not lye, *B. R.* 14 *C.* 1. *Rot.* 459. So a Councellor calling one a Thief at a Trial, the like; for it's not malicious, *&c.* if material for the Cauſe he manages. *Montagues c.* So where *A.* ſays to his Friend *B.* that *C.* hath the *French Pox*, therefore adviſing him not to keep him Company; for he ſpoke as Advice to a Friend, and not maliciouſly, *James* and *Rudley's C.* 40, 41 *El. in B.* And thus is further ſeen the Cauſe or Occaſion of ſpeaking Words, or doing any Thing, muſt be conſidered as well as the Words or Fact: And ſays *Coke*, *This is a general Rule*, *Co.* 4. 14. Alſo it's another Rule, All Offences in Fact or Word, ought in Conſtruction to be made the leaſt of poſſible. *Verba accipienda ſunt in mitiori ſenſu*: Words ſhall be taken ſpoke in that Senſe which is moſt innocent, *&c.* See of this ſeveral Examples, *Co.* 4. 17. *Hob.* 473. *C.* 4. 9. *Co.* 4. 13. for the Law will *preſume* Innocency further than down-right proved, as aforeſaid, to the Contrary. And if Juries ſhould not be cautious, as aforeſaid, one might be indicted, *&c.* for ſaying, *The King is a fit Man to govern*, or for any Thing in the World. Suppoſe *A.* be indicted, *for maliciouſly, and with a Deſign to withdraw the King's Subjects from their due Allegiance*, &c. *ſaying*, *The King is a fit Man to govern*, and *A.* ſhould be found guilty of it, becauſe he ſaid theſe Words; *A.* would be in a ſad Caſe, the Judges muſt give Judgment, as if the Words were ſpoke ironically, or in a contrary Senſe than they were, for *ſo* the Circumſtances alleged import, *Tho' it be found of Courſe*. If a Jury find an Indictment, *&c.* with the Word *feloniu* in it, they find one guilty of Felony, be the Fact what it will, and ſo as a Felon the Defendant muſt ſuffer: So alſo if the Word *proditorie*, for High Treaſon; and why may not they as juſtifiably find theſe Words of Courſe, as other not neceſſarily implyed? When an Indictment, *&c.* is grounded upon a Statute, then every little Word muſt be proved that is alſo in the Statute, though ſeeming implyed, or little more than immaterial; this *all agree*. For want of theſe, and ſuch like Obſervations, one *Thomas Burdett*, Eſq; was condemned, hanged and beheaded at *Tyburn*, in *Edward* the Fourth's Time, when the Matter proved was only, that he being abſent, the King hunted in his Park, and killed a white Buck, which Mr. *Burdett* fancied above the Reſt of his Deer, and that Mr. *Burdett* hearing of this, wiſhed the Buck's Horns in his Belly that adviſed the King ſo to do, *Speed's Hiſt.* 700. Much like was it alſo with one *Walter Walter*, who was beheaded in *Smithfield*, *Anno* 1476. when all proved againſt

againſt him, was only that he (living at the Sign of the *Crown* in *Cheapſide, London*) ſaid to his Child, to pacifie him when he cried, *Peace, peace, Child, thou ſhalt be Heir of the Crown.* But who can open ſome Jury-men's Eyes, to ſee how like an Ox led to the Slaughter they be impoſed upon, and cheated, to cheat others of their Lives, Fortunes, and all that's dear to them; though by their Example too of acting thus, they make Precedents, and give Countenance to after Juries to be like themſelves, and conſequently expoſe and render themſelves, they know not how ſoon, in the ſame Predicament, and to be puniſhed as the Criminal was they puniſhed. *Or by the Evidence given you.* Evidence is only ſuch a Teſtimony that makes ſomewhat relating to the Iſſue or Matter in Queſtion clear, manifeſt and plain to the Jury. And thus is it, all the Witneſſes or Teſtimony in the World of Things impoſſible, repugnant, inconſiſtent, *&c.* can be no more than *bare Teſtimony*, and cannot any wiſe amount to, or be called *Evidence.* Herein the Jury muſt conſider the Credit and Authority of the Evidence, and the Matter or Extent of what is evidenced. *Firſt*, If the Matter proved amount to ſuch plain and full Proof as is required. An Indictment laid againſt three Perſons, may not be found againſt all three, when the Evidence is only againſt one or two of them; nor if laid againſt one Perſon for three Faults, may it be found againſt that one for all the three Matters, when but one or two of them are proved; nor when the Evidence is but to part of a Matter or Fault, may the Indictment be found for the whole; but, as aforeſaid, all found muſt be proved: Indictments, *&c.* as aforeſaid, brought upon, or referred to *any Statute*, the Words of the Statute mentioned in ſuch Indictment, *&c.* muſt be proved very ſtrictly, even to a Tittle; the Proof muſt hit the Bird in the Eye. As one indicted on the Statute, for *maliciouſly diſturbing a Miniſter at Divine Service*, every one of theſe Words muſt be proved; ſo for *willfully and corruptly forſwearing one's ſelf*; ſo *for one's Gain keeping a Gaming-Houſe.* But in other Caſes, as at *Common Law*, if the Proof and Words in the Indictment, *&c.* differ either in the *Matter*, or the *Form*, or *Manner*, inconſiderably, or ſo as the Difference be not ſomewhat conſiderable or material, as aforeſaid; ſuch is indeed no Difference in Law, nor by the Jury to be taken as any. In the *Matter*, as in a Complaint for theſe Words, *B. is a Maintainer of Thieves, and a ſtrong Thief himſelf*; here the Word *ſtrong* ſignifying little or nothing, need not be proved ſpoken, *Dy.* 21. 75. But if the Allegation and Proof materially differ, otherwiſe; as for theſe Words, *If* B. *might have his Will, he would kill all the true Subjects in* England, *and the King too.* Now, the Proof being that the Defendant ſaid, *I think in my Conſcience, that if* B. *&c.* the beſt Opinions in this Caſe are, that this is not ſufficient Proof; for the Words alleged are more poſitive and abſolute, and move Credit more in one's Ears than thoſe proved, and ſo are not in Effect the ſame, but

materially differ. So of theſe Words: B. *procured Eight or Ten Witneſſes of his Neighbours to perjure themſelves*; the Proof being only that the Defendant ſaid, B. *had cauſed Eight or Ten*, &c. This is no Proof, for one may be a *Cauſe*, and yet not a Procurer, there being remote Cauſes, as well as others ſo nigh, as that of procuring. Such a Cauſe as this *B.* might be, though only Plaintiff or Defendant in a Suit, for had there been no Suit, there could be no Perjury. And the moſt favourable and innocent Senſe of Words is to be taken, and no other. As for the *Manner*, an Indictment being for Murder *by Poyſon*; if the Proof be, it was *not by Poyſon*, but a Weapon, burning or drowning, *&c.* this will not do; for the Manner proved, is of another Nature proved than alleged; but if the Difference were only thus, that the Poyſon alleged was of one ſort, and that proved, of another; this being immaterial, (both agreeing it was by Poyſon) the Proof may ſerve. So Murder alleged to have been committed by a *Dagger*, the Proof being it was *by a Sword* or Bill, may ſerve; but Proof *by Poyſoning* will not do. If an Aſſault and Battery be alleged to have been at *A.* the Proof being it was *not* at *A.* but *B.* may ſerve, provided the Offence be neither greater or leſſer, whether committed at *A.* or *B.* But if the Place alleged aggravate the Fault, it's otherwiſe; or if both Places be not in the ſame County. So of the like Difference in Time alleged and proved. Now, as to the Credit and Authority of what is witneſſed: *It's no Proof or Evidence to a Jury, which is againſt their own Knowledge, nor any other but that only, which confirms them in what they did know, or acquaints them with what they did not know.* The only Reaſon, ſaid my Lord High Steward, at Lord *Cornwallis*'s Trial, why a Priſoner is allowed no Council in Matter of *Fact*, or in any Thing but Matter in *Law*, when *Life* or *Member* is concerned, is this: *The Evidence whereby he ſhall be condemned, ought to be ſo plain and evident, that all the Council in the World may be preſumed able to ſay nothing againſt it, or in his Defence. Nothing ought ſo much as raiſe a Suſpicion*, ſays *Horne*, *but what comes from* grave and good People, *thoſe which be* credible, *and heed what they ſay*, Mir. 200. *And not from others, as ill-tongued, ill-diſpoſed*, &c. *Bract. Brit. Stanf.* The great Lord *Coke* ſays, *Of old Time (as yet*, ſays he, *indeed it ought to be) any Indictment was not to be found but on credible Witneſſes, and plain and direct Proof; and never upon Probabilities or Inferences*, &c. *Inſt.* 2. 384. And he likewiſe ſays, *Inſt.* 3. 25. *It's moſt neceſſary, as many hold, there ſhould be* two *good Witneſſes produced to the Grand-Jury to prove every Indictment: And the Proof*, ſays he, *ought to be* more *clear than* Light. Every Jury muſt always remember, they may preſume nothing but *Innocency*; and *Innocency*, &c. *they ought*, until the Contrary be proved. Of Preſumption and argumentive Verdicts, *&c.* finding one guilty, there be ſeveral very ſad Examples. One the Lord *Coke* tells of, is, *There being two Brothers, one dies, leaving an Eſtate, and an only Child; the*

the other educates it; and one Night correcting it, it cried, Good Uncle, do not kill me, *and next Morning it was gone no Body knew whither. This Brother is accuſed of its Death, upon Evidence of the Matter aforeſaid, that he beat it; it was young, about nine Years old; it cried as aforeſaid; it was never heard of ſince, and that the Uncle enjoys an Eſtate by this. The Jury found him guilty, and he was hanged; but about a Year after, it returned ſafe and well,* Inſt. 3. 232. The Scripture enjoins the Uſe always of *two* Witneſſes at leaſt, when yet the Puniſhment *then and there* was ſo much leſs than *now with us*, for the Crimes to be puniſhed, *Deut.* 17. 6. 16. 19. 15. In ſome Caſes there muſt be more than two Witneſſes, but never fewer. By the ancient Laws of *England*, no Indictment was to be received againſt a *Preſbyter*, without three, or at leaſt two Witneſſes; againſt a *Cardinal Deacon*, without Twenty-ſix, or at leaſt Twenty-four; againſt a *Cardinal Preſbyter*, but with Sixty-four, or at leaſt Forty-four, nor againſt a *Cardinal Biſhop*, without Seventy-two Witneſſes. *Lamb.* 178. The general Rule is, *Two or three Witneſſes be enough, if liable to no Exception*: Any *one* Perſon may invent or contrive any Story for Malice or Envy, or other End, to take away another's Life, *&c.* And who can diſprove or detect him? But it's not ſo eaſy for *two* to do it; yet *two* may poſſibly alſo agree and contrive an Evidence together, and ſo form it, and frame Circumſtances, all agreed of before-hand between them, that being falſe, it may yet ſeem very plauſible; *The Children of this World be wiſer than the Children of Light. Jezebel* had *two* Witneſſes againſt *Naboth*; and two Witneſſes were againſt chaſte *Suſanna*, to prove her Adultery, yet both had falſe Evidence againſt them. *Suſanna* was acquitted, only becauſe the Witneſſes differed what Tree it was under. In all Trials whatſoever in *England*, either at Civil Law, or Common Law, where is no Jury, there all will confeſs, there muſt be *two* Witneſſes at leaſt, *Co. L.* 6. b. And always that Witneſſes are to be joined to the Jury, they muſt be two at leaſt, *ibid.* And in any Law any where, muſt be always *two* Witneſſes at leaſt, and no Place can be pretended of otherwiſe, except only *England.* And that it ſhould be ſo *here*, even when there is a Jury too, ſee 48 *Aſſ.* 5. 48 *E.* 3. 30. And ſo is expreſly, *Mir. c.* 3. &c. *Co. L.* 6. b. *Inſt.* 3. 26. And ſo it was agreed in *B. C. Trin.* 9. *El.* And the only Reaſon why it ſhould be otherwiſe, is as aforeſaid, that the Jury be preſumed to know themſelves, to the Value of one Witneſs more. But if it ſo fall out, that really they know nothing themſelves; then, ſhould they find one guilty upon a ſingle Teſtimony, they make that Law, which otherwiſe could not be Law, and find one guilty the Law would have acquitted; and thus a Trial by a Jury would be leſs ſafe and more diſtructive than any other in all the whole World again. The Jury thus make *one* Witneſs as good as a *Thouſand*; for had a Thouſand witneſſed, the Jury could have done no more. This would

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occaſion great Miſchiefs, Perjuries, and other Inconveniencies. *A.* then being ſufficiently malicious or intereſted, and ſo deſigning *B.*'s Death; an *Italian* would poyſon, *Spaniard* ſtab, *French-man* piſtol him; but being an *Engliſh-man*, and expecting ſuch a credulous, officious Jury, as aforeſaid, to help him, will ſure chooſe to *ſwear* him to Death; for *A.* has his Malice better anſwer'd. *B.* thus not only loſes his Life, but alſo his Credit, Eſtate, and what not? Beſides attainting his Blood, and utterly diſgracing all his Relations; and at laſt, how ſhall *A.* be diſcovered in it? He is infinitely more ſafe this way than any other. Or, ſuppoſe one comes out of the Moon, and by Chance ſhould diſcover him, he knows he is ſafe of his Life, he ſhall not die by our Law: If any Body happen too that will be at the Trouble, Charges, Hazard, and Danger, to proſecute him never ſo ſeverely. But by the Statute, he ſhall forfeit *Forty Pounds*, or at his Election, ſtand a while in the Pillory, and half a Year be in Priſon; this is all. Likewiſe a cunning Rogue, ſuppoſe he robs one, *&c.* and no Witneſs by; if one offer to proſecute him, let him proſecute firſt, and he hangs one *thus* into the Bargain, and ſaves himſelf honourably. Or were there one or two Witneſſes by, but he firſt proſecutes, and ſwears againſt all; it will go hard with them all.

It's ſaid of the *Egyptians*, they had no Puniſhment for Lying, and ſo had no Meaſure in it: But thus *our* Law *tempts*, as well as *ſcarce at all puniſhes Perjury*. A Jury, tho' they have two or more Witneſſes, ought alſo to conſider and examine their Circumſtances. Amongſt the *Turks*, only ſuch may be Witneſſes as are Freemen, can ſay their Prayers, have ſome Knowledge in Law, and be known of civil Life and Converſation, *&c. Boſchiner Academ.* 19. By the Laws of *Scotland* (for the moſt Part always like ours) none ſhall be Witneſs under *Fourteen* Years old; furious People, Officer of the ſame Court, Women, adultrous Perſons, Thieves, Poor, whipt for any Offence, infamous, convict and ranſomed from Juſtice, Kinſfolks, Companions or Parties of the ſame Crime, Clergy againſt Laity; nor any one's Tenant, Bailiff, Servant, or any other of his Robe, Council, Retinue, *&c.* nor any known Adverſary, nor any Perſon excommunicate, or impriſoned for, or accuſed of a Crime. *St.* 2. *Rob.* 1. By *our* Laws none ought to be a Witneſs that's indicted of Treaſon or Felony, and not acquitted; Perſons excommunicate, outlawed, or otherwiſe defamed, nor Judges in any Caſe where they ſhall be concerned as Judges, *Brit.* 39. Perſons outlawed or otherwiſe infamous, 11 *H.* 7. 41. And certainly they cannot that be infamous, as attainted of a falſe Verdict, of any Conſpiracy at the King's Suit, of Perjury, of a Præmunire, of Forgery on the Stat. 5 *El. c.* 14. of Felony, or have by Judgment loſt their Ears, or ſtood in the Pillory, or be Infidels, or *Non ſanæ Memoriæ*, of inſufficient Diſcretion, conſiderably intereſted in the Matter, *Co. L.* 6. b. A

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Husband or Wife cannot be Witness for, or against one another, *Co. L.* 6. b. nor against any other in the same Cause, *Stanf.* 26. b. Except in criminal Cases, where he or she is the Party offended, and swears only for the King, and no other Evidence can be expected. The Confession of a Criminal gotten by Fright, or any Artifice used upon him, or made before he comes to his Trial, is no Evidence against him. The Common Law was so strong in this Point, that till 2, 3, *P. & M. c.* 10. no Justice of Peace could examine a Criminal; in short,

Ask his Estate, Fame and Religion,
Quality, Sex, Age and Discretion.

But the Judges use to determine *who* shall be sworn, and *what* shall be produced as *Evidence* to the Jury, and the Jury what *Credit or Authority* the same's worthy of, *Co. L.* 6. b. One that's burnt in the Hand for Felony, is by some held to be a Witness in Law; for, the Crime, say they, is purged, so if pardoned by the King. And some hold many of those aforesaid, are in Law good Witnesses, as *poor* Men; but the Jury may consider, such may easier be biassed or corrupted, as he has not so much to lose or forfeit for a Crime, and therefore lies under several Necessities and Temptations a rich Man does not, *&c.* In *Solomon*'s Proverbs, *c.* 30. praying against Poverty, the Reasons alleged are, *Lest being poor, one should steal, and take the Name of the Lord in vain.*

As for Servants, *&c.* they are under the same Circumstances commonly of poor Men, and worse, for they are more apt to do any Thing in Obedience, or Favour, or else out of Malice, *&c.* against or for their Lord, *&c.* Before the Conquest, the Oath of a *Thane* (one of like Degree then, as a Yeoman is now) was in Law equivalent to the Oath of six Villains, Pagans, &c. (Servants that were bound) *Lamb.* 56. 200. as for Persons any wise infamous, such will not value or stand upon their Credit, or but the less, since they have little or none to lose, *and over Shoes over Boots.* As for criminal Persons, it's a Maxim, *He that has been once wicked, or in one Thing, may be suspected again, or in another Thing*; hence where a Defendant is supposed in Law guilty but of a Contempt, Trespass, Deceit or Injury; he shall not wage his Law, for the Law will not believe *him*, though they would believe another against *whom* is an Action of Debt, Detinue or Account, *Co. L.* 295. As for one under 14 Years old, such are, as our Law says, not arrived at Discretion; such may mistake, be influenced, *&c.* and so all the Rest. But it were not amiss, if Juries heard all Persons, weighing their Testimony as ought. A Jury should mislike any Witness also, that in his Evidence varies, delivers himself in any Passion, speaks at Random, or not cautiously, or seems to side with or against either Party, or to argue, or to offer proving Negatives. None can swear a Negative, nor may be admitted to give Testimony directly against an Affirmative, 48 *E.* 3. 32.

3. 30. A Jury may take Notice of particular Statutes, Patents, Judgments, and other Records given in Evidence, and may go againſt Eſtopels, Concluſions, &c. ſo it be according to the very Truth; for they muſt ſpeak the Truth in all Caſes, *Co.* 4. 53. It's much the Jury does not always examine Witneſſes *themſelves*. If he that examines them be corrupted, or any wiſe ill affected, he may eaſily miſlead the whole Courſe of Evidence, he may countenance which Side he will pleaſedly, hearing the one Side on one Sort, but the other not without Brow-beating and Uneaſineſs; he may frighten, diſcountenance, divert, puzzle, diſtract, or otherwiſe abuſe a Witneſs; he may flatter, wheedle, prompt, aſk leading Queſtions, direct, &c. and thus darken and perplex the Truth.

How does a Jury diſcharge its Conſcience thus? The Jury is the only Judges alſo of what is ſaid, and how the Verdict ſhall be given, and they whoſe Conſciences are to be ſatisfied, and certainly know beſt what they want to know, &c. unleſs they walk by implicit Faith, therefore be the moſt proper to aſk the Queſtions.

All that is aforeſaid, ſhould alſo the rather be as propoſed, conſidering how the Law is now alter'd as to Accuſers, Judges, Witneſſes, Councellors, Solicitors, &c. Anciently, *All Perſons that indicted any other, were to be ſufficient, reſponſible*, &c. Co. 5. 120. *Accuſers gave Security to anſwer Damages, if the Accuſation proved falſe*, Mir. 19. Fines were ſet on Appellors, 11 *R.* 2. Fines 2. 15 *E.* 3. Fines 49. 107. If *A.* brought an Appeal in any Caſe, and was either barred, non-ſuited, or his Writ abated, he was fined and impriſoned *immediately, without the Defendant's Trouble*, 8 *H.* 4. 17. 20. *Brit.* 245. 32. Appellee acquit, the Appellor was by the ſame Judgment, without more Trouble, impriſoned a Year and a Day, and was to repair the Damages of Credit, Trouble, Charges, &c. of Appellee, beſides, undergo a grievous Ranſom or Fine to the King; and ſo was it of Abettors or Encouragers of the Proſecution, *Fleta* 53. It was Death to appeal innocent Perſons of any mortal Crime, till *H.* 1. brought it to corporal Puniſhment, and ſatisfying the Party grieved his Damages, *Mir.* 250. 251. So the Lawyers were puniſhed for aſſizing the Accuſer, and a Year and a Day's Impriſonment inflicted on a Sergeant, Lawyer, Attorney, or Clerk, to uſe Deceit or Colluſion in a Court, or conſent to it, either in Favour of the Court, or any Perſon elſe, *Fleta* 87. Councellors were to be ſuſpended Practice, if they tendered falſe Delays, falſe Witneſſes knowingly, uſed Deceits, Fictions, or Untruths to the Court: And were to ſwear not to maintain or defend any Wrong or Falſity, *Mir.* 121, 122. And it's by a kind Conſtruction they be not yet liable in ſeveral Caſes to be puniſhed as Barrettors, Maintainers, &c. An Aſſize did lye againſt Councellors, Attornies, &c. by whoſe ill Practice or Means any one loſt but a Freehold in Land, *Mir.* 154. 209. So Witneſſes have formerly been puniſhed ſeverely. In the Scripture,

Scripture, the Story of *Suſanna*, the Witneſſes are put to Death. By *Moſes*'s Law, it was Eye for Eye, and Tooth for Tooth, Life for Life, &c. againſt falſe Witneſſes, *Deut.* 19. 21. By the Law *Corneliæ* amongſt the *Romans*, a Witneſs that occaſioned another's Death by falſe Teſtimony, loſt his Head, if one of the greater Quality, elſe he was hanged on the Croſs, or given to wild Beaſts, *Simler.* Before the Conqueſt, that of *Moſes* was moſtly ſo with *us*, only ſometimes it was Baniſhment, *Ll. Ed. c.* 3. *Falſe Judges, and falſe Witneſſes are guilty of willfully killing Men. Mir* 34. 36. After it came to the cutting out of Tongues, *Mir. c.* 4. As for Judges, they were accounted Diſſeiſſours, if they wronged any one in his Title, *Brit.* 147. In *Scotland, a Judge convicted of having thrice ill judged, loſes his Office, and is adjudged infamous,* Stat. Rob. 1. c. 28. *Whoſoever gives a falſe Judgment, ſhall forfeit his* Were, *(what's Life is worth) unleſs he can prove on Oath he could judge no better, Lamb.* 162, 64. Judges, if condemned one to Death againſt their Knowledge, or by Ignorance of, or in what they ought not, as Judges, be ignorant of, they are Murderers, &c. and to die as ſuch, *Mir.* 256. King *Alfred*'s Law was, *That falſe Judges, becauſe they diſhonour God, whoſe Vicars they be, (the Scripture calls them God's) and the King, which raiſes them to ſuch an honourable Seat, as the Chair of God; they ſhall (firſt) make Satisfaction to the Party grieved, forfeit what elſe they have, and ſuffer further Puniſhment at the King's Will and Pleaſure. And if they falſly put to Death any, then to die themſelves, and always at leaſt to ſuffer like for like, Mir.* 265. 1301. Appeal of one's Death lay againſt a Judge, for judging one falſly or wrongfully to Death, *Mir.* 136. Preſentments were made againſt Chancellors, Judges, &c. for breaking their Oath, *Mir.* 144. There were Forty four Judges hanged in one Year for wongful Judgments, *Mir.* 296. &c. And ſays the ſame Book, *It's an abuſe, that all Things are not ſo now,* 296. What became of *Treſilian* and *Belknap*, of later Years? But now the Law ſeems clear otherwiſe, as we have little or no Puniſhment againſt Chancellors, Judges, Councellors, Attornies, Clerks, Witneſſes, &c. yet were Juries *then* ſo cautious, as aforeſaid, with and againſt them, where *now* therefore how many Times more jealous and cautious have they Reaſon, and ſhould they be.

The Law conſidering the great Burthen that lies upon the Conſciences of Jury-men, has favoured them with this Liberty. They may, as aforeſaid, take upon them the Knowledge of what the Law is in the Matter, or upon the Truth of the Fact, as well as the Knowledge of the Fact, and ſo give in a Verdict generally, *that the Defendant is guilty or not.* Or they may give in *only* the Matter of Fact, particularly how they find it to be, and then leave it to the Judges to determine. Or, they may acquaint the Judges, how the Matter of Fact ſtands, and then aſk the Judges their Opinion, as to the Matter of Law, and then determine the whole Matter *themſelves.*

The

The Grand-Jury ſtrikes out of the Indictment what they are not certain is true; or may any wiſe alter it to what they be certain is true: Or, if any Thing be in it they be doubtful of, they may ſuperſcribe it, *Ignoramus*, at their Election in all theſe Caſes. Thus if a Jury find the Words not ſpoke, or the Fact not done with, and according to the Aggravations and Circumſtances in an Indictment, *&c.* mentioned: They ought either *not find* the Indictment, (for one not being guilty as the Indictment mentions, is conſequently not guilty of that Indictment, but rather ſeems, if guilty at all, guilty of ſome other Matter than which he ſtands indicted of, and ſo of ſome other Indictment only; and then let the Proſecutor, if ſo fond to trouble his Neighbours, bring ſuch other) or *ſtrike out* what they have not ſufficient Evidence of, as they do often in Indictments of Murder, (which ſay the Defendant *of his Malice fore-thought feloniouſly killed and murdered* ſuch a one) ſtrike out the Words, *of his Malice fore-thought* and *murdered*, having no Evidence of the Malice, but ſufficient of the Reſt, and then indorſe it, *Billa vera*, and ſo find the Bill *Manſlaughter*, inſtead of *Murder*. So was it of an Indictment againſt Lord *Chandois* and Count *Arundel* his Second, in a Duel. In like Manner, when the Evidence proves a Fact done only by Miſchance, defending one's ſelf, in Time and Place of War; when a Defendant was not *Compis Mentis*; an Officer doing his Duty, *&c.* the Grand-Jury alter the Indictment accordingly. So of the Petit Jury, only it does not alter the Indictment, *&c.* but inſtead of altering Murder to Manſlaughter, *&c.* as aforeſaid, in the Indictment, they only ſay, Guilty of Manſlaughter, and not of Murder; or guilty of Chance-medley, *Se Defendendo*, &c. Or they may tell the Court particularly and plainly how they find the Truth in, and of the whole Matter to be, ſo far as concerns the Fact, or what was done or ſaid. As in Caſes of Words, what were ſpoke, where, to what Intent, *&c.* and ſo leave it to the Court to judge on it according to Law, and to tell what the Law is thereupon, and ſo be diſcharged themſelves, which is called giving a *ſpecial* Verdict. Suppoſe *A.* bring an Action of Debt on a Bond againſt *D.* as Heir of *C.* and *D.* pleads he hath nothing from *C.* to pay any Thing with; and *A.* replies, that he has, *&c.* and ſo the Iſſue is joined (or what the Jury be to try, is) whether *D.* has any Thing, as aforeſaid, or not. *A.* proves that *D.* had before the Action, brought ſomething ſo, but aliened by Fraud and ill Practice, to deceive *A.* of his Debt. Now, they finding the Matter or Caſe to be thus indeed, and the Law being (for there is a Statute, 13 *El.*) that ſuch aliening ſhall be void, and conſequent, the Heir chargeable nevertheleſs: They may, if they will, as aforeſaid, either take upon them to know the Law, and in this, or any Caſe, ſay *generally*, they find for *A.* Or not take Notice of the Law, but *only* of the *Matter*, and ſo tell the Court how, and what they find the Matter to be; and thus leave it to the Court to judge

judge in Law, whether they ought to be found for; and this is their moſt ſafe Way. To this End was the Stat. of *Weſt.* 2. *c.* 3. that if a Jury doubt on the Evidence what the Law is, and therefore what to do, they might leave it to the Judges to determine. But, ſays *Coke, This Statute is only in Affirmance of the Common Law, Inſt.* 2. 425. 13 *E.* 1. 39. See a *ſpecial* Verdict in Caſe of *Murder, Co.* 4. 44. So in a Caſe about Murder, the Jury tells the Court, they find the Killing it ſelf to be true, but not the Killing felonioufly, as mentioned in the Indictment, and ſo aſk the Opinion of the Court, if it be Murder, *Co.* 9. 69. So the Jury found the Parties indicted for *riotouſly* tearing the Petition, guilty of tearing the Petition, but not of the *Riot*, &c. It's true, it's doubted in *Moor, c.* 100*z.* whether in a Writ of Right a Jury may give a ſpecial Verdict. But as there is no Reaſon, that if the Cauſe be indifferently plain, as to the Law, the Jury themſelves ſhall not put an End to it, giving a *general* Verdict, as *Guilty* or *Not-guilty*, &c. without ſo much further Charge, loſs of Time, increaſe of Trouble, as otherwiſe muſt needs follow; yet on the other Hand, there is as little why, if there be Difficulty in Law upon the Caſe, that they being moſtly unlearned in Law, ſhould be bound to find *generally* guilty or not, *&c.* and ſo find and ſay on a ſudden what is the very Law, as well as Fact, when ſome ſuch Caſes have ſeveral Years puzzled all the Judges to reſolve. And it's againſt all Reaſon, that the Election of giving a ſpecial Verdict, or general Verdict, ſhould be in the Judges too; for the Jury beſt knowing themſelves, their own Capacities and Strength, do therefore beſt know when they meet with Difficulties to them in Law, and ſo when to give the one or other: And accordingly are the beſt Opinions that the Jury may *chuſe*, be the Action, *&c.* real, perſonal, or mixt, civil, criminal, publick or private; and be the Iſſue general or ſpecial, or in any Caſe whatſoever: And that the Judges muſt accept of, and cannot refuſe ſuch Verdict, 13 *E.* 1. 30.

Either the Jury may at any Time alter their Opinion or Verdict, *&c.* before recorded in Court, *Fitz. J. of P.* 114. *Co. L.* 227.

All ſaid any where above of Grand Juries, may be applied to the *other* Juries; and no Body will offer to deny, but *other* Juries ought to be as ſtrict, circumſpect, and careful, *&c.* as aforeſaid, tho' they would pretend otherwiſe of Grand Juries.

A Petit Jury may abridge a Fault a Grand Jury finds one guilty of, but can't enlarge it: As one indicted of *Murder*, may by the Petit-Jury, be found guilty of *Manſlaughter, Chance-medly*, &c. inſtead thereof; but one being indicted of *Manſlaughter*, can't by the Petit-Jury be found guilty of *Murder*, or any *greater* Crime than *Manſlaughter*.

A Petit-Jury cannot give any Verdict againſt any one, where Life or Member is in queſtion or danger, but only in the Court, whilſt alſo it's ſitting, *&c.* though in other Caſes it may.

An Abſtract of MAGNA CHARTA, *or the* GREAT CHARTER *made in the Ninth Year of King* HENRY *the Third, and confirmed by King* EDWARD *the Firſt, in the Twenty-eighth Year of his Reign; being ſo much thereof, as remains now in Force.*

HENRY, *By the Grace of God, King of* England, *Lord of* Ireland, *Duke of* Normandy *and* Guyan, *and Earl of* Anjou; *To all Arch-biſhops, Biſhops, Abbots, Priors, Earls, Barons, Sheriffs, Provoſts, Officers, and to all Bayliffs, and other our Faithful Subjects which ſhall ſee this preſent Charter, Greeting. Know you, that We unto the Honour of Almighty God, and for the Salvation of the Souls of our Progenitors and Succeſſors, Kings of* England, *to the Advancement of our Holy-Church, and Amendment of our Realm, of our meer and free Will, have given and granted to all Arch-Biſhops, Biſhops, Abbots, Priors, Earls, Barons, and to all Free-men of this our Realm, theſe Liberties following, to be kept in our Kingdom of* England *for ever.*

A Confirmation of Liberties.

FIRST, We have granted to all the Freemen of our Realm, for us and our Heirs for ever, theſe Liberties under-written, to have, and to hold to them and their Heirs for ever.

II. *How Sureties ſhall be charged to the King.*

WE, or our Bayliffs, ſhall not ſeize any Land or Rents for any Debt, as long as the preſent Goods and Chattels of the Debtor do ſuffice to pay the Debt, and the Debtor himſelf be ready to ſatisfy therefore. 2. Neither ſhall the Pledges of the Debtor be diſtrained, as long as the principal Debtor is ſufficient for the Payment of the Debt. 3. And if the principal Debtor fail in the Payment of the Debt, having nothing wherewith to pay, or will not pay where he is able, the Pledges ſhall anſwer for the Debt. 4. And if they will, they ſhall have the Lands and Rents of the Debtor, until they be ſatisfied of that which they before paid for him, except that the Debtor can ſhew himſelf to be acquitted againſt the ſaid Sureties.

III. *The Liberties of* London, *and other Cities and Towns, confirmed.*

THE City of *London* ſhall have all the old Liberties and Cuſtoms which it hath been uſed to have. Moreover, we Will and Grant, that all other Cities and Boroughs, Towns, and the Barons of the five Ports, and all other Ports, ſhall have all their Liberties and free Cuſtoms.

IV.

IV. *Common Pleas ſhall not follow the King's Court.*

COMMON Pleas ſhall not follow our Court, but ſhall be holden for ſome Place certain.

V. *Where and before whom Aſſizes ſhall be taken.*
Adjournment for Difficulty.

ASSIZES of *Novel Diſſeiſin* and *Mortdanceſter*, ſhall be taken but in the Shires, and after this Manner; If we be out of this Realm, our Chief Juſtices ſhall ſend our Juſtices through every County once in the Year: Which, with the Knights of the Shire, ſhall take the ſaid Aſſizes in thoſe Counties. (2.) And thoſe things that at the coming of our aforeſaid Juſtices, being ſent to take thoſe Aſſizes in the Counties, cannot be determined, ſhall be ended by them in ſome other Place in their Circuit. 3. And thoſe Things which for Difficulty of ſome Articles cannot be determined by them, ſhall be referred to our Juſtices of the Bench, and there ſhall be ended.

VI. *Aſſizes of Darrein Preſentment,*

ASSIZES of Darrein Preſentment, ſhall be always taken before our Juſtices of the Bench, and there ſhall be determined.

VII. *How Men of all ſorts ſhall be amerced, and by whom.*

A FREE-MAN ſhall not be amerced for a ſmall Fault, but after the Manner of the Fault; and for a great Fault, after the Greatneſs thereof, ſaving to him his Contenement. 2. And a Merchant likewiſe, ſaving to him his Merchandize. 3. And any other's Villain than ours ſhall be likewiſe amerced, ſaving his Wainage, if he fall into our Mercy. 4. And none of the ſaid Amerciaments ſhall be aſſeſſed, but by the Oath of honeſt and lawful Men of the Vicinage. 5. Earls and Barons ſhall not be amerced, but by their Peers, and after the Manner of their Offence. 6. No Man of the Church ſhall be amerced after the Quantity of his Spiritual Benefice, but after his Lay-tenement, and after the Quantity of his Offence.

VIII. *Making of Bridges and Banks.*

NO Town nor Freeman ſhall be diſtrained to make Bridges nor Banks, but ſuch as of old time, and of right have been accuſtomed to make them in the time of King *Henry* our Grandfather.

IX. *Defending of Banks.*

NO Banks ſhall be defended from henceforth, but ſuch as were in defence in the time of King *Henry* our Grandfather, by the ſame places, and the ſame bounds as they were wont to be in his time.

X. *Holding Pleas of the Crown.*

NO Sheriff, Conſtable, Eſcheator, Coroner, nor any other our Bailiffs, ſhall hold Pleas of our Crown.

XI. *The King's Debtor dying, the King ſhall be firſt paid.*

IF any that holdeth of Us *Lay fee* do die, and our Sheriff or Bailiff do ſhew our Letters Patents, of our Summons for Debt, which the dead Man did owe to us: It ſhall be lawful to our Sheriff or Bailiff, to attach and inrol all the Goods and Chattels of the Dead, being

being found in the said Fee, to the Value of the same Debt, by the Sight and Testimony of lawful Men; so that Nothing thereof be taken away, until we be clearly paid off the Debt. 2. And the Residue shall remain to the Executors, to perform the Testament of the Dead. 3. And if nothing be owing to us, all the Chattles shall go to the Use of the Dead (saving to his Wife and Children the reasonable Parts.)

XII. *How long Felons Lands shall be holden to the King.*

WE will not hold the Lands of them that be convict of Felony but one Year and one Day, and then those Lands shall be delivered to the Lords of the Fee.

XIII. *In what Place Wears shall be put down.*

ALL Wears from henceforth shall be utterly put down in *Thames* and *Medway*, and thro' all *England*, but only by the Sea-coasts.

XIV. *In what Case a* Præcipe in Capite, *is not grantable.*

THE Writ that is called *Præcipe in Capite*, shall be from henceforth granted to no Person of any Freehold, whereby any Freeman may lose his Court.

XV. *There shall be but one Measure throughout this Realm.*

ONE Measure of Wine shall be through our Realm, and one Measure of Ale, and one Measure of Corn, that is to say, the Quarter of LONDON. 2. And one Breadth of died Cloth, Russets, and Haberjects, that is to say, two Yards within the Lists. 3. And it shall be of Weights as it is of Measures.

XVI. *Inquisition of Life and Member.*

NOTHING from henceforth shall be given for a Writ of Inquisition, nor taken of him that prayeth Inquisition of Life or of Member; but it shall be granted freely, and not denied.

XVII. *Wager of Law shall not be without Witness.*

NO Bailiff, from henceforth, shall put any Man to his open Law, nor to any Oath, upon his own bare saying, without faithful Witnesses brought in for the same.

XVIII. *None shall be condemned without Trial. Justice shall be sold or deferred.*

NO Freeman shall be taken or imprisoned, or be disseised of his Freedom, or Liberties, or free Customs, or be outlawed, or exiled, or any otherwise destroyed; nor we will not pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. 2. We will sell to no Man, we will not deny or defer to any Man, either Justice or Right.

XIX. *Merchants, Strangers, coming into this Realm, shall be well used.*

ALL Merchants, (if they were not openly prohibited before) shall have their safe and sure Conduct to depart out of *England*, to come into *England*, to tarry in, and go through *England*, as well by Land as by Sea, to buy and sell without any Manner of evil Tools, by the old and rightful Customs, except in Time of War.

2. And

6. And if they be of a Land making War againſt us, and be found in our Realm at the Beginning of the Wars, they ſhall be attached without harm of Body and Goods, until it be known unto us or our Chief Juſtice, how our Merchants be intreated there in the Land making War againſt us. 3. And if our Merchants be well intreated there, theirs ſhall be likewiſe with us.

XX. *Tenure of a Barony coming into the King's Hand by Eſchete.*

IF any Man hold of any Eſchete, as of the Honour of *Walling ford, Nottingham, Bolein*, or of any other Eſchetes which be in our Hand, and are Baronies, and die; his Heirs ſhall give none other Relief, nor do none other Service to us, than he ſhould to the Baron, if it were in the Baron's Hand. 2. And we in the ſame wiſe ſhould hold it as the Baron held it; neither ſhall we have, by occaſion of any Baron or Eſchete, any Eſchete, or keeping of any of our Men, unleſs he that held the Barony or Eſchete, otherwiſe held of us in chief.

XXI. *Lands ſhall not be alienated to the Prejudice of the Lord's Services.*

NO Freeman, from henceforth, ſhall give or ſell any more of his Lands, but ſo, that of the Reſidue of the Lands, the Lord of the Fee may have the Services due to him, which belongeth to the Fee.

XXII. *In what only Caſe a Woman ſhall have an Appeal of Death.*

NO Man ſhall be taken or impriſoned upon the Appeal of a Woman, for the Death of any other than of her Huſband.

XXIII. *No Land ſhall be given in Mortmain.*

IT ſhall not be lawful, from henceforth, to any one, to give his Lands to any religious Houſe, and to take the ſame Land again, to hold of the ſame Houſe. Nor ſhall it be lawful to any Houſe of Religion, to take the Lands of any, and to leaſe the ſame to him of whom he received it: If any, from henceforth, give his Lands to any religious Houſe, and thereupon be convict, the Gift ſhall be utterly void, and the Land ſhall accrue to the Lord of the Fee.

Notes on MAGNA CHARTA.

THIS excellent Law holds the firſt Place in our Statute Books; for though there were, no doubt, many Acts of Parliament long before this, yet they are not now extant; 'tis called MAGNA CHARTA, or the *Great Charter*, not in reſpect of its Bulk, but in regard of the great Importance and Weight of the Matters therein contained; it is alſo ſtiled *Charta Libertatum Regni*, The Charter of the Liberties of the Kingdom; and upon great Reaſon (ſaith *Cook* in his Proem) it is ſo called from the Effect, becauſe it makes and preſerves the People free.

Though

Though it run in the Stile of the King *as a Charter*, yet, (as my Lord *Coke* well obſerves in the 38th Chapter) it appears to have paſſed in Parliament; for there was then a Fifteenth granted to the King, by the Biſhops, Earls, Barons, Free-Tenants and People, which could not be but in Parliament, nor was it unuſual in thoſe Times, to have Acts of Parliament in a Form of a *Charter*, as you may read in the Prince's Caſe. *Co. Rep. l.* 8.

Likewiſe, tho' it be ſaid here, That *the King hath given and granted theſe Liberties*; yet they muſt not be underſtood as mere *Emanations* of Royal Favour, or new Bounties granted, which the People could not juſtly challenge, or had not a Right unto before: For the Lord *Coke*, at divers Places aſſerts, and all Lawyers know, that this Charter is, for the moſt Part, only *Declaratory* of the principal Grounds of the fundamental Laws and Liberties of *England*; no new Freedom is hereby granted, but a Reſtitution of ſuch as lawfully they had before, and to free them of what had been uſurped and incroached upon them by any Power whatſoever; and therefore you may ſee this Charter often mentions their Rights and Liberties, which ſhews they had them before, and that the ſame were now confirmed.

As to the Occaſion of this Charter it muſt be noted, That our Anceſtors, the *Saxons*, had with a moſt equal Poize and Temperament, very wiſely contriv'd their Government, and made excellent Proviſion for their Liberties, and to preſerve the People from Oppreſſion; and when *William* the *Norman* make himſelf Maſter of the Land, though he is commonly called the *Conqueror*, yet in truth he was not ſo; and I have known ſeveral Judges that would reprehend any Gentleman at the Bar, that caſually gave him that Title: For, though he killed *Harold* the Uſurper, and routed his Army, yet he pretended a Right to the Kingdom, and was admitted by Compact, and did take the Oath to obſerve the *Laws* and *Cuſtoms*.

But the Truth is, he did not perform that Oath ſo as he ought to have done; and his Succeſſors, *William Rufus*, King *Stephen*, *Henry* the Firſt, and *Richard* likewiſe, made frequent Incroachments upon the Liberties of the People; but eſpecially King *John* made uſe of ſo many illegal Devices to drain them of Money, that wearied with intolerable Oppreſſions, they reſolved to oblige the King to grant them their Liberties, and to promiſe the ſame ſhould be obſerved; which King *John* did, in *Running-Mead* between *Staines* and *Windſor*, by two *Charters*, one called, *Charta Libertatum*, The Charter of Liberty (the Form of which you may read in *Math. Paris*, Folio 246. and is in effect, the ſame with this here recited) the other the *Charter of the Foreſt*, Copies of which he ſent into every County, and commanded the Sheriffs, *&c.* to ſee them fulfilled.

But by ill Counſel he quickly after began to violate them as much as ever; whereupon Diſturbances and great Miſeries aroſe, both to himſelf and the Realm.

The

The Son and Succeſſor of this King *John*, was *Henry* the Third, who in the ninth Year of his Reign, renewed and confirmed the ſaid Charters, but within two Years after cancelled them, by the pernicious Advice of his Favourites, and particularly *Hubert de Burgh*, whom he had made Lord Chief Juſtice; one that in former Times had been a great Lover of his Country, and well-deſerving Patriot, as well as learned in the Laws; but now, to make this a Step to his *Ambition* (which ever rideth without Reins) perſuaded and humoured the King, that he might avoid the Charters of his Father King *John* by *Dureſſe* and his own Charter, and *Charta de Foreſta* alſo; for that he was within Age when he granted the ſame: Whereupon the King in the Eleventh Year of his Reign, being then of full Age, got one of the great Charters, and of the Forreſt into his Hands; and by the Council principally of this *Hubert* his Chief Juſtice, at a Council held at *Oxford*, unjuſtly *cancelled both the ſaid Charters*, (notwithſtanding the ſaid *Hubert de Burgh* was the *primier* Witneſs of all the temporal Lords, to both the ſaid Charters;) whereupon he became in high Favour with the King, inſomuch that he was ſoon after, (*viz.* the 10th of *December*, in the Thirteenth Year of that King) created (to the higheſt Dignity that in thoſe Days a Subject had) to be an Earl, *viz.* of *Kent*. But ſoon after (for Flatterers and Humoriſts have no ſure Foundation) he fell into the King's heavy Indignation, and after many fearful and miſerable Troubles, he was juſtly, and according to Law, ſentenced by his Peers in an open Parliament, and juſtly degraded of that Dignity which he unjuſtly had obtained by his Counſel, for cancelling *Magna Charta*, and *Charta de Foreſta*.

In this great Charter, all the Ancient *Liberties* and *Cuſtoms* of *London*, are confirmed and preſerved, which is likewiſe done by divers other Statutes, as 14 *E.* 3. *c.* 2, &c. The 13th Paragraph ſays,

NO FREEMAN SHALL BE TAKEN, *&c.* which deſerves to be written in Letters of Gold; and I have often wondred, the Words thereof are not inſcribed in Capitals on all our Courts of Judicature, Town-Halls, and moſt publick Edifices: They are the *Elixir* of our *Engliſh* Freedoms, and Store-Houſe of all our Liberties. And becauſe my Lord *Coke*, in the ſecond Part of his Inſtitutes, has many excellent Obſervations, I ſhall here recite his very Words. This containeth nine ſeveral Branches.

1. *That no Man be taken or impriſoned*, but *per Legum Terræ*, that is, by the *Common Law*, *Statute Law*, or *Cuſtom* of *England*: For theſe Words, *per Legum Terræ*, being towards the End of this Chapter, do refer to all the precedent Matters in this Chapter; and this hath the firſt Place, becauſe the *Liberty of a Man's Perſon* is more precious to him, than all the reſt that follow, and therefore it is great Reaſon that he ſhould, by Law, be relieved therein, if he be wronged, as hereafter ſhall be ſhewed.

2. *No Man ſhall be diſſeiſed*; that is, put out of Seiſin, or diſpoſſeſſed of his Freehold; that is, Lands or Livelihood, or of his Liberties or Free-Cuſtoms; that is, of ſuch Franchiſes and Freedoms, and Free-Cuſtoms, as belong to him by his Free-birth-right, unleſs it be by the *lawful Judgment*; that is, *Verdict* of his Equals (that is, of Men of his own Condition) or by the *Law of the Land*; that is, (to ſpeak it once for all) by the due Courſe and Proceſs of Law.

3. *No Man ſhall be outlawed*, made an *Exlex*, put out of the Law, that is, deprived of the Benefit of the Law, unleſs he be outlawed according to the Law of the Land.

4. *No Man ſhall be exiled* or baniſhed out of his Country, that is, no Man ſhall *loſe his Country*, unleſs he be exiled according to the *Law* of the *Land*.

5. *No Man ſhall in any ſort be deſtroyed*, unleſs it be by the Verdict of his Equals, or according to the *Law* of the *Land*.

6. No Man ſhall be condemned at the King's Suit, either before the King in his Bench, where the Pleas are *Coram Rege*, nor before any other Commiſſioner or Judge whatſoever; but by the Judgment of his Peers, that is, Equals, or according to the Law of the Land.

7. We ſhall ſell to no Man Juſtice or Right.

8. We ſhall deny to no Man Juſtice or Right.

9. We ſhall defer to no Man Juſtice or Right.

Each of theſe we ſhall briefly explain.

1. No Man *ſhall be taken*, that is, reſtrained of Liberty, by Petition or Suggeſtion to the King or his Council, unleſs it be by Indictment, or Preſentment of good and lawful Men, where ſuch Deeds be done. This Branch, and divers others Parts of this Act, have been notably explained and conſtrued by divers Acts of Parliament.

2. *No Man ſhall be diſſeiſed, &c.* Hereby is intended, that Lands, Tenements, Goods and Chattles, ſhall not be ſeized into the King's Hands, contrary to this great Charter, and the Law of the Land; nor any Man ſhall be diſſeiſed of his Lands or Tenements, or diſpoſſeſſed of his Goods or Chattles, contrary to the Law of the Land.

A Cuſtom was alledged in the Town of *D.* that if the Tenant ceaſe by two Years, that the Lord ſhould enter into the Freehold of the Tenement, and hold the ſame until he was ſatisfied of the Arrearages: It was adjudged a Cuſtom againſt the Law of the Land, to enter into a Man's Freehold in that Caſe, without Action or Anſwer.

King *Henry* VI. granted to the Corporation of *Dyers* within *London*, Power to ſearch, *&c.* And if they found any Cloth died with *Log-wood*, that the Cloth ſhould be forfeit: And it was adjudged, that this Charter concerning the Forfeiture, was againſt the Law of the Land, and this Statute. For no Forfeiture, can grow by Letters Patents.

No Man ought to be put from his Livelihood without Anſwer.

3. *No*

3. *No Man outlawed*, That is, barred to have the Benefit of the Law. And note, to this Word *outlawed*, theſe Words, *unleſs by the Law of the Land*, do refer [*Of his Liberties.*] This Word hath three Significations.

1. As it hath been ſaid, it ſignifieth the *Laws* of the Realm, in which Reſpect, the Charter is called, *Charta Libertatum*, as aforeſaid.

2. It ſignifieth the *Freedom the Subjects of England* have: For Example, The *Company* of *Merchant Taylors* of *England*, having Power, by their *Charter*, to make Ordinances, made an Ordinance, that every Brother of that Society ſhould put the one half of his *Cloaths* to be dreſſed by ſome *Cloth Workers* free of the ſame *Company*, upon Pain to forfeit *Ten Shillings*, &c. And it was adjudged, that this Ordinance was againſt Law, becauſe it was againſt the Liberty of the Subject; for every Subject hath Freedom to put his Cloaths to be dreſſed by whom he will. And ſo it is, if ſuch or the like Grant had been made by his *Letters Patents*.

3. *Liberties* ſignifie the *Franchiſes* and *Privileges* which the Subjects have of the Gift of the King, as the *Goods* and *Chattles* of *Felons*, *Out-Laws*, and the like; or which the Subject claims by Preſcription, as *Wreck*, *Waife*, *Stray*, and the like.

So likewiſe, and for the ſame Reaſon, if a Grant be made to any Man, to have the ſole making of Cards, or the ſole dealing with any other Trade, that Grant is againſt the Liberty and Freedom of the Subject, that before did, or lawfully might have uſed that Trade, and conſequently againſt this great *Charter*.

Generally *all Monopolies* are againſt this great *Charter*, becauſe they are againſt the Liberty and Freedom of the Subject, and againſt the *Law* of the *Land*.

4. *No Man exiled*; That is, baniſh'd, or forced to depart or ſtay out of *England*, without his Conſent. By the *Law* of the *Land*, no Man can be exiled or baniſhed out of his Native Country, but either by Authority of Parliament, or in Caſe of Abjuration for Felony by the *Common Law*; and ſo when our Books, or any Record, ſpeak of Exile, or Baniſhment, other than in Caſe of Abjuration, it is to be intended to be done by Authority of Parliament, as *Belknap* and other Judges, *&c.* baniſhed into *Ireland*, in the Reign of *Richard* II.

This is a beneficial Law, and conſtrued benignly; and therefore the King cannot ſend any Subject of *England*, againſt his Will, to ſerve him out of this Realm, for that ſhould be an Exile, and he ſhould *perdere Patriam*: No, he cannot be ſent againſt his Will into *Ireland*, to ſerve the King or his Deputy there, becauſe it is out of the Realm of *England*: For if the King might ſend him out of his Realm to any Place, then, under Pretence of Service, as Ambaſſador, or the like, he might ſend him into the fartheſt Part of the World, which being an Exile, is prohibited by this Act.

5. *No Man deſtroyed*; That is, fore-judged of Life or Limb, or put to Torture, or Death, every Oppreſſion againſt Law, by Colour of an uſurped Authority, is a kind of Deſtruction. And the Words *Aliquo modo* (any otherwiſe) are added to this Verb *deſtroyed*, and to no other Verb in this Chapter, and therefore all Things, by any manner of Means, tending to Deſtruction, are prohibited; as if a Man be accuſed or indicted of Treaſon or Felony; his Lands or Goods cannot be granted to any, no not ſo much as by Promiſe, nor any of his Lands or Goods ſeized into the King's Hands before he is attainted: For, when a Subject obtaineth a Promiſe of a Forfeiture, many Times undue Means, and more violent Proſecution is uſed for private Lucre, tending to Deſtruction, than the quiet and juſt Proceeding of the Law would permit, and the Party ought to live of his own until Attainder.

6. *By lawful Judgment of his Peers*; That is, by his *Equals*, Men of his own Rank and Condition. The general Diviſion of Perſons, by the Law of *England*, is, either *one that is noble*, and in Reſpect of his Nobility of the Lords Houſe of Parliament, or *one of the Commons*, and in Reſpect thereof, of the Houſe of Commons in Parliament. And as there be divers Degrees of Nobility, as Dukes, Marqueſſes, Earls, Viſcounts and Barons, and yet all of them are comprehended under this Word *Peers*, and are Peers of the Realm: So of the Commons, there be Knights, Eſquires, Gentlemen, Citizens, and Yeomen, and yet all of them of the Commons of the Realm. And as every of the Nobles is one a Peer to another, though he be of a ſeveral Degree, ſo it is of the Commons, and as it hath been ſaid of Men, ſo doth it hold of noble Women, either by Birth or Marriage.

And foraſmuch, as this Judgment by Peers is called *lawful*, it ſhews the Antiquity of this Manner of Trial: It was the ancient accuſtomed legal Courſe, long before this Charter.

Or by the Law of the Land: That is, by due Proceſs of Law, for ſo the Words are expreſly expounded by the Statute of 37 *E.* 3. *Chap.* 8. And theſe Words are ſpecially to be referred to thoſe foregoing, to whom they relate. As none ſhall be condemned without a lawful Trial by his Peers, ſo none ſhall be taken, impriſoned, or put out of his Freehold, without due Proceſs of Law, that is, by the Indictment, or Preſentment of good and lawful Men of the Place, in due Manner, or by Writ original of Common Law.

Now, ſeeing that no Man can be taken, arreſted, attached, or impriſoned, but by due Proceſs of Law, and according to the Law of the Land, theſe Concluſions hereupon do follow:

1. That the Perſon or Perſons which commit any, muſt have lawful Authority.

2. It is neceſſary that the Warrant, or *Mittimus*, be lawful, and that muſt be in writing under his Hand and Seal.

3. The

3. The Cauſe muſt be contained in the Warrant, as for Treaſon, Felony, *&c.* Suſpicion of Treaſon, or Felony, or the like particular Crime: For if it do not thus ſpecifie the Cauſe, if the Priſoner brings his *Habeas Corpus*, he muſt be diſcharged, becauſe no Crime appears on the Return: Nor is it in ſuch Caſe, any Offence at all, if the Priſoner make his Eſcape; whereas if the *Mittimus* contain the *Cauſe*, the Eſcape would reſpectively be Treaſon or Felony, tho' in Truth he was not guilty of the firſt Offence. And this mentioning the Cauſe, is agreeable to Scripture, *Acts* 5.

4. The Warrant, or *Mittimus*, containing a lawful Cauſe, ought to have a lawful *Concluſion*, *&c.* And him ſafely to keep until he be delivered by *Law*, *&c.* and not until the Party committing ſhall farther order.

If any Man, by Colour of any Authority, where he hath not any in that particular Caſe, ſhall preſume to arreſt or impriſon any Man, or cauſe him to be arreſted or impriſoned, this is againſt this Act, and it is moſt hateful, when it is done by Countenance of Juſtice. King *Edward* VI. did incorporate the Town of St. *Albans*, and granted to them to make Ordinance, *&c.* they made a By-Law, upon Pain of Impriſonment, and it was adjudged to be againſt this Statute of *Magna Charta*; ſo it had been, if ſuch an Ordinance had been contained in the Patent it ſelf.

We will ſell to no Man, deny to no Man, &c. This is ſpoken in the Perſon of the King, who in Judgment of *Law*, in all his Courts of Juſtice, is preſent. And therefore every Subject of this Realm, for Injury done to him in Perſon, Lands or Goods, by any other Subject, *eccleſiaſtical* or *temporal*, whatever he be, without Exception, may take his Remedy by the Courſe of the Law, and have Juſtice and Right for the Injury done him; freely, without Sale; fully, without Denial; and ſpeedily, without Delay; for Juſtice muſt have three Qualities; it muſt be *free*; for nothing is more odious, than Juſtice ſet to Sale: *Full*, for Juſtice ought not to limp, or be granted by Piece-meal: And *ſpeedily*, for Delay is a kind of a Denial: And when all theſe meet, it is both Juſtice and Right.

We will not deny or delay any Man, &c. Theſe Words have been excellently expounded by latter Acts of Parliament, that by no Means Common Right, or Common *Law*, ſhould be diſturbed or delayed; no, tho' it be commanded under the *Great Seal*, or *Privy Seal*, *Order*, *Writ*, *Letters*, *Meſſage*, or *Commandment whatſoever, from the King or any other*; and that the Juſtices ſhall proceed, as if no ſuch Writs, Letters, Order, Meſſage, or other Commandment were come to them: All our Judges ſwear to this; for 'tis Part of their Oaths; ſo that if any ſhall be found wreſting the *Law*, to ſerve a Court-Turn, they are perjur'd as well as unjuſt. The *Common-Laws* of the Realm, ſhould by no Means be *delayed*, for the *Law* is the ſureſt Sanctuary that a Man can take, and the ſtrongeſt Fortreſs

to

to protect the Weakeſt of all: The *Law* is a moſt ſafe Head-piece, and no Man is deceived whilſt the Law is his Buckler: But the King may ſtay his own Suit, as a *Capias pro fine*, for the King may reſpite his Fine, and the like.

All Protections that are not legal, which appear not in the Regiſter, nor warranted in our Books, are expreſly againſt this Branch, *Nulli deferemus*, we will not delay any Man: As a Protection under the great Seal, granted to any Man, directed to the Sheriffs, *&c.* and commanding them that they ſhall not arreſt him, during a certain Time, at any other Man's Suit, which hath Words in it, ſuch as: *By our Prerogative, which we will not have diſputed*; Yet ſuch Protections have been argued by the Judges, according to their Oath and Duty, and adjudged to be void. As *Mich.* 11. *H.* 7. *Rot.* 124. a Protection granted to *Holmes*, a Vintner of *London*, his Factors, Servants and Deputies, *&c.* Reſolved to be againſt Law, *Paſch.* 7. *H.* 8. *Rot.* 66. ſuch a Protection diſallowed, and the Sheriff amerced for not executing the Writ, *Mich.* 13 & 14 *Eliz.* in *Hitchcok*'s Caſe, and many others of latter Time: And there is a notable Record of ancient Time, in 22 *E.* 1. *John de Marſhal*'s Caſe.

Juſtice or Right: We ſhall not ſell, deny or delay, Juſtice and Right; neither the End, which is Juſtice, nor the Mean whereby we may attain to the End, and that is the Law: Right is taken here for Law, in the ſame Senſe that Juſtice often is ſo called. 1. Becauſe it is the *right Line*, whereby Juſtice diſtributive is guided and directed; and therefore all the Commiſſioners of *Oyer* and *Terminer*, of Goal-delivery of the Peace, *&c.* have this Clauſe; *To do Juſtice and Right according to the Rule of the Law and Cuſtom of* England; and that which is called Common-Right, in 2 *E.* 3. is called Common-Law, in 14 *E.* 3. *&c.*

2. The Law is called *Rectum*, becauſe it diſcovereth that which is tort, crooked or wrong; for as Right ſignifieth Law, ſo tort, crooked or wrong, ſignifieth Injuries; and Injury is againſt Right; *A right Line is both declaratory of it ſelf and the Oblique.* Hereby the crooked Cord of that which is called Diſcretion, appeareth to be unlawful, unleſs you take it as it ought to be, *Diſcretion is to diſcern by the Law what is juſt.*

3. It is called *Right*, becauſe it is the beſt *Birth-right* the Subject hath, for thereby his Goods, Lands, Wife and Children, his Body, Life, Honour and Eſtimation, are protected from Injuries: *A greater Inheritance deſcends to us from the Laws, than from our Progenitors.*

Thus far the very Words of that Oracle of our Law, the ſage and learned *Cooke*, which ſo fully and excellently explains this incomparable Law, that it will be ſuperfluous to add any Thing farther thereunto. And by Stat. 35 *Ed.* 1. *c.* 2. it is expreſly declared, *That if any Judgment be given from that forwards, againſt any of the Points of* Magna Charta, *they ſhall be anull'd and holden for nought.*

The

The Habeas Corpus *Statute made in the* 31*ſt Year of K.* Charles II.

THERE having been great Delays uſed by Sheriffs, Goalers, and other Officers, to whoſe Cuſtody the King's Subjects had been committed, in making Returns of Writs of *Habeas Corpus, &c.* whereby many Perſons had been long detained in Priſon, in ſuch Caſes where by Law they were bailable; for Prevention thereof, and the more ſpeedy Relief of all Perſons impriſoned for any criminal Matters, it is Enacted,

I. That whenſoever any Writ of *Habeas Corpus* ſhall be brought and ſerved upon any Officer, or other Perſon, for any one in his Cuſtody, or ſhall be left at the Goal with any of the Under-Officers, the ſaid Officers or their Keepers or Deputies, within three Days after that, (unleſs the Commitment were for Treaſon or Felony plainly expreſſed in the Warrant of Commitment) on Payment of the Charges of bringing the Priſoner, or Tender thereof, to be aſcertain'd by the Judge or Court that awarded the Writ, and endorſed on the ſame, not exceeding 12*d. per* Mile, and upon Security given by the Priſoner's own Bond to pay the Charges of carrying him back, if he be remanded by the Court, and that he will not make any Eſcape by the Way, ſhall make Return of ſuch Writ of *Habeas Corpus*, and bring the Body of the Party committed before the Judges or Barons of the Court from whence the Writ ſhall iſſue, or to ſuch Perſons before whom the Writ is returnable; and ſhall certify the true Cauſes of his Detainer or Impriſonment: But if the Place of Impriſonment be beyond Twenty Miles, and not above one Hundred Miles off, then Ten Days is allowed for the ſame; and if further, it ſhall be within Twenty Days, and no longer.

II. And Perſons committed or detained for any Crime (unleſs for Treaſon or Felony expreſſed in the Warrant, as aforeſaid) in the Vacation-Time, may complain to the Lord Chancellor or Keeper, or any Judge, who upon View of the Copy of Commitment, or Oath of its being denied, ſhall upon Requeſt by ſuch Perſons, or any in their Behalf, atteſted and ſubſcribed by two Witneſſes, grant a *Habeas Corpus* under the Seal of their reſpective Courts, returnable immediately; and on Service thereof, the Officer within the Times before limited, is to bring up ſuch Priſoner before the ſaid Lord Chancellor or Judges, before whom the Writ is made returnable, with the Cauſes of his Commitment; and thereupon, within two Days after he ſhall be brought up, the Priſoner ſhall be diſcharged from his Impriſonment, on entering into Recognizance with one or more Sureties, to appear in the Court of King's Bench the Term following, or at the next Aſſizes, Seſſions or general Goal-delivery, or ſuch other Court for the County where the Offence is cognizable; into which Court the Writ, Return and Recognizance aforeſaid, ſhall be certified; unleſs it ſhall appear that the Party is detained upon a legal Proceſs or Warrant, for ſuch Matters or Offences which are not bailable by Law.

III. Provided

III. Provided always, that if any Perſon ſhall neglect to pray a *Habeas Corpus* for his Inlargement, by the Space of two Terms after he is committed, he ſhall not have any ſuch Writ in Time of Vacation, in Purſuance of this Act.

IV. If any Officer or Officers ſhall refuſe to make their Returns, or to bring the Body of the Priſoner as aforeſaid, according to the Command of the Writ, within the Times aforeſaid; or upon Demand made by the Priſoner, or any in his Behalf, ſhall refuſe to deliver a true Copy of the Warrant of Commitment, within ſix Hours after demanded, ſuch Officers, Goalers, *&c.* in whoſe Cuſtody the Priſoner ſhall be detained, ſhall forfeit for the firſt Offence 100*l.* and for the ſecond Offence 200*l.* to the Party grieved, and be rendered incapable to hold their Offices: The Penalties to be recovered by Action of Debt, Bill, Plaint, or Information, in any of the King's Courts at *Weſtminſter*, wherein no Eſſoin, *&c.* or Stay of Proſecution ſhall be admitted or allowed.

V. And no Perſon, who ſhall be delivered and ſet at large by *Habeas Corpus*, ſhall be again impriſoned for the ſame Offence, by any Perſon other than by legal Order and Proceſs of ſuch Court, wherein he ſhall be bound by Recognizance to appear, or other Court having Juriſdiction of the Cauſe: And if any other Perſons ſhall knowingly impriſon again the Perſon delivered or ſet at large, they ſhall forfeit to the Priſoner *Five Hundred Pounds*, to be recovered as aforeſaid.

VI. Perſons committed for High-Treaſon or Felony, plainly and eſpecially expreſſed in the Warrant, upon Prayer in open Court the firſt Week of the Term, or firſt Day of the Seſſions of *Oyer & Terminer* or Goal-Delivery to be brought to Trial; if they are not indicted the next Term, Seſſions of *Oyer & Terminer*, or Goal-Delivery after ſuch Commitment, the Judges, upon Motion made in Court the laſt Day of the Term or Seſſions, ſhall ſet them at Liberty upon Bail, unleſs it appear upon Oath, that the King's Witneſſes could not be produced that Term or Seſſions: And if any ſuch Perſons committed as aforeſaid, upon ſuch Prayer aforeſaid, ſhall not be indicted and tried the ſecond Term or Seſſions after Commitment, they ſhall be diſcharged from their Impriſonment.

VII. But nothing in this Act ſhall extend to diſcharge out of Priſon any Perſon charged in Debt or other Action, or with Proceſs in any Civil Cauſe, but that after his Acquittal for his Crime, he ſhall be kept in Cuſtody for ſuch other Suit.

VIII. If any Perſon or Perſons, Subjects of this Realm, ſhall be committed to any Priſon, or be in Cuſtody of any Officer, for any Criminal Matter, the ſaid Perſon ſhall not be removed from the ſaid Cuſtody into the Cuſtody of any other Officer; unleſs it be by *Habeas Corpus*, or ſome other legal Writ, or where the Priſoner is delivered to the Conſtable to be carried to Goal, *&c.* or when any Perſon is

ſent

ſent by Order to the Houſe of Correction, or removed from one Priſon to another in the ſame County, in order to a Trial or Diſcharge; or in caſe of ſudden Fire, Infection, or other Neceſſity. And Perſons making out and ſigning any Warrants for Removal, contrary hereto, or counterſigning the ſame, and the Officers obeying or executing them, ſhall incur the Forfeitures before mentioned, both for the firſt and ſecond Offence, to the Party grieved.

IX. And any Priſoner may move for and obtain his *Habeas Corpus*, as well out of the *Chancery* or *Exchequer*, as out of the Courts of *King's Bench* or *Common Pleas*; and if the Lord Chancellor or any Judge or Baron, ſhall deny any Writ of *Habeas Corpus* required to be granted as aforeſaid, they ſhall forfeit to the Party grieved 500*l.* recoverable in Manner aforeſaid.

X. And it is declared that Writs of *Habeas Corpus* may run into any County Palatine, the Cinque Ports, and other privileged Places of *England*, and into the Iſles of *Jerſey* or *Guernſey*.

XI. No Subject of this Realm ſhall be ſent Priſoner into *Scotland*, *Ireland*, or into any Parts beyond the Seas, which are or may be within or without the Dominions of his Majeſty, his Heirs or Succeſſors: And if any of the ſaid Subjects be ſo impriſoned, it is illegal, and every ſuch Perſon ſhall for ſuch Impriſonment have an Action of falſe Impriſonment, againſt him by whom he ſhall be committed, detained, impriſoned, ſent Priſoner or tranſported, and againſt all Perſons that ſhall frame, contrive, write, ſeal, or counterſign any Warrant for ſuch Commitment, or ſhall be adviſing, aiding or aſſiſting in the ſame; and ſhall have Judgment to recover treble Coſts, beſides Damages, which Damages ſhall not be leſs than 500*l.* in which Action no Delay or Stop of Proceedings, nor no Injunction, Protection or Privilege, *&c.* ſhall be allowed; and the Perſon or Perſons ſo offending as aforeſaid, being lawfully convicted thereof, ſhall be diſabled to bear any Office of Truſt or Profit within the Realm, or Dominions thereunto belonging, and incur the Pains, Penalties and Forfeitures ordered by the Statute of *Præmunire* made in the 16th Year of *Richard* II. and be incapable of any Pardon from the King, his Heirs or Succeſſors.

XII. This Act ſhall not extend to any Perſon who by Contract in Writing ſhall agree with any Merchant or Owner of a Plantation, *&c.* to be tranſported, and ſhall have received Earneſt upon ſuch Agreement: Nor to Perſons convicted of Felony, and praying to be tranſported beyond the Seas, who may be ſo tranſported into any Parts notwithſtanding this Statute; nor to the Impriſonment of any Perſon before the Time limited for the Commencement of the Act, or any Thing thereto relating; nor to Perſons reſident in this Realm, that ſhall have committed any Capital Crime in *Scotland* or *Ireland*, *&c.* but that ſuch Perſons may be ſent to receive Trial as before this Act.

XIII.

XIII. And Perſons offending againſt this Act ſhall not be impleaded for any Offence, unleſs the ſame be done within two Years at moſt after the Offence was committed, in Caſe the Party grieved ſhall not be then in Priſon; and if he ſhall be in Priſon, then within two Years after his Delivery out of Priſon, or deceaſe.

XIV. After the Aſſizes proclaimed for any County, no Perſon ſhall be removed from the common Goal upon any *Habeas Corpus*, purſuant to this Act, but ſhall be brought thereupon before the Judge of Aſſize in open Court: But after the Aſſizes are ended, any Perſon detained may have a *Habeas Corpus*, according to the Direction and Intention of the Act.

XV. If any Information, Suit or Action, be brought againſt any Perſon or Perſons for Offences againſt this Law, the Defendants may plead the General Iſſue, and give the Special Matter in Evidence; and the ſaid Matter ſhall be as available to all Intents, as if they had pleaded or alledged the ſame Matter in Bar or Diſcharge of ſuch Information, Suit or Action.

XVI. Perſons appearing to be committed as Acceſſary before the Fact, to any Petit Treaſon or Felony, or upon Suſpicion thereof, which ſhall be ſpecially expreſſed in the Warrant of Commitment, ſhall not be removed or bailed by Virtue of this Act, or in any other Manner than they might have been before the Making of the ſame.

Form of a Habeas Corpus returnable immediate.

GEORGE *the Second*, &c. *To the Sheriff of*, &c. Greeting: *We command you, that the Body of* A. B. *in our Priſon under your Cuſtody detained, as 'tis ſaid, together with the Day and Cauſe of his Taking and Detaining, by whatſoever Name the ſaid* A. B. *ſhall be charged in the ſame, you have under ſafe and ſecure Conduct, before Our beloved and faithful* R. M. *our Chief Juſtice aſſigned to hold Pleas before us, at his Chamber at*, &c. *immediately after the Receipt of this Writ, to do and receive all thoſe Things which the ſame our Chief Juſtice ſhall then and there conſider of in this Particular*, &c.

The Courſe of Deſcents *of Lands or Eſtates. Collected out of Sir* Matthew Hale's *Hiſtory of the Laws of* England, *Pag.* 206, 235, &c.

AMONG the many Preferences that the Laws of *England* have above others, I ſhall ſingle out one particular Title, which is of common Uſe, wherein their Preference is very viſible, *to wit*, 1. The hereditary Tranſmiſſion of Lands, from Anceſtor to Heir, and the Certainty thereof.

Firſt then, touching Deſcents and hereditary Tranſmiſſions, I ſhall premiſe certain general Rules; where, Note, *That in all Deſcents the Law prefers the worthieſt of Blood*; as,

1. In all *Deſcents immediate*, the *Male* is preferred before the *Famale*, whether in Succeſſions *deſcending*, *aſcending*, or *collateral*: Therefore in Deſcents the Son inherits and excludes the Daughter; the Brother is preferred before the Siſter, the Uncle before the Aunt.

2. In all *Deſcents immediate*, the Deſcendants from Males, are to be preferred before the Deſcendants from Females: And hence it is that the Daughter of the eldeſt Son is preferred in Deſcents from the Father, before the Son of the younger Son; and the Daughter of the eldeſt Brother, or Uncle, is preferred before the Son of the Younger; and the Uncle, nay, the Great Uncle, *i. e.* the Grandfather's Brother, ſhall inherit before the Uncle of the Mother's Side.

Rule II. 2. In *Deſcents*, the next of Blood is preferred before the more remote, tho' equally or more worthy. And hence it is, 1, The Siſter of the whole Blood is preferred in Deſcents before the Brother of the half Blood, becauſe ſhe is more ſtrictly joined to the Brother of the whole Blood, *viz.* by Father and by Mother, then the half Brother, though otherwiſe, he is the more worthy.

2. Becauſe the Son or Daughter being nearer than the Brother, and the Brother or Siſter than the Uncle, the Son or Daughter ſhall inherit before the Brother or Siſter, and they before the Uncle.

3. That yet the Father or Grandfather, Mother or Grandmother, in a direct aſcending Line, ſhall never ſucceed immediately the Son or Grandchild; but the Father's Brother (or Siſter's) ſhall be preferred before the Father himſelf; and the Grandfather's Brother (or Siſter's) before the Grandfather: And yet, upon a ſtrict Account, the Father is nearer of Blood to the Son than the Uncle; yea, than the Brother: For the Brother is therefore of the Blood of the Brother, becauſe both derive from the ſame Parent; the common Fountain of both their Blood. And therefore the Father is preferred at this

this Day in the Administration of the Goods before the Son's Brother of the whole Blood, and a Remainder limited *proximo de Sanguine* of the Son shall vest in the Father before it shall vest in the Uncle, *Vid. Littleton, Lib.* 1. *Fol.* 8, 10.

Rule III. 3. That all the Descendents from such a Person, as by the Laws of *England* might have been Heir to another, hold the same Right by Representation, as the common Root from whence they are derived: And therefore,

1. They are in the Law in the same Right of Worthiness and Proximity of Blood, as their Root that might have been Heir was, in Case he had been living: And hence it is, that the Son or Grandchild, whether Son or Daughter of the eldest Son, succeeds before the younger Son; and the Son or Grandchild of the eldest Brother before the youngest Brother; and so through all the Degrees of Succession, by the Right of Representation, the Right of Proximity is transferred from the Root to the Branches, and gives them the same Preference as the next and worthiest of Blood.

2. This Right transferred by Representation is infinite and unlimited, in the Degrees of those that descend from the Represented; for *Filius* the Son, the *Nepos* the Grandson, the *Abnepos* the Great Grandson, and so *in infinitum*, enjoy the same Privilege of Representation, as those from whom they derive their Pedigree have, whether it be in *Descent Lineal* or *Transverſal*: And therefore the Great Grandchild of the *eldeſt Brother*, whether it be *Son* or *Daughter*, shall be preferred before the *younger Brother*; because, though the *Female* be less worthy than the *Male*, yet she stands in Right of Representation of the *eldeſt Brother*, who was more worthy than the *Younger*. And upon this Account it is,

3. That if a Man have *Two Daughters*, and the *Eldeſt* dies in the Life of the Father, leaving six Daughters, and then the Father dies; the *youngeſt Daughter* shall have an equal Share with the other six Daughters, because they stand in Representation and Stead of their Mother, who could have had but a Moiety.

Rule IV. 4. That by the *Law of England*, without the *ſpecial Cuſtom* to the Contrary, the *eldeſt Son*, or *Brother*, or *Uncle*, excludes the *younger*; and the *Males* in an equal Degree do not all inherit; but all the *Daughters*, whether by the same or divers Venters, do all inherit together to the Father, and all the *Sisters* by the same Venter do inherit to the *Brother*.

Rule V. 5. That the last actual *Seiſin* in any *Anceſtor*, makes him, as it were, the *Root of the Deſcent*, equally to many in *Intents*, as if he had been a *Purchaſer*: And therefore he that cannot, according to the *Rules of Deſcents*, derive his Succession from him that was last actually seized, though he might have derived it from some *precedent Anceſtor*, shall not inherit. And hence it is, that where Lands descend to the *eldeſt Son* from the *Father*; and the *Son* enters, and dies without

without Iſſue, his *Siſter* of the whole Blood ſhall inherit as Heir to the Brother, and not the *younger Son* of the half Blood, becauſe he cannot be Heir to the Brother of the half Blood: But if the *eldeſt Son* had ſurvived the *Father*, and died before the Entry, the *youngeſt Son* ſhould inherit as Heir to the Father, and not the *Siſter*; becauſe he is Heir to the Father who was laſt actually ſeized. And hence it is, that tho' the *Uncle* is preferred before the *Father* in *Deſcents* to the *Son*, yet if the Uncle enter after the Death of the *Son*, and die without Iſſue, the Father ſhall inherit to the Uncle, *Quia Seiſina facit Stipitem.*

Rule VI. That whoſoever derives a Title to any Land, muſt be of the Blood of him that firſt purchaſed it: And this is the Reaſon why, if the *Son* purchaſe Lands, and dies without Iſſue, it ſhall deſcend to the Heirs of the Part of the Father; and if he has none, then to the Heirs on the Part of the Mother; becauſe though the Son has both the Blood of the Father and of the Mother in him, yet he is of the whole Blood of the Mother, and the Conſanguinity of the Mother are *Conſanguinei Cognati* of the Son.

And of the other Side, if the Father had purchaſed Lands, and it had deſcended to the Son, and the Son had died without Iſſue, and without any Heir of the Part of the Father, it ſhould never have deſcended in the Line of the Mother, but eſcheated: For though the *Conſanguinei* of the Mother were the *Conſanguinei* of the Son, yet they were not of Conſanguinity of the Father, who was the Purchaſer: But if there had been none of the Blood of the Grandfather, yet it might have Reſort to the Line of the Grandmother, becauſe her *Conſanguinei* were as well of the Blood of the Father, as the Mother's Conſanguinity is of the Blood of the Son: And conſequently alſo, if the Grandfather had purchaſed Lands, and they had deſcended to the Father, and from him to the Son; if the Son had entered, and died without Iſſue, his Father's Brothers or Siſters, or their Deſcendants, or for want of them, his Great Grandfather's Brothers or Siſters, and their Deſcendants; or for want of them, any of the Conſanguinity of the Great Grandfather, or Brothers and Siſters of the Great Grandmother, or their Deſcendants might have inherited; for the Conſanguinity of the Great Grandmother, was the Conſanguinity of the Grandfather; but none of the Line of the Mother or Grandmother, *viz.* the Grandfather's Wife, ſhould have inherited; for that they were not the Blood of the firſt Purchaſer. And the ſame Rule, *e converſo*, holds in Purchaſes in the Line of the Mother or Grandmother, they ſhall always keep in the ſame Line that the firſt Purchaſer ſettled them in.

But it is not neceſſary, that he that inherits be always Heir to the Purchaſer; it is ſufficient if he be of his Blood, and Heir to him that was laſt ſeized. The Father purchaſes Lands, which deſcended to the Son, who dies without Iſſue, they ſhall never deſcend to the Heir of the Part of the Son's Mother; but if the Son's Grandmother has

a Brother,

a Brother, and the Son's Great Grandmother hath a Brother, and there are no other Kindred, they ſhall deſcend to the Grandmother's Brother; and yet if the Father had died without Iſſue, his Grandmother's Brother ſhould have been preferred before his Mother's Brother, becauſe the former was Heir of the Part of his Father, tho' a Female; and the latter was only Heir of the Part of his Mother; but where the Son is once ſeized, and dies without Iſſue, his Grandmother's Brother is to him Heir of the Part of his Father, and being nearer than his Great Grandmother's Brother, is preferred in the Deſcent.

But, Note, *This is always intended ſo long as the Line of Deſcent is not broken; for the Rules of Deſcents are to be obſerved, as if he were the original Purchaſer, and as if it had been in the Line of the Father or Mother.*

Rule VII. 7. In all Succeſſions, as well in the Line *Deſcending*, *Tranſverſal* or *Aſcending*, the Line that is firſt derived from a *Male* Root has always the Preferences.

Inſtances whereof in the Line *Deſcending*, &c. *viz.*

A. *has Iſſue two Sons*, B. *and* C. B. *has Iſſue a Son and a Daughter*, D, *and* E. D. *the Son has Iſſue, a Daughter* F. *and* E. *the Daughter has Iſſue, a Son* G. *Neither* C. *nor any of his Deſcendants ſhall inherit, ſo long as there are any Deſcendants from* D. *and* E. *and neither* E. *the Daughter, nor any of her Deſcendants ſhall inherit, ſo long as there are any Deſcendants from* D. *the Son, whether they be Male or Female.*

So in Deſcents *Collateral*, as Brothers and Siſters, the ſame Inſtances applied thereto, evidence the ſame Concluſions.

But in Succeſſions in the Line *Aſcending*, there muſt be a fuller Explication, becauſe it is darker, and more obſcure: I ſhall therefore ſet forth the whole Method of *Tranſverſal Aſcending Deſcents*, under the Eight enſuing Rules, *viz.*

Rule I. If the *Son* purchaſes Lands in *Fee-Simple*, and dies without Iſſue, thoſe of the *Male Line Aſcending*, *uſque Infinitum*, ſhall be *preferred* in the *Deſcent*, according to their *Proximity of Degree* to the Son; and therefore the Father's Brothers and Siſters, and their Deſcendants, ſhall be preferred before the Brothers of the Grandfather and their Deſcendants; and if the Father had no Brothers nor Siſters, the Grandfather's Brothers, and their Deſcendants; and for want of Brothers, his Siſters and their Deſcendants, ſhall be *preferred* before the Brothers of the Great Grandfather: For although by the Law of *England* the Father or Grandfather cannot immediately inherit to the Son, yet the Direction of the Deſcent to the *Collateral Aſcending Line*, is as much as if the Father or Grandfather had been by Law *inheritable*; and therefore as in the Caſe the Father had been inheritable, and ſhould have inherited to the Son before the Grandfather, and the Grandfather before the Great Grandfather; and conſequently if the Father had *inherited*, and died without Iſſue, his eldeſt Brother, and his Deſcendants, ſhould have inherited before the younger Brother

ther and his Deſcendants; and if he had no Brothers, but Siſters, the Siſters and their Deſcendants ſhould have inherited before his Uncle's or Grandfather's Brothers, and their Deſcendants. So, though the *Law of England* excludes the Father from inheriting, yet it ſubſtitutes and directs the Deſcent as it ſhould have been, had the Father inherited, *viz. It lets in thoſe firſt that are in the next Degree to him.*

Rule II. The ſecond Rule is this, *That the Line of the Part of the Mother ſhall never inherit, as long as there are any, tho' never ſo remote, of the Line of the Part of the* Father; and therefore, tho' the Mother has a Brother, yet if the *Atavus*, or *Atavia Patris*, (*i. e.* the Great-Great-Great Grandfather of the Father, or the Great-Great-Great Grandmother) has a Brother or a Siſter, he or ſhe ſhall be preferred, and exclude the Mother's Brother, though he is much nearer.

Rule III. *But yet further, The Male Line of the Part of the Father aſcending, ſhall,* in Æternum, *exclude the Female Line of the Part of the Father aſcending*: And therefore in the Caſe propoſed, of *the Son's purchaſing Lands and dying without Iſſue*, the *Siſter* of the *Father's Grandfather*, or of his *Great-Grandfather*, and ſo *in infinitum*, ſhall be *preferred* before the *Father's Mother's Brother*, though the *Father's Mother's Brother* be a Male, and the *Father's Grandfather* or *Great-Grandfather's Siſter* be a Female, and more remote; becauſe ſhe is of the Male Line, which is *more worthy than the Female Line*, though the *Female Line* be alſo of the *Blood of the Father.*

Rule IV. *But as in the Male Line aſcending, the more near is preferred before the more remote; ſo in the Female Line deſcending, ſo it be of the Blood of the Father, it is preferred before the more remote.* The *Son* therefore purchaſing Lands, and dying *without Iſſue*, and the *Father*, *Grandfather* and *Great-Grandfather*, and ſo upward, all the Male Line being dead without any *Brother* or *Siſter*, or any deſcending from them; but the *Father's Mother* has a *Siſter* or *Brother*, and alſo the *Father's Grandmother* has a *Brother*, and likewiſe the *Father's Great-Grandmother* has a *Brother*; tho' it is true, all theſe are of the *Blood of the Father*; and tho' the very remoteſt of them ſhall exclude the *Son's Mother's Brother*; and tho' it is alſo true, that the *Great-Grandmother's Blood* has paſſed thro' more Males of the *Father's Blood*, than the Blood of the *Grandmother* or *Mother* of the *Father*; yet in this Caſe, the *Father's Mother's Siſter* ſhall be *preferred* before the *Father's Grandmother's Brother*, or the *Great-Grandmother's Brother*, becauſe they are all in the Female Line, *viz. Cognati* (and not *Agnati*) and the *Father's Mother's Siſter* is the neareſt, and therefore ſhall have the *Preference*, as well as in the Male Line aſcending, the *Father's Brother* or his *Siſter* ſhall be preferred before the *Grandfather's Brother.* Pag. 244.

Rule V. But yet in the laſt Caſe, where the Son purchaſes Lands, and dies without Iſſue, and without any Heir on the Part of the *Grandfather*, the Land ſhould deſcend to the *Grandmother's Brother*

or

or *Sister*, as Heir on the *Part of the Father*; yet if the *Father* had purchased this Land, and died, and it descended to his Son, who died *without* Issue, the Lands should not have descended to the *Father's Mother's Brother* or *Sister*, for the Reasons before given in the *Third Rule*: But for want of *Brothers* or *Sisters* of the *Grandfather*, *Great-Grandfather*, and so upwards in the Male-ascending Line, it should descend to the *Father's Grandmother's Brother* or *Sister*, which is his Heir of the *Part of his Father*, who should be *preferred*
Pag. 245. before the *Father's Mother's Brother*, who is in Truth, the Heir of the *Part of the Mother of the Purchaser*, tho' the next Heir of the *Part of the Father* of him that died last seized: And therefore, as if the Father that was the *Purchaser* had died without Issue, the Heirs of the Part of the Father (whether of the Male or Female Line) should have been *preferred* before the Heirs of the *Part of the Mother*; so the Son, who now stands in the Place of the Father, and inherits of him primarily in his Father's Line, dying without Issue, the same Devolution and Hereditary Succession should have been, as if the Father had immediately died without Issue, which should have been to his *Grandmother's Brother*, as Heir of the Part of the Father, tho' by the Female Line, and not to his *Mother's Brother*, who was only Heir of the Part of his *Mother*, who is not to take till the Father's Line, both Male and Female, be spent.

Rule VI. If the *Son* purchase Lands, and dies without Issue, and it descends to any Heir of the Part of the Father, and then if the Line of the Father, (after Entry and Possession) fail, it shall never return to the Line of the *Mother*, tho' in the first Instance, or first Descent from the *Son*, it might have descended to the Heir of the Part of the *Mother*: For now by this Descent and *Seisin*, it is lodged in the Father's Line, to whom the Heir of the Part of the *Mother* can never derive a Title as Heir; but it shall rather *Escheat*. But if the Heir of the Part of the Father had not entered, and then that Line had failed, it might have descended to the Heir of the Part of the *Mother*, as Heir to the *Son*, to whom immediately for want of Heirs of the Part of the Father, it might have descended.

Rule VII. And upon the same Reason, if it had once descended to the Heir of the Part of the Father, of the *Grandfather's*
Pag. 247. Line, and that Heir had entered, it should never descend to the Heir of the Part of the Father, of the *Grandmother's* Line; because the Line of the *Grandmother* was not of the Blood or *Sanguinity* of the Line of the *Grandfather's* Side.

Rule VIII. If for Defaults of Heirs of the *Purchaser* of the Part of the Father, the Lands descend to the Line of the *Mother*, the Heirs of the *Mother* of the Part of her Father's Side, shall be preferred in the Succession, before her Heirs of the Part of her Mother's Side, because they are the more worthy.

Thus far Judge *Hales*; See also *Plowden's Com.* F. 444.

Of Maxims and General Rules, from JACOB's LAW DICTIONARY.

A MAXIM in Law is ſaid to be a Propoſition, of all Men confeſſed and granted, without any Argument or Diſcourſe. And *Maxims* are generally certain Rules or Poſitions, that are the Concluſions of Reaſon, and therefore ought not to be denied or impeached. They are alſo Principles and Authorities, and Part of the Common Law of the Land. *Terms de Ley.* Sir *Edward Coke* in his Inſtitutes, gives the *Latin* Etymology of this Word, and ſays that they are called Maxims. Of Maxims and General Rules the Books of Law are full; but the chief of the *Latin Maxims*, affecting Life, Liberty or Property, with uſeful Obſervations thereon, are ſuch as follow.

1. *Actus Dei Nemini facit Injuriam*: The Act of God does Injury to no Man. The Reaſon of our Law is ſo much ruled by *Religion*, that it will not permit the Act of God to prejudice any: Therefore if an Houſe is blown down by Tempeſt, the Tenant is excuſed in Waſte; but if he expreſsly covenant to repair, there an Action lies. *Noy.* If a Defendant dies in Execution for Debt, the Plaintiff in the Action ſhall have a new Writ of Execution, becauſe the Defendant's Death is the Act of God. And otherwiſe the Plaintiff would loſe his Debt without any Default in him.

2. *Actus Legis nulli facit Injuriam*: The Act of the Law doth Injury to none. For if Land, out of which a Rent-charge is granted, be recovered by elder Title, and thereby the Rent-charge becomes avoided; yet the Grantee ſhall have a Writ of Annuity. *Dyer.* This is becauſe the Rent-charge is made void by Courſe of Law.

3. *Actus me invito factus, non eſt meus Actus*: An Act done againſt my Will is not my Act. As where a Perſon is compelled for fear of Impriſonment, to make a Bond, Deed, or other Writing; the Compulſion will render the ſame void, as if it had never been made. 1 *Inſt.* And not only a Deed, but a Marriage procured by Dureſs, is likewiſe voidable; for all Acts ought to be voluntary, and the Law hath a ſpecial Regard to the Safety and Liberty of Perſons. If one obliges another to ſurrender his Eſtate, it amounts to a Diſſeiſin of him. 14 *Aſſiſ.*

4. *Actio Perſonalis moritur cum Perſona*: A perſonal Action dies with the Perſon. In Caſe one commit a Treſpaſs, or a Battery be done to a Man, and he that did it or the other die, the Action is gone. *Noy Max.* A Leſſee for Years makes Deſtruction on the Lands let, and then dies, no Action will lie againſt his Executor or Adminiſtrator for Waſte done before their Time. Alſo an Action of Debt lies not againſt Executors upon a ſimple Contract, for the Eating and Drinking of the Teſtator; for that Action dies with him. And

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becauſe the Executors cannot wage their Law or deny it, as the Teſtator might have done. 9 *Rep.*

5. *Accuſare Nemo ſe debet niſi coram Deo:* No Man ought to accuſe himſelf, unleſs it be before God. An Oath is not lawful whereby any Perſon may be compelled to confeſs, or accuſe himſelf, *&c.* Likewiſe a Perſon may not ſwear for himſelf, but only where he has particular Power by ſome Statute. 4 *Rep.* The Law will not enforce any one to ſhew or ſay what is againſt him: for which Reaſon an Offender, tho' ever ſo culpable, may plead *Not Guilty.*

6. *Aliquis non debeat eſſe Judex in propria Cauſa:* No Perſon ought to be a Judge in his own Cauſe. It is unreaſonable for Perſons to be at the ſame Time Judges to give Sentence, Miniſters to make Summons, and Parties to have a Share in Debts, *&c.* to be recovered. *Dyer.* And therefore a Lord of a Manor having Cognizance of all Kinds of Pleas, cannot hold Plea to what himſelf is a Party; nor may Juſtices of Peace act in any Matter relating to themſelves; except in certain Pariſh Buſineſs, by a late Statute. 16 *Geo.* 2. But an Inn-keeper in his own Caſe, may detain a Gueſt's Horſe until Satisfaction be made for Standing, and other Charges: And a Perſon may retake his own Goods, of which he is diſpoſſeſſed, *&c.* One cannot generally be Witneſs in his own Cauſe; for it is preſumed by the Law that he will be partial in ſpeaking for his Advantage. 1 *Inſt.*

7. *Ambiguum Pactum contra venditorum interpretandum eſt:* An ambiguous Deed or Contract is to be expounded againſt the Seller or Grantor. So that if a Man having a Warren in his Lands, grants the ſame Land for Life, without mentioning the Warren, yet the Grantee ſhall have it with the Land. For otherwiſe the Grantor ſhould have excepted ſuch Warren out of the Deed or Grant. *Bacon.* But Words ſhall be taken in the moſt favourable Senſe for the Speaker; as in an Action againſt a Man for ſaying of the Plaintiff that he hath forſworn himſelf, it may be conſtrued to be in common Converſation. And the Action is only maintainable where it is ſaid he hath forſworn himſelf in a Court of Record. 4 *Rep.*

8. *A Verbis Legis non eſt recedendum:* We ought not to go from the Words of the Law. The Judges may not make any Interpretation of a Statute, againſt the expreſs Words thereof; for nothing can ſo well declare the Intent of the Makers of an Act of Parliament, as their direct Words in it themſelves. 5 *Co. Rep.* All Acts of Parliament and Letters Patent muſt be conſtrued one Part with another, and all the Parts of them together; and the Words are to be taken in a lawful and rightful Senſe, and applied to the Advancement of the Remedy, *&c.* 1 *Inſt.* But Caſes out of the Letter of a Statute, yet being within the ſame Miſchief, ſhall be within the Remedy the Statute provides.

9 *Baſtardus nullius eſt Filius; Aut Filius Populi:* A Baſtard is the Son of none, or the Son of the People. As a Baſtard is born out of

of Marriage, his Father is not known by the Law; therefore he ſhall not inherit or be Heir to any Perſon, and for that he is in Law as no Man's Iſſue; and he can have no Heir but of his own Body; becauſe of the Uncertainty who is related to him. 1 *Inſt.* The Baſtard of a Woman is ſaid to be no Child, where the Mother gives Lands to him as ſuch; but having by Time gained a Name of Reputation, he may take a Remainder, as a reputed Son; and may himſelf purchaſe by his reputed Name, *&c. Dyer.* In Caſe a Child is born only a Day after Marriage, between Parties of full Age, it is no Baſtard, but ſuppoſed to be the Huſband's: So if a Man takes a Wife, big with Child by another, who was not her Huſband. *Roll. Abr.* And if the Huſband be within the four Seas, that by Intendment of Law he may converſe with his Wife, and ſhe hath Iſſue, the Child cannot be proved a Baſtard. Theſe Caſes are, unleſs there be an apparent Impoſſibility, that the Huſband ſhould be the Father of it; as if he has loſt his Genitals, *&c.* 1 *Co. Inſt.*

10. *Caveat Actor*: Let the Actor take Care what he does. If a Landlord gives an Acquittance to his Tenant for the laſt Rent due, all Rent in Arrear is preſumed to be ſatisfied. And in Caſe a Perſon bound by Bond pays a leſſer Sum before the Day appointed, or at another Place than is limited, and the Obligee or Lender of the Money then and there receiveth it, that is a good Satisfaction. 1 *Inſt.* Acceptance of Rent affirms, and makes a voidable Leaſe to have Continuance, and if where a Tenant or Leſſee aſſigns over his Term, the Landlord accepts the Rent of the Aſſignee, knowing of the Aſſignment, he cannot afterwards ſue the Leſſee for Rent. 3 *Rep.* An Executor paying Debts on ſimple Contract, before thoſe of a higher Nature on Judgments, *&c.* is liable to the Payment of all. *Plowden.* And taking any of the Goods of the Deceaſed, makes a Man Executor in his own Wrong, and anſwerable.

11. *Cauſa & Origo eſt materia Negotii*: The Cauſe and Beginning is the Matter of the Buſineſs. Although the Law gives Power to a Perſon to enter a Tavern; the Lord to diſtrain his Tenants Beaſts; him in Reverſion to view if Waſte be done; a Commoner to enter into the Land to ſee his Cattle, *&c.* Yet if he that enters the Tavern commits a Treſpaſs, or the Lord that diſtrains for Rent, *&c.* kills the Diſtreſs, or if he who enters to view Waſte breaks the Houſe, or the Commoner cut down Trees; in theſe and the like Caſes, the Law will judge that they entered for that Purpoſe, and they ſhall be Treſpaſſers from the Beginning. 8 *Rep.*

12. *Ceſſante Cauſa, ceſſat Effectus*: The Cauſe ceaſing, the Effect alſo ceaſeth. Where a Woman married is divorced from her Huſband, ſhe ſhall have her Goods given in Marriage, not being ſpent; for they were given in Advancement of the Woman, and the Cauſe and Conſideration of that Gift is defeated. *Dyer.* In an Action where a Debt is the Cauſe of Execution, on Lands or Goods, if the Plain-

tiff releaſes to the Defendant all Debts, the Diſcharge of the Debt, diſcharges the Execution which is the Effect of that Cauſe. If an Office be granted to a Perſon, to perform certain Buſineſs, and he fails in his Duty, the Office ſhall ceaſe and determine. *Plowd.*

13. *Conjunctio Maris & fœminæ eſt de jure Naturæ:* The Conjunction of Man and Wife is of the Law of Nature. The Bodies and Minds of Perſons are both joined in Matrimony; in contracting which, the Conſent of the Mind is chiefly regarded: Wherefore it is ſaid, that the Parties Conſent, and not the Copulation, makes the Marriage. 1 *Inſt.* All Perſons may lawfully marry, that are not near of Kin and prohibited by the *Levitical* Degrees; and the Age of conſenting thereto is fourteen Years in the Man, and twelve in the Woman: If they marry before, at thoſe Ages they may diſagree to it. *Danvers's Abr.* A Huſband and Wife are accounted in Law but as one Perſon: And by Marriage the Man is intitled to all his Wife's real and perſonal Eſtate: As the Huſband is the Woman's Head, all ſhe hath is her Husband's; but then he is liable to the Payment of her Debts. *Finch.* An Action of Debt lies againſt the Husband for Goods ſold to the Wife; the Law preſumes they come to his Uſe: But a Wife may not make any Contract, without the Husband's Conſent, except it be for neceſſary Things for her Family, *&c.* if ſhe do otherwiſe, it will not be binding to him. 2 *Inſt.* The Wife is *ſub Poteſtate Viri*, and therefore her Acts ſhall not bind herſelf, unleſs ſhe levy a Fine of Lands, *&c.*

14. *Conſuetudo Manerii & Loci eſt obſervanda:* The Cuſtom of the Manner and Place is to be obſerved. It is the Cuſtom of Manors muſt direct what a Copyholder ought to do, or ought not to do; but Copyhold Eſtates ſhall not have the collateral Qualities that Eſtates of the Common Law have, without a ſpecial Cuſtom. 1 *Co. Inſt.* According to the general Cuſtom, if a Copyholder commit Waſte, either permiſſive or voluntary; or do not pay his Rent to the Lord, being demanded on the Land; or if he refuſe to do Suit of Court. Or in Caſe he makes a Leaſe of his Eſtate, for longer Time than a Year, without Licence from the Lord, *&c.* either of theſe will be Forfeitures of Copyhold Eſtates.

15. *Cuicumque aliquis quid concedit, concedere videtur & id ſine quo res ipſa eſſe non poteſt:* To whomſoever any one ſhall grant any Thing, he grants that without which it cannot be. If Lands are granted to a Man, he has an implied Covenant for peaceable enjoying the ſame, and the Law allows him a Way thereto, without being expreſly mentioned. 1 *Inſt.* And where a Perſon grants all the Timber Trees growing in his Woods, the Grantee may come upon the Ground, and cut them down, and carry them through all his Land, though the Graſs receive Injury by the Carriage. For Trees are proper to be carried by Carts, and when a Man has Title to the principal Thing, he ſhall always juſtify the neceſſary Circumſtance. *Plowden.*

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A Tenant at Will ſowing Corn on the Ground, if he be ouſted by the Leſſor, ſhall have free Entry, Egreſs and Regreſs, for cutting and carrying away the ſame. And in Caſe he be diſturb'd therein, he may bring an Action and recover Damages.

16. *Cui licet quod Majus, non debet quod Minus eſt non licere*: To whom it is lawful to do the greater, to him 'tis not unlawful to do the leſſer Thing. Where there is a Cuſtom that Lands may be granted to any one in Fee-Simple; here the Grant to a Perſon and the Heirs of his Body, or for Life, is within that Cuſtom. 5 *Rep.* A Perſon who has an Office to him and his Heirs, may make an Aſſignee, and conſequently a Deputy.

17. *Dilationes in Lege ſunt odioſæ*: Delays are odious in the Law. The delaying of Juſtice is an Obſtruction to and a Kind of Denial of it; and Pleas that are dilatory ſhall not be received, unleſs ſufficient probable Matter is ſhewn for it, or the Truth of them be proved by *Affidavit*. If a Plaintiff forbears to bring his Cauſe to Trial, the Defendant is not to be delayed, but may take out a Writ of *Venire facias*, directed to the Jury to try the Cauſe; by what is termed *Proviſo*. *Old Natura Brev.* In criminal Caſes, where Perſons are committed to Priſon for capital Offences, as Treaſon, Felony, &c. expreſſed in the Warrant, on Prayer in open Court the firſt Week of the Term, or Day of Seſſions, they are to be brought to Trial. If they are not indicted the next Term or Seſſions, upon Motion made the laſt Day of ſuch Term, &c. they ſhall be admitted to Bail, unleſs the King's Witneſſes are not ready. And in Caſe they are not tried the ſecond Term, &c. they may be diſcharged. *Habeas Corpus* Act, 31 *Car* 2.

18. *Dormit aliquando jus, Moritur nunquam*: A Right ſometimes ſleeps, but never dies. In the Eye of our Law, Right is of ſuch an high Eſtimation, that the Law preſerves it from Death and Deſtruction; for tho' trodden down it may be, 'tis never trod out. *Coke.* A Right to Land it is held cannot die; indeed a Releaſe of a Perſon's Right enures by Way of Extinguiſhment, but then it's ſo underſtood in Reſpect of him that makes the Releaſe, &c.

19. *Dominium a Poſſeſſione cœpiſſe dicitur*: Right and Dominion is ſaid to have its Beginning from Poſſeſſion. According to this Maxim, a long and quiet Poſſeſſion eſtabliſhes a Right; but then it muſt exceed the Memory of Man; and if there be Proof of Record, or in Writing to the Contrary, tho' it exceeds the Knowledge or Memory of any one living, yet 'tis judged within Memory. 1 *Co. Inſt.* The Reaſon why a peaceable Poſſeſſion, without Contradiction, makes a Right in Law, is that thereby there may be Certainty of Titles to Eſtates. In a Writ of Right the Limitation of Time is made Sixty Years, by 32 *H.* 8.

20. *Expreſſum facit ceſſare tacitum*: A Matter expreſſed, cauſes that to ceaſe, which by Intendment of Law was implied and not expreſſed.

expreſſed. A Man makes a Leaſe rendring Rent, and the Words of Reſervation are expreſs to the Leſſor only, the Heir ſhall not have it; but if no Perſon be ſaid to whom the Rent ſhall be paid, this by Implication ſhall be to the Leſſor and his Heirs. *Dyer.* An expreſs Covenant qualifies the Generality of a Covenant in Law, and reſtrains it by the Aſſent of the Parties, ſo that it ſhall extend no farther than it is expreſſed in the Covenant. But a Warranty in Law is not deſtroy'd by an expreſs Warranty; as if one grants a Leaſe, reſerving a certain Rent, in which he binds himſelf and his Heirs to Warranty of the Land, *&c.* There the Warranty expreſs'd ſhall not make that in Law ceaſe, or be of no Effect, but the Leſſee may chooſe which he pleaſes. 4 *Rep.*

21. *Fortior & Potentior eſt diſpoſitio Legis, quam Hominis*: The Diſpoſition of the Law, is of greater Force than the Diſpoſition of Man: This is explained in Surrenders of Eſtates. As if a Perſon having granted a Leaſe of Lands for Years, to begin at *Lady-Day* next, he cannot make a Surrender of his future Intereſt, becauſe there is no Reverſion wherein it may be drowned. Though in Caſe the Leſſee before *Lady-Day* take a new Leaſe of the ſame Lands, *&c.* for Years, either to begin preſently or at *Lady-Day*, this is a *Surrender in Law* of the former Leaſe and Intereſt. 10 *Co. Rep.*

22. *Furioſus furore ſuo punitur*: A Madman or Lunatick is puniſh'd by his Madneſs. If a Madman kill another, he hath not broken the Law, altho' he hath broken the Words of it; becauſe he had not any Memory or Underſtanding, but meer Ignorance which comes from the Hands of God. *Plowden.* And therefore ſuch Madman has Favour ſhewn him by Reaſon of his Diſability; he ſhall not ſuffer for any felonious Act; nor can the Puniſhment of a Lunatick without his Mind and Diſcretion, be an Example to others. 1 *Inſt.* A Madman, in a *Civil* Cauſe, cannot promiſe or contract for any Thing, or do any Buſineſs; and this is becauſe he underſtands not what he does: All his Acts may be avoided, either by the King, who has the Care of the Eſtates of Lunaticks, or by his Heirs. But if a Man *non Compis mentis* levy a Fine, or ſuffer a Recovery of Lands, *&c.* theſe being Matters of Record, ſhall bind himſelf, his Heirs and Executors. 4 *Rep.*

23. *Hæres Legitimus eſt quem Nuptiæ demonſtrant*: He is lawful Heir whom Marriage demonſtrates ſo to be. A Child born within Marriage, tho' ever ſo ſoon after, is in Law legitimate, and Heir to the Husband: But an Alien may not be Heir, tho' born in lawful Wedlock. In Caſe a Child be born in ſecond Marriage, within nine Months after the firſt Husband's Death, he may be Heir either to the firſt or ſecond Husband. *Bracton.* A Baſtard is excluded from being Heir; and a Monſter without human Shape, cannot be Heir to a Perſon; but an Hermaphrodite, if there be any ſuch, may take Lands, *&c.* as Heir according to that Sex which is moſt prevalent.

1 *Co.*

1 *Co. Inſt.* The eldeſt Son, after the Death of his Father, is his Heir: And if there be Grandfather, Father and Son, and the Father dies before the Grandfather, the Grandſon ſhall be Heir; who is termed *Hæres jure Repræſentationis*, becauſe he repreſents his Father's Perſon. *Broke Abr.* Till the Death of the Anceſtor one is called Heir apparent; and by the Common Law, a Perſon cannot be Heir to Goods and Chattels. There is an *Ultimus Hæres*, on the Eſcheat of Lands, for want of lawful Heirs; which is the Lord of whom held.

24. *Ignorantia Juris not excuſat*: The Ignorance of the Law doth not excuſe one. Ignorance of the Law, even in Infants being of the Years of Diſcretion, ſhall be no Excuſe, if they commit Crimes; and altho' it be invincible, as where a Perſon affirms that he has done all that in him lies to know the Law. *Doctor and Stud.* For every Man is bound at his Peril to take Notice what the Law of the Realm is. If any Perſon takes upon him to know the Law, and through Ignorance openly affirms that a void Leaſe, *&c.* is good, to the Prejudice of another's Title; he may have an Action againſt him, and recover Damages. 1 *Rep.*

25. *Ignorantia facti excuſat*: Ignorance of the Fact excuſeth. A Perſon buys a Horſe in a Fair or Market, of one that had no Property in him; if this were unknown to the Buyer, he has good Right to the Horſe, and his Ignorance ſhall excuſe him. But here, if he had known the Seller had no Right, the Buying in open Market would not have excuſed. Where an illiterate ignorant Man ſeals a Deed, and it is read to him falſe, that makes the ſame void. 2 *Co. Rep.*

26. *Impotentia excuſat Legem*: The Law excuſes Impotency. This Maxim regards the Infirmities of Perſons, where the Law excuſeth their not doing certain Acts; as of Men in Priſon, out of the Realm, Ideots and Lunaticks, Perſons Blind and Dumb, *&c.* 1 *Inſt.* Legal Impriſonment, without any Covin, ſhall be a good Excuſe for a Perſon's Non-Reſidency, by Reaſon of his Impotency. If a Diſſeiſee be an Infant, Feme Covert, or in Priſon, *&c.* and the Diſſeiſor dies ſeiſed of the Land, it ſhall be no Diſcent to take away an Entry, becauſe of Impotency in ſuch Perſons. *Finch.* And their Right of Action is ſaved, till their Impediments are removed, where others are bound by the Statutes of Limitation.

27. *Injuria illata in Corpus non poteſt remitti*: Injuries to the Body cannot be remitted or forgiven. Our Law carefully provides for puniſhing forcible Injuries, between Perſon and Perſon, becauſe they are moſt contrary to the Repoſe of the Kingdom, on which the publick Felicity depends. And the Life and Member of every Subject are under the King's Protection, to the Intent they may ſerve him and their Country when Occaſion requires. *Coke.* So tender is this Part of our Law, that if one do but menace another, with a Weapon or Staff, or in Caſe he ſtretch forth his Arm, or give any other Token,

Token, whereby his Intention of Striking appears; it is actionable; They are in legal Conſtruction deemed an Aſſault, tho' no Stroke be given.

28. *In omnibus quidam, maxime tamen in Jure Æquitas eſt:* In all Things, but eſpecially in the Law, there is Equity. The Laws themſelves deſire to be ruled by Equity; which is ſaid to be a Correction of the Law, wherein it is any way wanting by Reaſon of the Generality of it. *Pl.* The Stat. of *Glouceſter* gives an Action of Waſte againſt Tenants for Life or Years; and by the Equity of it, this Action lies againſt him that holds Land for one Year only, or Twenty Weeks, *&c.* And if a Leſſor come upon the Ground of a Leſſee, it ſhall be intended that he came to ſee whether Waſte were done. For Equity turns all to the beſt, and makes every Act lawful, when it is indifferent if it be ſo or not. *Finch.* If a Perſon does make a Feoffment to a future Uſe, the Feoffee ſhall be ſeiſed of the Lands, *&c.* to the Uſe of the Feoffer and his Heirs in the mean Time; and this is by Equity.

29. *In omnibus fere Minori ætati Succurritur:* In all Caſes generally there is Favour ſhewed to Perſons within Age. No Man or Woman before the Age of Twenty-one Years can alien or ſell any Lands, Goods or Chattels, or bind themſelves by Deed, ſo careful is the Law of their Intereſt; unleſs it be for Eating, Drinking, Schooling, Phyſick, and other Neceſſaries. 1 *Inſt.* An Infant is permitted to do any Thing for his own Advantage, but not to his Prejudice; he may make a Purchaſe, which is intended for his Benefit, tho' at his full Age, he may either agree to or wave it. Infants may buy Things but cannot borrow Money even to buy Clothes; for the Law will not truſt them with Money, but at the Peril of the Lender, who muſt ſee the ſame thus laid out. 1 *Salk.* A Preſentation to a Benefice is to be made by an Infant within the ſix Months, being a Thing of Neceſſity, otherwiſe Lapſe ſhall incur againſt him; and he muſt perform a Condition annexed to an Eſtate by his Anceſtor, or ſhall be barred of the Right to the Lands. In ſome Caſes alſo an Infant is impleadable at Law, and for his Contempt ſhall receive the ſame Puniſhment as a Man of full Age. *Dyer.*

30. *Jus ſanguinis, quod in legitimis Succeſſionibus ſpectatur, ipſo Nativitatis tempore quæſitum eſt:* The Right of Blood, which is regarded in lawful Succeſſions or Inheritances, is found in the very Time of Nativity. It is therefore *jus primogenituræ*, or Right of Elder-Brotherſhip, is principally reſpected: And 'tis a Maxim, that the next of the worthieſt Blood ſhall ever inherit: As the Male and all Deſcendants from him, before the Female; and the Female, of the Part of the Father, before the Male or Female of the Mother's Part, *&c.* 1 *Inſt.* Among the Males, the eldeſt Brother and his Poſterity, inherits Lands in Fee-Simple before any younger Brother.

31. *Lex*

31. *Lex neminem cogit ad impoſſibilia:* The Law compelleth no Man to Impoſſibilities. If the Condition of a Bond be poſſible at the Time of making it, and before it can be performed, becomes impoſſible by the Act either of God, or the Law, or of the Obligee, *&c.* the Obligation is not forfeited. But where a Condition for Payment of Money is made impoſſible in Reſpect of Time; as if it be to pay the ſame on the Thirtieth of *February*, and there is no ſuch Day, it is due and payable preſently. 1 *Co. Inſt.* Where a Man is bound by a Recognizance or Bond with Condition for his Appearance the next Term in ſuch a Court, and before the Day the Cogniſor or Obligor dies, the Obligation will be ſaved; becauſe it is impoſſible the Condition ſhould be performed. So in Caſe a Leaſe be granted for Twenty Years, upon Condition that the Leſſee dwells upon the Lands the whole Term, and he lives but ten Years, the Executors ſhall enjoy the Lands; for the Condition is become impoſſible. *Doderidge.* A Condition of a Bond to go to *Rome* in a few Hours, is void and impoſſible; but 'tis ſaid the Obligation may be good.

32. *Legis Conſtructio non facit Injuriam:* The Interpretative Conſtruction of Law ſhall wrong no Perſon. In Caſe an Executor of a Will grants all his Goods and Chattels, the Goods which he hath as Executor ſhall not paſs, for that would be a Wrong to the Teſtator's Eſtate. 10 *Edw.* 4. And where Tenant in Tail, or for Life, makes a Leaſe generally, it ſhall be taken for the Life of the Leſſor or Grantor, or elſe it would be wrongful to him in Reverſion. Tho' if a Perſon ſeiſed in Fee, make any Leaſe for Life, without mentioning for whoſe Life, it ſhall be conſtrued for the Life of the Leſſee. 1 *Inſt.*

33. *Lubricum Linguæ non facile in pœnam eſt trahendum:* The Raſhneſs of the Tongue is not eaſily puniſhed. This is where Words are ſpoken in a Paſſion; for in all Caſes Words of Heat, as to call a Man Rogue, Villain, Knave, *&c.* unleſs it be ſaid in ſuch an Affair, or to a certain Perſon, will bear no Action at Law. 4 *Rep.* But if one reproaches another with ſome heinous Crime; calls a Perſon Thief, a Merchant Bankrupt, ſays of an Attorney he deals corruptly, or calls any one a perjured Man; an Action of the Caſe lies for Damages, becauſe theſe Slanders are of great Import, and concern a Man's Life, Eſtate and Condition. To call a Perſon Baſtard, that is Heir to an Eſtate; or ſay a Man has the *French* Diſeaſe, *&c.* when he is courting a Woman, are held actionable. *Danvers's Abr.*

34 *Mutata forma prope interimitur Subſtantia rei:* The Form being changed, the Subſtance of the Thing is deſtroyed. In Caſe a Perſon cuts down another's Timber Trees, and ſquares them to make Beams for a Houſe, he may ſeize the ſame before they are thus uſed. Tho' if they are laid in the Building, they may not be ſeized by

by the Owner, for their Nature is then altered, and they are become Part of the Houſe; yet the Party ſhall have his Action for the Damage. *Doderidge.* And where a Man gets the Barley of another, and makes it into Malt, it cannot be taken again by the former Owner, tho' its Form is not loſt; becauſe it is become a Thing of another Nature and Uſe.

35. *Neceſſitas non habet Legem:* Neceſſity hath no Law. Where a Fire happens in the Street of a Town, any Perſon may juſtify the Pulling down the Wall, or Houſe of another, to prevent the Spreading thereof; as it is a Caſe of Neceſſity. And if ſeveral Perſons are in Danger of Drowning, by the Caſting away of a Ship, or Boat, one to ſave his Life may thruſt another from a Plank, or the Boat's Side, *&c.* tho' ſuch other be thereby drown'd. *Bacon.* According to our ancient Books, if a Man ſteals Victuals meerly to ſatisfy his preſent Hunger, it is neither Felony nor Larceny, being for the Neceſſity of preſerving Life. *Staundford.* But this having encouraged Thefts, 'tis now adjudged otherwiſe; and the Privilege of Neceſſity ſhall not prevail againſt the Common-wealth. The great Lord *Coke* ſays, *Neceſſitas eſt Lex Temporis.* 8 *Rep.*

36. *Nihil magis conſentaneum eſt, quam ut iiſdem modis res diſſolvatur quibus conſtituitur:* Nothing is more agreeable to Equity, than that every Thing ſhould be diſſolv'd by the ſame Means it was firſt conſtituted. Every Contract and Agreement muſt be releaſed by a Matter of as high a Nature as that was; ſo that a Deed in Writing under Hand and Seal, can only be releaſed by ſome other Writing, ſigned and ſealed, *&c.* 5 *Rep.* And therefore an Obligation or Matter in Writing, cannot be diſcharged by an Agreement by Word. Where an Eſtate is veſted in the King by Matter of Record, it may not be diveſted out of him but by the like Matter: And an Act of Parliament ſhall not be avoided but by Parliament. *Plowden.*

37. *Nullus commodum capere poteſt de injuria ſua propria:* No Man ſhall take Advantage of his own Wrong. If a Man be bound in a Bond to appear at a Day before Juſtices, on which Day the Obligee caſts him in Priſon, ſo as he cannot come; no Benefit ſhall be had of this Bond. *Noy.* In Caſe a Leſſor and Leſſee of Lands for Years, join in cutting down of Timber, the Leſſor ſhall not puniſh the Leſſee for ſuch Waſte; and take Advantage of his own Wrong by joining therein. An Appeal of an Infant may not ſtay for his full Age, which would be taking Advantage of his own Wrong. 27 *H.* 8.

38. *Nullum iniquum in Jure præſumendum eſt:* No injurious Thing is to be preſumed in the Law. All Things are taken to be lawfully done, till Proof is made to the Contrary; and Fraud ſhall never be intended or preſumed by the Law, unleſs it be expreſsly averred. Where no Fraud is found by the Jurors in a Feoffment, the Judges ſhall not adjudge the ſame fraudulent; and altho' Jurors have found Circumſtances and Preſumptions to intitle the Finding of Fraud, it

in

is but Evidence, and not any Matter upon which the Court may judge thereof. 10 *Rep.* For the Office of the Jurors is to adjudge upon the Evidence concerning Matters of Fact, and thereupon to give their Verdict; and not leave Things to the Judgment of the Court, which do not appear to them.

39. *Omne Actum ab agentis intentione eſt judicandum:* Every Act is to be judged from the Intention of the Agent. 'Tis held in Contracts and Obligations, the Intention of the Parties is the chief Thing that the Law regards; for ſuch Words as ſhew the Aſſent of Parties, and have Subſtance in them, are ſufficient. A Bond run thus, Know all Men by theſe Preſents, that I *A.* am held and bound to *B.* in Twenty Pounds, to be paid to the ſaid *A*, *&c.* This Obligation was adjudged good, for the Parties Intention appears. *Plowden.* The Law will likewiſe take one Word for another in Deeds, to ſupply the Intention of Perſons; as where a Man has a Remainder of Lands, if he grants it to another, by the Name of a Reverſion, the Grant is good, notwithſtanding the miſ-terming of the Thing. 1 *Inſt.* In Wills, the Intent of the Teſtator ſhall generally be obſerved.

40. *Poſſeſſio fratris de feodo Simplici facit Sororem eſſe Hæredem:* The Poſſeſſion of the Brother, of a Fee-Simple, makes the Siſter to be Heir. A Man has Iſſue a Son and a Daughter by one Woman or Venter, and a Son by another, then dies ſeiſed of Lands in Fee-Simple, and the eldeſt Son enters into the Lands, after which he dies without having any Iſſue. Here the Siſter ſhall have the Land, and not the younger Son or Brother, tho' he be Heir to the Father; but there muſt be an actual Entry upon the Land, otherwiſe it goes to the younger Brother. 1 *Co. Inſt.* The Poſſeſſion of a Brother of an Eſtate-Tail, ſhall not make the Siſter Heir; for the younger Son of the Half Venter it deſcends to, who ought to have it *per formam Doni.* Plowden.

41. *Prohibetur ne quis faciat in ſuo, quod nocere poſſit in alieno; & ſic utere tuo ut alienum non lædas:* It is forbidden that any one ſhould do that in his own, which may injure another; and ſo uſe your own, that you do not hurt others. Where a Man doth any Thing upon his own Ground to the particular Damage of his Neighbour, 'tis accounted a Nuſance; and an Action lies for it, or the ſame may be abated or removed by the Perſons that are prejudiced thereby. *Wood.* If a Man has an Houſe that has good Lights, and a Stranger having Lands adjoining, builds a new Houſe on his Lands ſo near, that the Windows of the other are darkned by it; 'tis an Offence actionable. As is alſo the Setting up or making a Houſe of Office, Dye-houſe, Lime-pit, *&c.* ſo near to another's Houſe, that the Smell thereof annoys him, or is infectious; or if the Corruption of the Water of the Pits, hurts his Water, or Graſs, or deſtroys Fiſh in a River, *&c.* 3 *Inſt.*

42. *Proximus*

42. *Proximus ſum egomet mihi:* Every one is next to himſelf. In Caſe of Wills, where an Executor is appointed, he may pay himſelf a Legacy before any other; and among Debts of equal Degree, the Executor may pay his own Debt firſt. *Noy.* Executors are nearer to the Teſtator, and do more repreſent his Perſon, than the Heir does the Anceſtor; this is held, becauſe if an Executor be not named in a Mortgage, yet the Law appoints him to receive the Money, But the Heir ſhall not receive it, unleſs he be named. 1 *Inſt.*

43. *Publicum bonum Privato eſt præferendum:* The publick Good is to be preferred before private Intereſt. A Woman intitled to Dower ſhall not be indowed of a Caſtle of Defence, for that is *pro bono publico*; but as to Caſtles for private Uſe and Habitation, 'tis otherwiſe. The Inhabitants of a Village may make By-Laws for repairing a Church, or Highway, or any ſuch Thing as is for the publick Good generally; and the greater Part ſhall bind all of them, without Cuſtom. 5 *Rep.* And Corporations have Power to make Ordinances, for the Government of their Bodies Politick, and better Execution of the Laws of the Realm: But they may not do ſo, without a Cuſtom or Charter, unleſs it be for Things concerning the publick Good.

44. *Quælibet conceſſio fortiſſime contra donatorem interpretenda eſt:* Every Man's Grant ſhall be taken moſt ſtrongly againſt himſelf. Whenever a Deed is uncertain, and the Words of it were ambiguous, it ſhall be conſtrued moſt ſtrongly againſt the Grantor therein; as if a Man grants an Annuity out of Land, and he hath no Land at the Time of the Grant, it ſhall nevertheleſs charge his Perſon. And where any Deed made to a Perſon, is good for Part, and for ſome Part thereof not good, that which is for the Benefit and Advantage of the Grantee, ſhall ſtand good in Law. 1 *Co. Inſt.* But altho' Grants are taken ſtrongly againſt the Makers, yet no Wrong muſt be done by it; and a Man may not be obliged by his own Act and Deed to do ſome Things which are againſt Law. For if a Husbandman be bound not to till or ſow his Land, the Obligation is contrary to the Common Law, and void. 11 *Rep.*

45. *Qui facit per alium facit per Se:* What one does by another he does by himſelf. If a Man empowers another by Letter of Attorney to ſell and alien his Land, and he doth ſo, it is his Alienation by him; and where a Perſon gives Authority to his Bailiff to ſell Cattle, and he doth it, this will be his Sale by the Bailiff. *Plow.* Where any Perſon has a Bailiff or Servant, who is known to be ſuch, and he ſends him to Market to buy Goods, his Maſter ſhall be chargeable with the Payment, if the Things come to his Uſe. In Caſe he ſells his Maſter's Cloth, and warrants it to be good, or of a certain Length, when it is not ſo, an Action lies againſt the Maſter only, and not the Servant. *Noy.* And if a Perſon commands one to do a Treſpaſs, or to beat another, he ſhall be himſelf a Treſpaſſer,

46. *Qui*

46. *Qui ſentit onus, ſentire debet & commodum:* He who bears the Burden, ought to receive the Profit. A Man ſeiſed of Lands in Fee hath Iſſue a Daughter and dies, his Wife being with Child of a Son; the Daughter enters and ſows the Lands, and then the Son is born, and his next Friend enters, here the Daughter ſhall have the Corn growing on the Ground. *Perkins.* Alſo a Tenant for Life, or in Dower, having ſown Corn upon the Land, may deviſe the ſame growing at the Time of their Deaths; and their Deviſees ſhall have it. 7 *Aſſiſ.*

47. *Qui ſentit commodum, ſentire debet & onus:* He that reaps the Profit ought to bear the Burden. If a Perſon grant a Rent-charge for Life out of his Land, and afterwards conveys the Land to others, in every one of whoſe Time the Rent is behind, and then the Grantee dies, his Executor may bring Action of Debt againſt all of them for Rent due in their Time; as they all have the Profit of the Land. 4 *Rep.* And an Aſſignment on a Leaſe, the Leſſee who hath covenanted to Repair, may have an Action of Covenant againſt the Aſſignee, for ſuffering a Houſe to decay; becauſe he that enjoys the Profit, muſt bear the Burden and Charges. Where Perſons enjoy Benefit by making Banks of a River, they are to contribute to the Repairs thereof. 5 *Rep.*

48. *Quod initio vitioſum eſt, tractu Temporis non convaleſcet:* That which in the Beginning is vicious, cannot by Tract of Time be made good. In Caſe a Biſhop makes a Leaſe of Church Lands for four Lives, which is contrary to the Statute, tho' one dies in his Life Time, ſo as now there are but three, and afterwards the Biſhop dieth, yet it ſhall not bind his Succeſſor. For here the Leaſe ſo made, had a bad and unlawful Beginning, it being for more Lives than the Act allows, and therefore cannot be brought to a good End. 10 *Co. Rep.* If an Infant or Feme Covert, that is a married Woman, makes a Will, and publiſhes the ſame, and afterwards dieth being of full Age or Sole, both theſe Wills notwithſtanding will be void and of no Effect. And this is becauſe the Foundation, *viz.* the Making and Publiſhing are void. *Plowden.*

49. *Quod eſt inconveniens, & contra Rationem non eſt permiſſum in Lege:* Whatever is inconvenient, and contrary to Reaſon, is not permitted in the Law. It is likewiſe a Maxim, that what is contrary to Reaſon, is unlawful: And hence it is ſaid that all poſitive Laws, which are contrary to the Laws of Nature, and of Reaſon, are no Laws at all. Therefore if a Town hath Cuſtoms, which are againſt Law and Reaſon, and thoſe Cuſtoms are confirmed by Act of Parliament; ſuch Confirmation ſhall not make them to be good and binding. 1 *Inſt.* But no Perſon ought, out of his own private Opinion, to be wiſer than the Law.

50. *Quod alias bonum & juſtum eſt, ſi per vim vel fraudem petatur, malum & injuſtum eſt:* What otherwiſe is good and juſt, if it be acquired

acquired by Force or Fraud is evil and unjuſt. And if it be mixed therewith, it is the ſame Thing; for where a Man by Will deviſed Tenements to ſuperſtitious Uſes, and alſo to good and charitable Uſes; it was adjudged that the Commixture of the evil Uſe with the good, infected the good Uſe and deſtroyed it. 3 *Rep.* At the Common Law Forcible Entry into Houſes or Lands, *&c.* was no Crime, where a Perſon had Title, and Entry was lawful. But by Statute, none ſhall enter into Lands or Tenements, but in a peaceable Manner, tho' they have Title of Entry, upon Pain of Impriſonment, *&c.* 5 *Richard* 2. In this Caſe, Juſtices of Peace have Authority to commit Offenders till they pay a Fine, and to reſtore the Poſſeſſion; or an Action of Treſpaſs may be brought, and treble Coſts recovered. 2 *Inſt.*

51. *Rex eſt vicarius, & Miniſter Dei in Terra, omnis quidem ſub eo, & ipſe ſub nullo niſi tantum ſub Deo*: The King is the Miniſter of God upon Earth; every one is under him, and he under none, but only God. *Bracton.* All the Lands in *England* are ſaid to be holden either mediately or immediately of the King; and all Eſtates for want of Heirs, or by Forfeiture, on committing Crimes, Eſcheat to the King, as Lord Paramount. 1 *Co. Inſt.* Lands in the King's Poſſeſſion are free from Tenure; for a Tenant is he who holds of ſome Lord by Service, and the King cannot be a Tenant, becauſe he hath no Superior but God: Neither may the King be Jointenant with any, for none can be equal with him. 8 *Rep.* The King's Grant is taken ſtrongly againſt a Stranger, and more favourable for the King; contrary to the Grants of a common Perſon: And if the King grants Land in Fee-Simple, upon Condition that the Grantee do not alien or ſell the ſame, it is good; tho' void in others. *Plow.* Where the Right or Title of the King and the Subject concur and meet together, his Title ſhall be preferred; and the King's Title is not to be tried, without Warrant from the King, or Aſſent of his Attorney General. 2 *Inſt.* No Diſtreſs can be made upon the King's Poſſeſſion; but he may diſtrain out of his Fee in other Lands, *&c.* and may take Diſtreſſes in the Highway: The King may alſo diſtrain for the whole Debt or Rent due of one Tenant, where the Eſtate is let to ſeveral. In whoſe Hands ſoever the Goods of the King come, their Lands are chargeable, and may be ſeized for the ſame; and the King is not bound by the Sale of his Goods in open Market. The Debts of the King ſhall be ſatisfied, before thoſe of a Subject, for which there is a *Prerogative Writ*, and until his Debts be paid, he may, by Writ protect his Debtor from the Arreſt of others; but altho' the King's Debt is to be firſt paid, that muſt be when it is in equal Degree with the Subject's. *Croke Car.* No Preſcription of Time runs againſt the King; he is not within the Statutes of Limitation; an Entry ſhall not bar him; nor will any Judgment be final againſt him, but with a *Salvo Jure Regis*. The King cannot be Nonſuit,

Nonſuit, as he is ſuppoſed to be preſent in all his Courts; and he may have ſuch Proceſs in his Suit, as no other Perſon but himſelf can have: And an Action lies not againſt the King, but a Petition in Stead of it, to him in the *Chancery*. *Finch*. Our King is the Fountain of Honour and Juſtice; all Statutes are to have his Royal Aſſent, and in calling or diſſolving Parliaments, declaring War and Peace, *&c.* his Proclamation has the Effect of a Law. Alſo Acts of Parliament are not binding to the King, unleſs they concern the Common-wealth, or he be ſpecially named. 1 *Eliz.* But notwithſtanding the King's Prerogative is ſo large, as we find that to be Law almoſt in every Caſe of the King, that is Law in no Caſe of the Subject: Yet the King may not by Petition or Bill, *&c.* diſpoſe of any Man's Lands or Goods. Nor ſhall he take that he hath a Right to, which is in the Poſſeſſion of another, but by due Courſe of Law. He may not command a Man to Priſon, againſt the Writs and Proceſſes of Law, *Nihil poteſt Rex quam quod de Jure poteſt.* Forteſc. For the Law is the Rule of the King's Prerogative, which does not extend to any Thing injurious to others. 12 *Rep.* And as the Subject owes to the King his true and lawful Obedience; ſo the King is to defend the Laws, and protect the Bodies and Goods of his Subjects.

52. *Salus Populi Suprema eſt Lex:* The Health and Welfare of the People is the chiefeſt Law. According to this Maxim, there is a ſovereign Power in the People, or States of the Kingdom, to examine into and re-inſtitute the regal Eſtate, where Kings act arbitrarily, and againſt the Rights and Liberties of the People. *Britannick Conſtit.* The main End of Government, is the common Good of the Subject; and by the ſame Law which ordains our Kings, the meaneſt of the People enjoy the Liberty of their Perſons, and Property in their Eſtates, which it is every Man's Concern to preſerve to the utmoſt. *Forteſcue.* In Caſes that are for the general Good of the People, a Man can juſtify doing of a Wrong; as in Time of War, a Perſon may erect Bulwarks on another Man's Lands: And hence it is, one may at any Time raze an Houſe that is burning, for the Safeguard of neighbouring Houſes. *Plowden.* Trade being for the Benefit and Good of the People, Bonds to reſtrain the Exerciſe of it, are held void; and the Inſtruments of a Man's Trade or Profeſſion may not be diſtrained, as the Books of a Scholar, Ax of a Carpenter, *&c.* But this is underſtood when other Things may be taken as a Diſtreſs. 1 *Inſt.*

53. *Semel malus ſemper præſumitur eſſe malus:* Thoſe who once are evil, are always preſumed to be ſo. This has been underſtood, *in eodem genere mali*, in the ſame Kind of Evil; as perjured Perſons, who have once forſworn themſelves, and thereof are convicted, will not be afterwards admitted to give Evidence in any Cauſe, becauſe they have once ſo offended. And no infamous Perſon, or one attainted of falſe Verdict, or Conſpiracy, or convicted of Forgery, or Felony,

Felony, or that has ſtood in the Pillory, &c. ſhall be allowed to be a Witneſs. 1 *Co. Inſt.* But if a Man convicted of Felony, or who hath ſtood in the Pillory, be afterwards pardoned, it reſtores him to his Credit as a new Man, and he may be a good Evidence. 2 *Hawk.*

54. *Subſtantia prior & dignior eſt accidente:* The Subſtance is more worthy, and before the Accident. No Declaration or Count in a Suit of Law ſhall abate, ſo long as the Matter of Action is fully ſhewed in Subſtance in the Declaration, and the Writ, as is provided by the Statute 36 *Ed.* 3. And no Judgment ſhall at any Time be arreſted or ſtayed in any Court of Record for Want of any Matter of Form, in the Declaration, Plea, &c. or for any Defect whatſoever, except only Matter of Subſtance, which ſhall be ſhewed publickly to the Judges of the ſaid Courts. 18 *Eliz.* After Verdict is given in an Action, in the Courts at *Weſtminſter*, the Judgment ſhall not be reverſed by Writ of Error, for any Faults either in Form or Subſtance, in any Bill, or Writ, &c. or for Variance therein from the Declaration or other Proceedings, by 5 *Geo.* 1.

55. *Ubi major Pars eſt, ibi eſt totum:* Where the major Part is, there by the Law is the whole. The only Way of determining the Acts of many, is by the major Part, or a Majority; as the major Part of Members of Parliament enact Laws, and the Majority of Electors chuſe the Members of Parliament; and the Act of the major Part of any Corporation, is accounted the Act of the Corporation. 19 *Hen.* 7.

56. *Veritas nihil veretur niſi abſcondi:* Truth fears nothing but to be concealed. And Truth is nothing elſe but an Affection of our Speech, and Actions agreeing with the Mind; but is properly called *veracitas*, that is a Speaking of Truth: Of which 'tis to be underſtood, that it is afraid of nothing more than to be obſcured. *Plowden.* Fraud and Covin are ſo mixt with Truth, as they often deceive, and put a falſe Gloſs upon the worſt Things; tho' the Law will never permit them to ſuppreſs the Truth, where it can be diſcovered. And in all Caſes it labours to make a Diſcovery, and cenſure Corruptions.

57. *Vigilentibus non Dormientibus Leges ſubveniunt:* The Laws help thoſe that are watchful, and not thoſe that are ſleepy and negligent. For want of being watchful, and by Negligence a Right may be loſt; as where an Action is not brought within the Times appointed by the Statute of Limitations, 21 *Jac.* 1. which ordains, that Writs or Actions of Ejectment, to recover Lands, &c. are to be ſued within Twenty Years after the Title did ariſe, or the Parties will be barred. All Actions of Debt, upon the Caſe, (except for Words) Actions of Account, (other than concerning Merchandize) of Detinue, Trover and Treſpaſs, muſt be commenced within ſix Years after the Cauſe of Action; and all Actions of Aſſault and Battery, Wounding and Impriſonment, muſt be brought within four Years; and for Slander within two Years, after Cauſe of Action, and not afterwards.

Of

Of ACTIONS and REMEDIES.

ACTION of *Debt* is a Suit given by Law where a Man oweth another a certain Sum of Money, by Obligation, or Bargain for a Thing ſold, or by Contract, *&c.* and the Debtor will not pay the Debt, at the Day agreed; then the Creditor ſhall have this Action againſt him for the ſame.

If Money be due upon any Specialty, Action of Debt only lieth; for no other Action may be brought for it: And where a Man contracts to pay Money for Things which he hath bought, and the Seller takes Bond for the Money, the Contract is diſcharged; ſo that he ſhall not have Action of Debt upon the Contract, but on the Bond, *Nat. Br.* 268.

The uſual Action of Debt, which conſiſts of divers particular Branches, lies in all theſe Caſes: 1. For Money due on Bond, or Bill. 2. For Rent due from Tenants. 3. For Goods or Money delivered. 4. For an Attorney's Expences. 5. For permitting a Priſoner to Eſcape. 6. Upon a Judgment or Arbitrament.

1. In a Bond where ſeveral are bound ſeverally, the Obligee may have Action of Debt againſt all the Obligors together, or all of them apart, and have ſeveral Judgments and Executions; tho' he ſhall have Satisfaction but once: But when the Bond is joint, and not ſeveral, all the Obligors muſt be ſued that are bound; and one is not obliged to anſwer without the Reſt. Alſo if a Bond is made to three, to pay Money to one of them, they muſt all join in the Action, for they are but as one Obligee. *Dyer* 19, 310. *Yelv.* 177.

If there be ſeveral Days mentioned for Payment of Money on a Bond, the Obligation is not forfeited, nor can be ſued, until all the Days are paſt: Yet in ſome Caſes, the Obligee may bring Action of Debt for the Money due by the Bond preſently, tho' it be not forfeited; and by ſpecial wording the Condition, an Obligee may be able to ſue the Penalty on the firſt Default. A Man is bound to pay 20*l.* in Manner following, that is to ſay, 10*l.* on one Day, and 10*l.* on another, after the firſt Day Action of Debt lies for 10*l.* it being a ſeveral Duty. 1 *Co. Inſt.* 292. 2 *Danv. Abr.* 501.

Action of Debt is generally proſecuted on a Bill, Bond or Leaſe, *&c.* And in Debt on Single Bill, a Defendant may plead Payment before the Action brought in Bar thereof; and on Bond, he may bring in the Principal, Intereſt and Coſts, pending the Action, and thereupon be diſcharged. 4 & 5 *Ann.*

2. An Action of Debt lies for Rent in Arrear, upon a Leaſe for Life or Years; at Common Law it lay not on Leaſes for Life, but now by Statute it may be had. 8 *Ann. c.* 17. If Tenant in Fee-ſimple, or Fee-tail die, his Executor may have Action of Debt by the Stat.

32 *H.* 8. for Arrears of Rent incurred in the Life-time of ſuch Tenants, or he may diſtrain for the ſame; but before this Act the Executor had no Remedy. 1 *Cro.* 471.

If a Rent or Leaſe for Years of Land is reſerv'd and made payable at four Quarter-Days, the Leſſor may have Action of Debt after the firſt Day of Failure; for every Quarter's Rent is a ſeveral Debt, and diſtinct Actions may be brought for each Quarter. 5 *Rep.* 81. 2 *Ventr.* 129. An Aſſignee of Rent upon a Leaſe for Years, ſhall have Debt for it: And Action of Debt will lie againſt a Leſſee, for Rent due after the Aſſignment of the Leaſe; for the perſonal Privity of Contract continues, tho' the Privity of Eſtate is gone: But 'tis otherwiſe, if a Landlord once accepts the Rent of the Aſſignee, knowing of the Aſſignment. 1 *Lev.* 22.

When a Leaſe is ended, the Duty in reſpect of the Rent remains, and Debt lieth by Reaſon of Privity of Contract between Leſſor and Leſſee. 2 *Cro.* 227.

3. Action of Debt lieth upon a Parol Contract by Word only, and ſo doth Action on the Caſe. And in ſome Caſes, Debt will lie, altho' there be no Contract betwixt the Party that brings the Action, and him againſt whom brought; for there may be a Duty created by Law. But Action of Debt lieth not againſt Executors, upon a Simple Contract made by the Teſtator: Tho' it lies for the Arrearages of an Account againſt Executors, of Receipts by the Teſtator. 2 *Saund.* 343. 9 *Rep.* 87.

If Goods or Money are delivered to a third Perſon for my Uſe, I may have Action of Debt, or Account on them. And where Money is delivered to a Perſon, to be re-delivered again, the Property is altered, and Debt lies: But where a Horſe, or any Goods are thus delivered, there Action of Detinue lieth. Action of Debt lies againſt the Husband, for Goods which were delivered or ſold to the Wife, if they come to the Husband's Uſe: And if one delivers Meat, Drink or Clothes to an Infant, and he promiſes to pay for them, Action of Debt or on the Caſe will lie againſt the Infant; but what is delivered, muſt be averr'd to be for the neceſſary Uſe of the Infant. 2 *Danv. Ab.*

A Man agrees with a Taylor to make him a Suit of Clothes, for a certain Price; the Taylor may bring a general Action of Debt againſt him for the Money; but if the Price is not agreed on, Action of the Caſe only lies, or ſpecial Action of Debt on the ſpecial Contract. *Wood's Inſt.* 544.

4. An Attorney ſhall have Action of Debt againſt his Client, for Money which he hath paid to any Perſon for ſuch Client, for Coſts of Suit, or to his Counſel, *&c.* And an Action of Debt, or Caſe, lies for an Attorney for his Fees, againſt him that retained him in his Cauſe: But Attornies are not to demand more than their juſt Fees; nor to be allowed any extraordinary Fees to Counſel, without Tickets ſigned by them, *&c.* And 'tis ſaid to be a good Plea to an Action

Action brought by an Attorney for his Fees, that the Plaintiff did not give the Defendant any Bill of Charges, according to the Stat. *Mich.* 22 *Car. B. R. Stat.* 3 *Jac.* 1. *c.* 7.

If a Client, when his Buſineſs in Court is diſpatch'd, refuſeth to pay the Officer his Court Fees; the Court on Motion will grant an Attachment againſt him, on which he ſhall be committed until the Fees are paid. 1 *Lill. Abr.* 598.

But Officers guilty of Extortion ſhall render treble Value: And an Action may be brought againſt Attornies for Extortion, and the Party grieved ſhall have treble Damages and Coſts. 3 *Ed.* 1. *&c.*

5. Action of Debt lies againſt a Goaler permitting a Priſoner committed in Execution to eſcape, for thereupon the Law makes the Goaler Debtor: And where the Party is not in Execution, there Action on the Caſe lieth for Damages ſuffered by the Eſcape. 1 *Saund.* 218.

If a Priſoner eſcapes who was in Execution, his Creditor may retake him by *Capias ad Satisfaciendum*; or bring Action of Debt on the Judgment, or a *Scire facias* againſt him, *&c.* for he hath ſtill an Intereſt in the Body, as a Pledge for the Debt. If the Priſoner makes a tortious Eſcape, the Perſon at whoſe Suit he was taken in Execution, may have an *Alias Cap.* to take him again; or Action of the Caſe againſt the Sheriff: But if the Sheriff voluntarily permit the Eſcape, Debt may be brought againſt the Sheriff. 1 *Ventr.* 269.

Debt lieth againſt a Sheriff, for Money levied in Execution: And if a Defendant in Execution is reſcued, the Sheriff is liable for the whole Debt, and is to have his Remedy againſt the Reſcuer. *Dy.* 241.

6. A Perſon may have Action of Debt upon an Arbitrament; but not for Debt referred to Arbitration, which muſt be Action on the Caſe: And Debt will lie for Breach of a By-Law, or for Amercement in a Court-Leet, *&c.* Action of Debt ſhall be brought for Money adjudg'd to be paid by Arbitrators, declaring on the Award; and alſo upon the Bond for not performing it. *Brownl.* 55.

2. The *Action upon the Caſe*, is a general Action that is given for Redreſs of Wrongs and Injuries, done without Force, and which by Law are not provided againſt. It is ſaid to have its Name, on Account of the whole Cauſe or Caſe being ſet forth in the Writ; and there is no other Action lies in the Caſe. By Statute 'tis ordained, that this Action ſhall be had, rather than any Perſons ſhall depart the King's Courts Remedileſs; wherein there may be the like Proceſs, as in Actions of Debt or Treſpaſs. 13 *Ed.* 1. In general, Action of the Caſe lies for *Nonfeaſance*, where a Perſon omits that which he ought to do, according to Promiſe, to the Damage of another; and for *Malefeaſance*, when one does ſomething, which ought not to be done; and *Miſfeaſance*, where a Thing is undertaken, or the Law requires a Perſon to do it, and he doth it otherwiſe than he ſhould. *Croke Car.* The Actions are as various under theſe Heads, as the Torts and Injuries upon which they are founded. For Deceits in

Contracts, Bargains and Sales; as where one ſells another adulterated Wine, Corn full of Sand or Gravel, Wares by falſe Weights or Meaſures, *&c.* warrants a Horſe to be ſound, or Clothes to be of ſuch a Length, and they are not ſo, Action upon the Caſe will lie. 1 *Danvers Abr.* So for any private Nuſance or Annoyance to a Perſon's Houſe, Water, Way, Light or Air, by building, deverting, ſtopping, *&c.* whereby he is endamaged. 2 *Roll.*

3. The *Action of Account*, is an Action that lies againſt a Perſon, who by Reaſon of his Office or Buſineſs undertaken, is to render an Account to another, but refuſes to do it; as a Bailiff or Receiver to a Lord and others. This Action is now not ſo much uſed as formerly, there being no Damages given by it.

4. The *Action of Covenant*, is ſuch as is brought, where a Man is bound by Covenant in a Deed, entered into by him and other Perſons to do, or not to do ſome Act or Thing agreed between them, when he hath broke the ſame. In Caſe it be agreed, that one Perſon ſhall pay 100 *l.* to another for certain Lands, this is a mutual real Covenant; and Action of Covenant lies, if the other Party refuſeth to convey, *&c.* 2 *Mod.* On a Bond Action of Covenant lies, for it proves an Agreement; tho' when only a Hand is to a Writing, and no Seal thereto, Covenant does not lie; but Action of the Caſe upon Breach of the Agreement. 2 *Danvers.*

5. The *Action of Detinue*, is an Action that lies againſt one who has got Goods or other Things delivered to him to keep, and he afterwards refuſeth to deliver them. For any Thing certain and valuable, wherein one may have Property, Detinue will lie; in which Action the Thing detained is generally recovered, and not Damages; tho' if a Man cannot recover the Thing itſelf, he ſhall recover the Damages for it, and alſo for the Detainer. 1 *Inſt.* If on the Delivery of Goods, the Perſon to whom they are delivered dies, Action of Detinue may be brought againſt his Executors, or any one to whoſe Hands they come: And where the Goods are delivered over to another, this Action ſhall be immediately had againſt the ſecond Perſon. And notwithſtanding the Party deliver the Things to a Perſon that has Right to the ſame, yet 'tis ſaid he is chargeable. 2 *Danv.*

6. The *Action of Trover and Converſion*, which comes from the *French Trouver, invenire*, is a ſpecial Action of the Caſe that lies againſt a Perſon, who having found another's Goods, refuſes to deliver them upon Demand. Or it is where a Man has in his Poſſeſſion the Goods of another by Delivery to him, or otherwiſe, and the Perſon ſo poſſeſſed, ſells or makes Uſe of them without the Owner's Conſent. And this Action lies for the Recovery of Damages to the Value of the Goods, *&c.* 2 *Lilly.* It is called Trover and Converſion, becauſe the Plaintiff in the Action ſurmiſes, that he loſt ſuch and ſuch Goods, and that the Defendant found them, and at ſuch a Place converted them to his own Uſe. But here the Loſing

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is only a mere Suggeſtion, and in no Reſpect material. If a Perſon find Goods, and doth refuſe to deliver them to the Owner on Demand, this is a Converſion in Law; yet he may anſwer, that he does not know whether the Perſon demanding is the right Owner or not, and then it is held to be no Converſion. 1 *Danvers Abr.* Altho' a Defendant tenders the Goods or Things, after a Demand and Refuſal made, or even if they come into the Plaintiff's Poſſeſſion, neither of theſe will purge the Wrong, or make Satisfaction to the Plaintiff for detaining of the Goods. For they ſhall only go in Mitigation of the Damages, but not to the Right of the Action of Trover, which the Party is ſtill intitled to. *Mod. Caſ.*

7. The *Action of Slander*, is an Action of the Caſe brought for Words, where a Perſon is injured in his Reputation. And for any Words ſpoke of another, which affect his Life or Liberty, Office, Trade, or tend to his Loſs of Preferment in Marriage, or Service, or to his Diſinheritance, or which occaſion any particular Damage, this Action lies. *Dyer.*

8. The *Action of Aſſault and Battery*, is an Action that lies for Treſpaſs againſt a Man's Perſon, where an Injury is done to another in a violent Manner: And ſuch Offence is alſo indictable, tho' it is uſual not to proſecute an Indictment, but to bring this Action only for Damages. *Terms de Ley.* But if a Perſon be aſſaulted or beaten, and he hath no Witneſſes to prove the Fact, the Party inſtead of his Action for the Battery, may bring an Information in the Crown Office againſt the Aggreſſor, and there he ſhall be fined to the King. 'Tis held that the leaſt Touching of another Perſon in Anger, is a Battery, which may be committed either by Puſhing, Jolting, or Filliping upon the Noſe, *&c.* and Spitting in a Man's Face, is Battery; if not done by Accident. *Dalton.* The laying Hands gently on one is not Battery to found an Action; the Law will not preſume any Damage in ſuch Caſe, and the Defendant may juſtify *molliter Manus impoſuit.* If a Perſon is beaten by another, he may likewiſe return it, and plead that the Plaintiff's Battery was occaſioned by his own firſt Aſſault, whereupon the Defendant ſhall go quit, and the Plaintiff be amerced. 2 *Inſt.* For the Battery of the Perſon's Wife, Child or Servant, the Husband, Father and Maſter ſhall have this Action.

9. The *Action of Treſpaſs*, is that Action as generally lies for any Wrong or Damage, which is done with Force and Arms by one private Man to another; and it is ſometimes againſt the Perſon and ſometimes againſt his Lands and Goods. The Action of Treſpaſs lieth where any one makes an Entry on another's Lands, and there does Damage; alſo *Treſpaſs Vi & Armis* may be brought by a Perſon who has the Poſſeſſion of Goods, or of a Houſe or Land, if he be diſturb'd in his Poſſeſſion. 2 *Rolls Abr.* To enter into an Houſe againſt the Will of the Owner, is Treſpaſs for which Action lies; but a Man may lawfully come into the Houſe of another, to demand

mand Money, *&c.* yet it has been held, that if a Perſon has a Horſe in another Man's Ground, and he enters therein to take it away without Leave, Action of Treſpaſs lies againſt him. 4 *Shep.*

10. The *Action of Waſte*, is an Action that is brought where any Waſte or Deſtruction is made either in Houſes, Lands, or Woods, *&c.* by Tenants for Life or Years, to the Damage of the Heir or him in Reverſion or Remainder. 1 *Inſt.*

11. The *Action of Ejectment*, is now the common Action for Trial of Titles, and recovering of Lands, *&c.* illegally held and kept from the right Owner. For it is become an Action in the Place of many real Actions, ſuch as Writs of Right, *Formedons*, *&c.* which are very difficult as well as tedious and expenſive. There is no Arreſt required in this Action, as now generally proſecuted; but if there be not a Tenant in Poſſeſſion, as where a Houſe or Land is empty, and no Perſon can be found to whom the Declaration may be delivered: In that Caſe the Plaintiff muſt proceed by Sealing a Leaſe upon the Land, *&c.* And an original Writ is to be ſued out againſt the Perſon who ejected the Leſſee, and then Ouſter and Ejectment, *&c.* 1 *Lilly.* The uſual Courſe of proceeding in Ejectment is to draw a Declaration only, and feign therein a Leaſe for three, five, or ſeven Years, to him that would try the Title, and alſo feign a caſual Ejector or Defendant, and then deliver the Declaration to the Ejector, who ſerves a Copy of it on the Tenant in Poſſeſſion. And at the ſame Time gives Notice at the Bottom, for him to appear and defend his Title, or that he the feigned Defendant will ſuffer Judgment by Default, whereby the true Tenant will be turned out of Poſſeſſion of the Lands. To this Declaration, the Tenant is to appear the Beginning of the next Term by his Attorney, and conſent to a Rule to be made Defendant inſtead of the caſual Ejector, and take upon him the Defence, wherein he muſt confeſs *Leaſe*, *Entry* and *Ouſter*, and at the Trial ſtand upon the Title only. But if the Tenant in Poſſeſſion does not appear, and enter into the ſaid Rule in Time, after the Declaration ſerved, then on Affidavit being made of the Service of the Declaration, with the Notice to appear as aforeſaid, the Court will order Judgment to be entered againſt the caſual Ejector by Default, and thereupon the Tenant by Writ is turn'd out of his Poſſeſſion. In Caſe ſuch Tenant appears to the Action, having by his Attorney filed common Bail, and enter'd into the Rule aforementioned, he is made Defendant in the Declaration, and put into the Place of the Ejector. And then the Defendant's Attorney muſt plead Not-Guilty, and the Attorney for the Plaintiff draws up the Iſſue in the Cauſe, a Copy whereof and of the Declaration is to be deliver'd to the Attorney for the Defendant, whereupon Notice is given of Trial. In order to which, the Writ of *Venire*, *&c.* is to be made out and returned, and the Record made up by the Plaintiff's Attorney, beginning with the Declaration; then the *Breviate* of the Cauſe

Cauſe is to be prepared, in which, after a ſhort Recital of the Declaration and Plea, the Plaintiff's Title is to be ſet forth from the Perſon laſt ſeiſed in Fee of the Premiſſes, under whom the Leſſor claims down to the Client, the Plaintiff proving the Deeds, *&c.* And after Trial the Proceedings are as in other Caſes. 1 *Lilly's Abr.* By a late Statute, thoſe Tenants to whom Declarations in Ejectment are delivered for any Lands, *&c.* are to give their Landlord's Notice thereof, on Pain of forfeiting three Years Rent. And the Court where ſuch Ejectment ſhall be brought, may ſuffer the Landlord to make himſelf Defendant, by joining with the Tenant, if he appears; but if he does not, Judgment ſhall be ſigned. Tho' in Caſe the Landlord deſires to appear by himſelf, and conſents to enter into the like Rule as the Tenant if he had appear'd, ought to have done; the Court ſhall permit him ſo to do, and order a Stay of Execution, *&c.* 11 *Geo.* 2.

Wherever a Defendant is barred in any real Action concerning Lands, either by Judgment upon Verdict, Demurrer, or Confeſſion, *&c.* he may bring an Action of a higher Nature, and try the ſame Right again, as it concerns the Inheritance. But in perſonal Actions, as Debt, *&c.* a Bar is perpetual; for the Plaintiff cannot have his Action of a higher Nature, but his only Remedy is by Error or Attaint; and ſometimes in the Chancery.

Of Fictions, Intendments, and Preſumptions.

1. A FICTION, or feigned Conſtruction of the Law, is when in a ſimilitudinary and colourable Way the Law conſtrueth a Thing otherwiſe than it is in Truth: And therefore *Fictions* were formerly termed an *Abuſe* of the Law; but have been a long Time thought neceſſary, and allowed of in ſeveral Caſes. As a common Recovery is *Fictio Juris*, or a formal Device for the docking of an Eſtate-Tail, *&c.* that was contrived, when thoſe Eſtates came to be inconvenient, and could not be altered for any good End or Purpoſe. The Seiſin of the Conuſee in a Fine, is alſo but a *Fiction* of Law, it being only an invented Form of Conveyance to paſs Eſtates: And in the Action of Ejectment, there is both a fictitious Leaſe to try the Title, and a feigned caſual Ejector; yet this is the moſt common real Action. Likewiſe if a Bond is made at a Place beyond Sea, it may be pleaded to be done there in *Iſlington* in the County of *Middleſex*, by Fiction of Law, in order to try the ſame here, *&c.* 1 *Co. Inſt.* But the Law ought not in any Caſe to allow of Fictions, where it may be otherwiſe really ſatisfied; and there is to be Equity and Poſſibility in every legal Fiction. And it is obſerved, that no Fiction ſhould unlawfully work any Damage, or Injury to another, 10 *Rep.*

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2. *Intendment*, in our Law, ſignifies the Underſtanding, Intention and true Meaning of a Thing; which ſupplies what is not fully expreſſed or apparent. So that where a Thing is doubtful, Intendment may make it out; likewiſe many Things ſhall be intended after a Verdict, in a Cauſe; but Intendment cannot ſupply the Want of Certainty, in a Charge laid in an Indictment for any Crime, &c. which muſt be expreſsly found. 2 *Hawkins.* A Thing may be neceſſarily intended by ſomething that goes before or follows it; and where in a Suit an indifferent Conſtruction may bear two Intendments, it is a Rule in Law to take it ſtrongly againſt the Plaintiff. In Caſe a Perſon be bound by Bond to another, and it is not expreſſed to whom the Money ſhall be paid, or even if ſaid to the Obligor, the Law will intend it to be payable to the Obligee, who lent it. And where no Time of Payment is limited, the Law intends that the Money is to be paid immediately. 2 *Lilly.* In Deeds and Contracts, the Intent of Parties is much regarded by the Law; yet it ſhall not take Place againſt the direct Rules of Law: And in Conveyances of Eſtates, our Law does not admit them regularly to paſs by Intendment and Implication. Tho' in Deviſes of Lands, they are allowed with due Reſtrictions, that is to ſay, where the Deviſee muſt neceſſarily have the Thing deviſed by Will, and no other Perſon whatſoever can have it. *Vaughan.* No Intendment or Implication ſhall be allowed againſt an Eſtate limited by expreſs Words, to drown the ſame.

3. *Preſumption*, denotes in Law an Opinion or Belief of Things, ſo ſtrong as to amount to Proof and Evidence thereof. Where all the Witneſſes to a Deed of Feoffment or other Conveyance of Lands are dead, there violent Preſumption, which ſtands for a Proof, is continual and quiet Poſſeſſion. If where a Defendant pleads Payment to a Bond, the Debt appears by the Bond to have been of a very long Standing, and no Demand can be proved to have been made, nor Intereſt paid for many Years; it ſhall be preſumed that the Bond is paid, though the Plaintiff has it in his Cuſtody, 1 *Co. Inſt.* Alſo if Rent be in Arrear for Twenty Years or upwards, and the Landlord does give a Receipt for the laſt Year's Rent due, 'tis in our Law preſumed that all the reſt is ſatisfied. And ſo in ſome other Inſtances, tho' Preſumption is what may be doubted of, yet it ſhall be accounted true, if the contrary be not proved. In a Criminal Caſe, if a Perſon is found killed in a Houſe, and at the ſame Time a Man is ſeen to come out there with a bloody Knife or Sword, and no other Perſon was then in the Houſe; this is a violent Preſumption which will be admitted for Evidence, that that Man was the Murderer. But here a Precaution is given, that on ſuch Preſumption or circumſtantial Evidence, without other Proof by Witneſſes, the Court ought not to judge haſtily. 1 *Inſt.*

Of

Of Mayors, Corporations, &c.

MAYORRS are the chief Magiſtrates in Corporations, and Juſtices of Peace *pro Tempore*; they are mentioned in ſeveral Statutes, and generally have the ſame Power as Juſtices of Peace in the County at large.

The Authority of Mayors is contained in the following Particulars.

By the Statute 3 *Car.* 1. Mayors of Corporations are authorized to convict Perſons ſelling Ale without Licence; and to levy the Penalty of *Twenty Shillings* on the Offender by Diſtreſs, &c.

They are to cauſe Quart and Pint Pots for the ſelling of Ale, to be examin'd whether they hold their full Meaſure, and to mark them, under the Penalty of *Five Pounds*. 11 & 12 *W.* 3.

And by an ancient Statute, Mayors, &c. have Power to ſet the Prices of Ale and Beer. 23 *H.* 8.

The Statute 2 *Ed.* 3. *c.* 3. gives Power to Mayors, Conſtables, &c. to arreſt Perſons carrying Guns charg'd, and having offenſive Weapons or Armour in Fairs, Markets, &c. to make Affrays.

And Juſtices of Aſſize ſhall enquire into the Defaults, &c.

By 52 *H.* 3. *c.* 6. Mayors, Bailiffs, and Lords of Leets have Power to regulate the Aſſize of Bread, and examine into the Goodneſs thereof; and if Bakers make unlawful Bread, they may give it to the Poor, and pillory the Offenders, &c.

The 8 of *Annæ* directs that chief Magiſtrates of Towns, &c. may in the Day-Time enter into any Houſe, Shop, Bakehouſe, Warehouſe, &c. 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, deficient in Baking, under Weight, or not truly mark'd, or ſhall conſiſt of any other Sort than what is allow'd, the ſame Bread to be ſeized and given to the Poor.

This Statute likewiſe impoſes a Penalty of *Forty Shillings*, for want of Weight, or not being mark'd as directed, &c. but this is ſince repeal'd by 1 *Geo.* which inflicts a Penalty of *Five Shillings* for every Ounce wanting in Weight, and *Two Shillings and Six Pence* if under an Ounce, Complaint being made, and the Bread weigh'd before a Magiſtrate within Twenty-four Hours.

Chief Magiſtrates of Ports, &c. where Goods are convey'd away, which are liable to Cuſtoms, before Entry made and the Duties agreed, are to iſſue out their Warrants for the Apprehenſion of the Offender, &c. 12 *Car.* 2. And if any Perſon ſhall abuſe a Cuſtom-Houſe Officer, the next Magiſtrate may commit him 'till the next Seſſions. 14 *Car.* 2.

The

The Statute 4 *Jac.* gives Power to Head Officers of Corporations to puniſh Drunkenneſs by impoſing a Fine of *Five Shillings* on View, Confeſſion, or Proof by one Witneſs; or to ſet the Offender in the in the Stocks for Six Hours.

And Perſons ſitting Tipling in an Ale-houſe, Inn, or Tavern, are likewiſe liable to Puniſhment by Mayors, *&c.* who may levy *Three Shillings and Four Pence* on ſuch Offenders, for every Offence, for the Uſe of the Poor, or cauſe them to be ſet in the Stocks four Hours.

And the Ale-houſe Keeper, *&c.* permitting Tipling in their Houſes, are liable to a Penalty of *Ten Shillings.*

By 8 *H.* 6. Head Officers and Juſtices of Peace in Corporations have like Power within their Franchiſes, in Caſes of forcible Entry, as Juſtices of Peace have in the County. And they are to enquire of the Force; commit Offenders, cauſe the Tenements to be ſeiz'd, *&c.*

Mayors, *&c.* are to enquire into unlawful Games againſt the Statute 33 *H.* 8. and to levy Penalties, *&c.* They are likewiſe to ſearch Places ſuſpected to be unlawful Gaming Houſes; and to levy the Penalty of *Forty Shillings.* They have Power to commit Perſons playing at unlawful Games. Horſes ſtoln, found in a Corporation, may be redeem'd by the right Owners, if they claim them within ſix Months after the Selling, and make Proof before the next Juſtice of Peace, or the Head Officers of the Corporation, that the Horſe is theirs, and repay the Buyer what he ſhall likewiſe teſtify upon Oath he has paid. 31 *Eliz.*

Mayors and Head Officers in Corporate and Market Towns, and Lords of Liberties and their Stewards, are to appoint and ſwear two ſkilful Perſons yearly to be Searchers and Sealers of Leather &c. Searchers not doing their Duties, to forfeit *Forty Shillings*, and Triers, *Five Shillings.* Stat. 1 *Jac.* 1. *c.* 22.

Perſons robbing Orchards, Hedge-breakers, *&c.* are puniſhable by Mayors. And a Perſon on Conviction by the Oath of one Witneſs, ſhall pay to the Perſon injur'd ſuch Damage as the Mayor, *&c.* ſhall think fit, or be whipp'd 43 *Eliz. c.* 7.

Perſons having any Wood, Underwood, Poles, Gates, Stiles, *&c.* in their Cuſtody, and not giving a good Account how they came by the ſame, Mayors, *&c.* may order them to make Recompence, and alſo to pay a Sum not exceeding *Ten Shillings*, for the Uſe of the Poor, or commit them to the Houſe of Correction for a Month. 15 *Car.* 2. Buyers of ſtolen Wood ſhall pay treble Value.

By 1 *Geo.* Perſons maliciouſly breaking down, cutting or plucking up, *&c.* any Timber-Trees, Fruit-Trees, *&c.* ſhall be ſent to the Houſe of Correction for three Months, and there whipp'd and be kept at hard Labour.

Mayors,

Mayors, *&c.* on Receipt of Precepts from Sheriffs, (when Writs are iſſued out for electing Members of Parliament) requiring them to chuſe Burgeſſes by the Citizens, *&c.* are to proceed to Election, and make Returns by Indenture between them and the Electors: Making a falſe Return, to forfeit *Forty Pounds* to the King, and the like Sum to the Party choſen not return'd, 23 *H.* 6.

In Time of Sickneſs, a Tax may be laid on Inhabitants for Relief of Perſons viſited with the Plague, by Mayors, *&c.* who are to appoint Searchers, Buriers of the Dead, *&c.* And if any infected Perſons go abroad with Sores upon them, after a Head Officer ſhall have commanded them to keep Home, it is Felony; and if they have no Sores about them, they are to be puniſhed as Vagrants. 1 *Jac.* 1. *c.* 31.

By 9 *Annæ*, Juſtices are to cauſe Watches to be ſet to prevent Perſons coming on Shore, or going on board from Ships which are to perform Quarentine in Time of Sickneſs Aboard; the Penalty of coming on Shore is a Sum not exceeding *Twenty Pounds*.

The 43 *Eliz.* which directs that the Father, Grandfather, Mother, Grandmother and Children of every poor Perſon ſhall be aſſeſs'd towards their Relief, by Juſtices, *&c.* which empowers Overſeers of the Poor, *&c.* to place out poor Boys Apprentice, and ſets forth the Office of Overſeers, *&c.* gives like Authority to Head Officers in Corporate Towns, as Juſtices of Peace have in their Counties; which ſaid Juſtices are not to intermeddle in Corporations for the Execution of this Law.

Mayors, Bailiffs, and other Head Officers of Corporate Towns, *&c.* are to make Proclamation for Rioters to diſperſe as follows.

"Our Sovereign Lord the King charges, and commands all Per-
"ſons aſſembled, immediately to diſperſe themſelves, and peaceably
"depart to their Habitations, upon Pain of Impriſonment, *&c.*

If the Rioters, being Twelve in Number, do not diſperſe within an Hour after Proclamation made, 'tis Felony: And Conſtables, *&c.* may ſeize them and carry them before a Juſtice. 1 *Geo. c.* 6.

Mayors, *&c.* are empower'd to hear and determine Matters relating to Servants and Apprentices; to compel Perſons to go to Service, *&c.* by 5 *Eliz.*

And in the Time of Harveſt, may require Perſons fit for Labour, to work by the Day; or on their Refuſal, put them in the Stocks. They may alſo licence Labourers to go for Work from one County to another: And have Power to aſſeſs the Wages of Labourers, *&c.* at *Eaſter* Seſſions.

Mayors of Ports, *&c.* may arreſt Soldiers departing without Licence. 18 *H.* 6. They are to be preſent at Muſters; quarter and billet Soldiers, *&c.* 13 *&* 14 *W.* 3. 1 *Geo.*

If Soldiers having Relief by Order of Juſtices ſhall beg, they are to be puniſhed as Vagabonds.

Perſons

Perſons uſing Games on a *Sunday*, Bear-beating, Bull-beating, &c. forfeit *Three Shillings and Four Pence* to the Uſe of the Poor where the Offence is committed: Butchers killing or ſelling Meat on a *Sunday*, forfeit *Six Shillings and Eight Pence*. Carriers or Drovers, &c. travelling on that Day, *Twenty Shillings*; and Perſons doing any worldly Labour on a *Sunday*, are liable to a Penalty of *Five Shillings*; all leviable by Warrant from Mayors and Head Officers of Corporations as well as other Juſtices. By 1 *and* 3 *Car.* 1.

By 3 *Car.* 1. *c.* 4. If any Perſon ſhall profanely ſwear or curſe in the Preſence of a Mayor, &c. or ſhall be convicted thereof before him, by the Oaths of two Witneſſes, he ſhall forfeit for every Offence *One Shilling* to the Uſe of the Poor, or be ſet in the Stocks three Hours.

But the Statute 6 & 7 *W.* 3. confines the Forfeiture to *One Shilling* to Servants, Labourers, &c. other Perſons being order'd to pay *Two Shillings*, and double, treble, &c. on repeating the Offence.

Juſtices, &c. neglecting to put the Act in Execution, to forfeit *Five Pounds*.

Vagrants, or other looſe, idle and diſorderly Perſons, Blind, Lame, &c. or pretending to be ſo, found begging in the Streets, a Mayor, Conſtable, &c. may cauſe them to be whipp'd. 12 *Annæ*.

By former Statutes, Mayors, &c. are empower'd to make Paſſes of Vagrants. And Juſtices in Liberties and Corporations by 12 *Annæ*, are to iſſue out their Warrants to Conſtables, &c. to make a Search for and apprehend Vagrants before the Quarter-Seſſions.

In every City, Borough, and Town there ſhall be a common Balance, and ſeal'd Weights under the Penalty of *Ten Pounds* the City, *Four Pounds* the Borough, and *Forty Shillings* a Town.

There is likewiſe to be a common Buſhel ſeal'd. 8 & 11 *H.* 6. And Mayors, &c. are to provide a Mark for the Sealing of Weights and Meaſures; being allow'd *One Penny* for Sealing every Buſhel, and hundred Weight; and a Half-penny for every other Meaſure, and Half hundred Weight, &c.

Mayors are to puniſh Offenders uſing falſe Weights; they may burn ſuch Weights and Meaſures, and inflict a Penalty of *Six Shillings and Eight Pence*. Stat. 11 *H.* 7. And if they permit Perſons to ſell by Meaſures not ſeal'd, &c. they ſhall forfeit *Five Pounds*. Sealing Weights not agreeable to the Standard incurs the ſame Penalty; and refuſing to ſeal Weights and Meaſures, makes them liable to a Forfeiture of *Forty Shillings*. 7 *H.* 7. *c.* 4.

Mayors, &c. are empower'd to inſpect, and order the Size of Faggot, Billet, Tale-Wood, &c. 43 *Eliz.*

Mayors, &c. have Power to command Conſtables near the Sea Coaſts to call Aſſiſtance for the Preſervation of Ships in Danger of a Wreck. 12 *Annæ*.

These are the particular Powers given to Mayors, &c. by Statute: To which I shall add, that if any Person intrudes into, or executes the Office of Mayor, Bailiff, &c. a *Quo Warranto*, may be brought against the Usurper; and if the Defendant in the *Quo Warranto*, shall be found guilty of an Usurpation or Intrusion, the Court shall give Judgment of Ouster, fine the Offender, and order the Plaintiff Costs.

A Corporation cannot do an Act *in Pais* without the Common Seal and the Hand of the Mayor; but they may do an Act upon Record without it: The Mayor of *Thetford*'s Case. *Hil.* 1 *Ann. Salk. Rep.* 192.

This Case was upon a *Mandamus* to the Mayor and Commonalty of *Thetford*, which was return'd without the Common Seal or the Hand of the Mayor: And if an Action be brought against the Corporation here for a false Return, they are estopp'd to say it is not their Return; for it is the *Responso Majoris & Communitatis* upon Record.

If the Sense of a Mayor differs from the Majority of the Corporation, in respect to executing a Writ, and he executes the Writ accordingly, they cannot avoid it, as he is the Head and Principal; but they may take their Course against him; Mayor of *Norwich*'s Case. *Salk.* 432.

On a *Mandamus* to the Mayor, Aldermen, and Commonalty of *Rippon*, to restore a Person to the Place of Alderman, it was prov'd that he declared to the Corporation, he would no longer serve in that Office, which Resignation the Corporation accepted, and chose another, and held good: But it was held 'till Election, he had Power to wave his Resignation. Sir *Jonathan Jenning*'s Case. *Salk.* 433.

Serjeant *Whitacre* being turn'd out of his Recordership of *Ipswich*, for not attending at the Sessions of the Peace, having Notice, he obtain'd a *Mandamus* to be restor'd; but the Court held that the Recorder was bound to attend and assist at the Sessions, to direct the Corporation in the Proceedings of Justice; and that his Office relating to Justice, Non-attendance is a good Cause of Forfeiture. *Salk.* 435.

A Corporation that hath a Patent to make a Town Clerk *durante beneplacito* of the Mayor and Aldermen, they may turn him out at their Pleasure; but it is doubted of a Recorder. 2 *Keb.* 461. And an Alderman cannot be turned out.

An Obligation being seal'd with the Common Seal of a Corporation, which the Mayor signs; the Corporation is afterwards dissolv'd, the Mayor is suable. 2 *Leo.* 137.

But if a Corporation seals a Bond, and two of their Members sign it; and afterwards the Corporation is dissolved, the particular Persons are not oblig'd by it. 1 *Leo.* 237.

And if the Common Officer of the Town does any Thing for their common Use, the Town shall be answerable. 1 *Leon. Case* 215.

Every

Every City and Town Corporate may by a Power inherent to their Conſtitution, make By-Laws for the Government of the Body Politick; this is included by Law in the Incorporating Act. 5 *Mod.* 429. They may likewiſe make a Fraternity. And a Body Politick is a Creature of the King, created by Letters Patents. *Hill.* 22 *Car.* 2. B. R. The Conſent of the greater Part ſhall be binding; but they may not make any Ordinances to the Diminution of the King's Prerogative, or againſt the publick Good, under the Pealty of *Forty Pounds.* 19 *H.* 7.

Actions ariſing out of Corporations, ought not to be tried in Corporation-Courts; for their Privileges extend no farther than to the Trial of ſuch Actions, the Cauſes whereof ariſe within their Juriſdiction. *Lutw.* 1571.

If a Corporation neglect to chuſe ſuch Officers as they ought to elect by their Charter; or if they make a falſe Election, this is a Forfeiture of their Corporation: And the Charter implies Conditions in Law, for them to perform; and by the Non-performance the Charter is forfeited. *Hil.* 21. *Car.* B. R.

A Mayor's Warrant againſt an unlicenſed Ale-Houſe Keeper.

New-York, ſs. To the Conſtable, &c.

WHEREAS *Information has been given unto me* E. H. *Gent. Mayor of*, &c. *aforeſaid, That* C. D. *of the ſaid Town keeps a common Ale-houſe for ſelling of Ale without being licenced according to the Laws in that Caſe made and provided: Theſe are therefore to require you to bring the ſaid* C. D. *before me to anſwer the Premiſes, and be proceeded againſt according to Law. Given*, &c.

Warrant to levy the Penalty for ſelling Goods by unlawful Weights.

Oxford, *ſs. To the Conſtable*, &c.

WHEREAS *C. D.* hath this Day been convicted before me for ſelling of Goods and Wares by falſe Weights and Meaſures, contrary to Law: Theſe are therefore to command you to levy the Sum of *Six Shillings and Eight Pence* on the Goods and Chattels of the ſaid *C. D.* by Diſtreſs and Sale, which he has forfeited by the Offence aforeſaid. Given, &c.

Warrant to levy the Forfeiture for Drunkenneſs.

New-York, *ſs. To the Conſtables*, &c.

WHEREAS C. D. *has been this Day legally convicted before me of Drunkenneſs, whereby he has forfeited the Sum of* Five Shillings: *Theſe are therefore in his Majeſty's Name, to require you to demand of the ſaid* C. D. *the ſaid Sum of* Five Shillings *ſo forfeited as aforeſaid. And if the ſame be not paid into the Hands of the Churchwardens of*, &c. *aforeſaid, within the Space of one Week for the Uſe of the Poor, according to the Direction of the Act of Aſſembly in that Caſe made, that then you do levy the ſame by Diſtreſs; and if the ſaid* C. D. *ſhall not be of Ability to ſatisfy the ſaid Sum, nor has any Goods whereof a Diſtreſs may be taken; then you are to ſet him in the Stocks, there to remain for the Space of ſix Hours. Given*, &c.

Mittimus

Mittimus for the Commitment of a Perſon keeping unlawful Games.

Kent, *ſs. To the Conſtable and Keeper*, &c.

WHEREAS *C. D.* on his Conviction before me of keeping an unlawful Gaming-Houſe in the Town of, &c. aforeſaid, having refus'd to give Security for his not keeping ſuch a Gaming Houſe for the future, as the Acts of Aſſembly require: Theſe are to command you to convey the ſaid *C. D.* to the Common Goal of, &c. aforeſaid: Hereby requiring you the ſaid Keeper of the ſaid Goal him ſafely to keep in your Cuſtody until he ſhall give Security as aforeſaid; and alſo pay the Sum of *Forty Shillings*; which he has forfeited by the Offence aforeſaid. Given, &c.

Warrant for the Apprehenſion of a Hedge-Breaker.

Eſſex, ſs. To the Conſtable, &c.

WHEREAS *Complaint has been made unto me upon Oath, That* C. D. *of*, &c. *aforeſaid, Labourer, did tear down, break and deſtroy the Hedges and Fences of* E. F. *Gent. in a Ground belonging to the ſaid* E. F. *call'd*, &c. *contrary to an Act of Parliament in that Caſe made: Theſe are therefore in his Majeſty's Name, to command you to apprehend the ſaid* C. D. *(if within the Liberty of the Town of*, &c. *aforeſaid) and that you do bring him before me, to anſwer the Premiſes, and be dealt with according to Law. Given*, &c.

A Rate and Aſſeſſment for the Relief of Perſons viſited with the Plague.

New-York, ſs. To the Conſtable, &c.

A RATE and Aſſeſſment made this Day, &c. by *A. B.* Eſq; Mayor of the Town of, &c. aforeſaid, on the Inhabitants of the ſaid Town, for and towards the Relief of ſeveral poor Perſons viſited with the Plague

	l.	*s.*	*d.*		*l.*	*s.*	*d.*
Of *A. B*	0	5	0	Of *C. D.*	0	4	0
E. F.	0	3	0	*G. H*	0	2	0

I do allow of the Aſſeſſment above, and the ſeveral Sums therein mentioned. *A B.* Mayor.

Warrant againſt Bakers ſelling Bread under Weight, to levy the Forfeiture.

Eſſex, *ſs. To the Conſtable*, &c.

WHEREAS Complaint has been made unto me, That *C. D.* did lately expoſe to Sale Bread wanting its due Weight; and whereas upon Examination into and weighing of the ſaid Bread, the ſaid Charge appears to me to be juſt: Theſe are therefore to command you to levy the Sum of *Five Shillings* on the Goods and Chattles of the ſaid *C. D.* by Diſtreſs and Sale, which he has forfeited by the Offence aforeſaid, according to the Statute in that Caſe made, the ſaid Bread wanting an Ounce and more of its due Weight. Given, &c.

Appointment

Appointment of Searchers and Buriers of the Dead.

I A. B. *Mayor of the Town of*, &c. *do hereby appoint* C. D. *and* E. F. *to be Searchers and Buriers of Persons dying of the Plague within the said Town, for so long Time as the Sickness shall therein continue.*

A PASS for a Vagrant.

Morris, ss. To the Constables, &c.

WHEREAS E. F. *a Vagrant, was found wandering and begging in the Town of*, &c. *aforesaid, and being this Day brought before me* A. B. *Esq; Mayor of the said Town, it appears upon Examination, that the said* E. F. *is legally settled in the Parish of*, &c. *in the County of*, &c. *I do therefore hereby order and require you forthwith to remove and convey the said* E. F. *from and out of*, &c. *aforesaid, unto*, &c. *in the County of*, &c. *and to deliver him to the proper Officer there, taking his Certificate thereof, in order to his being conveyed the next and most direct Way to*, &c. *aforesaid, the Place of his Settlement; pursuant to the Act of Parliament for conveying of Vagrants. Given*, &c.

FINIS.

24 JU 58

Joseph Clerk

His Book Betting y^e year

1780

Joseph Clark

His Book