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THE
Office and Authority
OF A *Magistrate*
Justice of Peace.

AND ALSO
The Duty of Sheriffs, Coroners, Church-
wardens, Surveiors of Highways, Con-
stables, and Officers of Militia.

Together with
Precedents of Warrants, Judgments, Execu-
tions, and other legal Process, issuable by
Magistrates within their respective Jurisdic-
tions, in Cases Civil or Criminal.

AND
The Method of Judicial Proceedings, before
Justices of Peace, in Matters within their Cognisance
out of Sessions.

Collected from the Common and Statute Laws
of *England*, and Acts of Assembly, now in Force; And
adapted to the Constitution and Practice of *Virginia*.

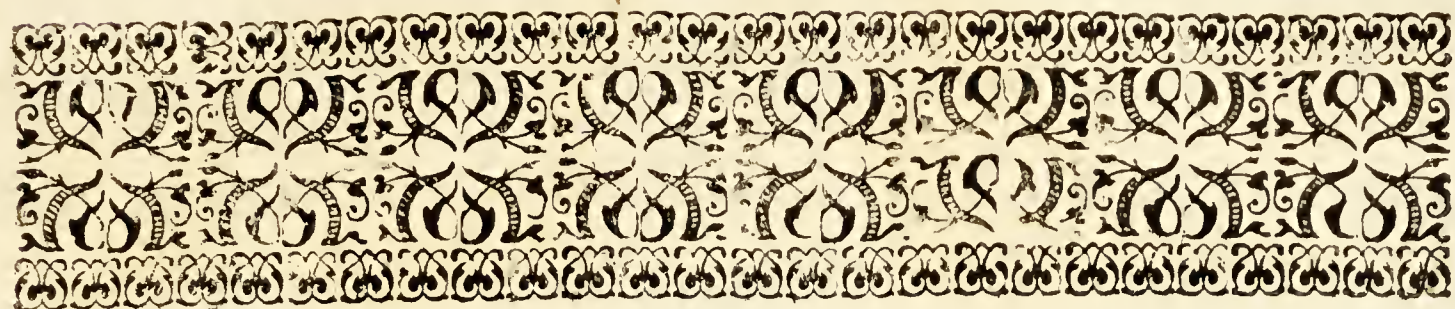
By GEORGE WEBB, *Gent. One of His Majesty's
Justices of Peace of the County of New-Kent.*

WILLIAMSBURG:
Printed by WILLIAM PARKS. M,DCC,XXXVI.

THE Abstracts and Precedents contained
in this Book, have been composed with
much Industry ; and I conceive the Publish-
ing them will be for the common Benefit of
this Colony of Virginia.

John Clayton, *Attorn. Gen.*

RPJCH

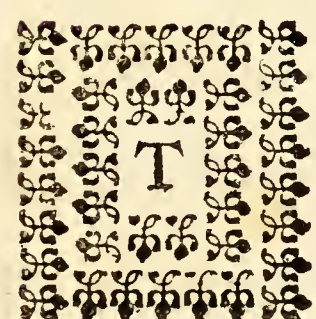


To the Honourable

William Gooch, Esq;

His Majesty's Lieutenant-Governor,
and Commander in Chief
of *VIRGINIA*.

SIR,

 HIS Book claims Your Protection ; not for its own Merit, much less any in its Author, but as it is a Work intended for the Benefit and Instruction of many of His Majesty's Subjects under Your Government: If it is found to answer this Purpose, Your Honour will not think it beneath Your Patronage.

Flattery, or Detraction, are Vices which appear, to an honest Mind, equally mean and despicable ; yet, Virtue and Goodness have an indisputable Right to the Esteem and Applause of Mankind, especially, when they are eminently seen in Men of elevated Stations, who thereby become Public Blessings.

I therefore cheerfully embrace this Opportunity of transmitting to Posterity this faithful Record of Your Administration, That Your Exemplary unaffected Piety, Your Loyalty to His Majesty, and Zeal for His Royal House, Your impartial Administration of Justice, Your affectionate Regard, and Steadiness in Pursuit of the true Interests of this Colony, the Ease and Freedom of Access which You allow, and the Candor, Affability, and Condescension by You shewn to Persons of all Ranks and Degrees among us, justly merit the sincerest Returns of
Duty

Duty and Affection from all the Subjects of this Dominion.

These public Virtues are as publicly acknowledged, not only by the repeated Addresses of our General Assemblies, but by daily Instances in private Conversation : So universal is the Love and Esteem of our People for their Governor, that I have never yet known One dissatisfied with Your Government, or disaffected to Your Person.

A Happiness rare, and unexperienc'd by any of Your Predecessors, but a bright Example!

I am desirous to avoid all Imputations of Insincerity in this censorious Age, and therefore Your Honour will suffer me here to declare to the Public, That I have neither past Favours, nor future Hopes, to bias my Judgment,

ment, or Testimony ; and then, I hope, the World will allow me to be an unexceptionable Witness.

Truth and Sincerity are my only Motives : These will prevail with Your Honour to pardon this plain Dedication of one of His Majesty's faithful Subjects, and

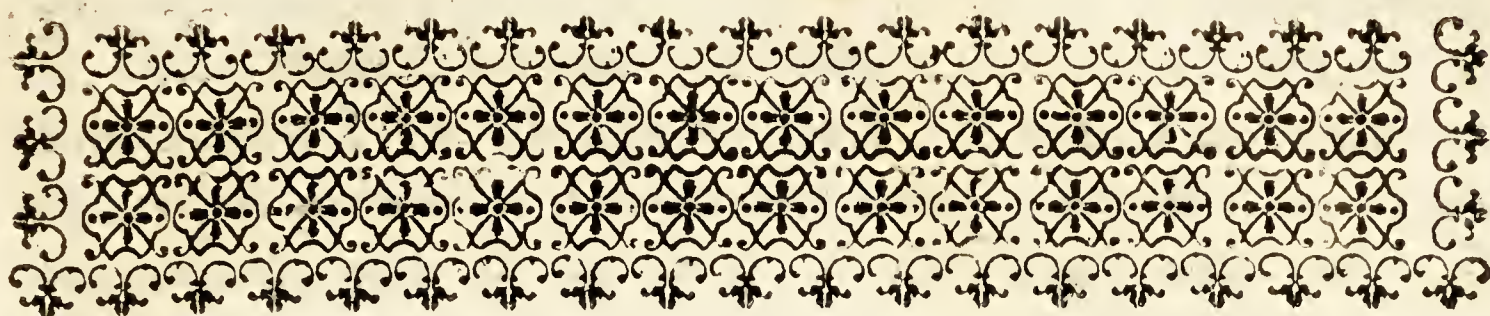
Your Honour's

Most obedient, and

Most humble Servant,

GEO. WEBB.

To



To the

READER.

Think it needless to make any Apology for my undertaking the Publication of this Work, the First in its Kind hitherto produced in these Parts of the World: The Subject is large and extensive, well deserving an abler Hand, but none such having yet appear'd, and the Increase of our People occasioning new and greater Variety of Cases, Civil and Criminal, as well in Courts of Justice, as before Magistrates, out of Sessions, the Use and Necessity of a Work of this Nature daily increased, and frequent Applications were made to me, for Advice in Judicial Proceedings before Justices of Peace.

THE voluntary Subscriptions which were universally offer'd, upon my Publishing Proposals for Printing this Book, and which have been since made by Persons
of

of all Ranks, encouraged me to procede: I now present it to the Public, in Hopes the candid Reader will see no material Cause of Objection against my Performance; but that it may be found instructive, or useful, to private Persons and Families, as well as to Magistrates and other public Officers, at least, 'til some more Judicious and Learned Person shall think fit to oblige the World with a more Complete Work.

THE Principal Subject of this Book relates to the Jurisdiction and Authority of a Justice of Peace, out of Sessions, and the Judicial Proceedings subsequent thereupon; Matters which are cognisable and determinable, before a Court of Judicature only, were not intended to be treated of here, and therefore no farther Mention is made of them, than what appear'd necessary to my Purpose, under each Title respectively.

THE Duty of Civil, Military, and Parish Officers, is summarily declared, so far as it concerns the Principal Matter by me intended.

UNDER each Head of Criminal Offence, I have collected so much of the Common and Statute Law of England, as well as the Laws of Virginia, as seem'd pertinent to shew the Reasons why such Offence is, or ought to be punishable here also.

AS this Work has been universally desired, therefore, to render it generally useful, instructive, and easie to the unlearned Reader, he will here find a plain and clear Explanation of every difficult Word, or Term in Law, wherever such occur; to which I have added, under such Heads as are most material, diverse Historical Abstracts, which I conceiv'd might prove entertaining
as

as well as instructive. In the Account given of the first Settlement of Virginia, pag. 316, I have follow'd the generally receiv'd Opinion, That it was discover'd and named by Sir Walter Raleigh; But upon farther Search into the Histories of those Times, this Opinion does not seem to be well supported: It appears, that Sir Walter, with several Ships under his Command, undertook an Expedition to North America, but not that he ever landed in Virginia, in Person.

WITH the same View of being generally serviceable, this Book appears throughout in a plain Method, easie to be understood, and the Matters therein contained briefly and clearly express'd, under their respective Titles, without troubling the Reader with unnecessary Repetitions, Reports of nice and intricate Cases, or affected Quotations from Learned Men in Foreign Languages. These, as Matters of Speculation, rather than Practice, are by me purposely omitted.

IN such Variety of Matter it's not to be expected that every particular Case, which possibly may happen, should be distinctly specified; such an Attempt would prove both vain and fruitless: By General Rules and Maxims, adapted to the usual Occurrences of Human Life, we may form a true Judgment, in every special Case.

I HAVE avoided all References to Laws and Law Books, but have collected and recited out of them so much as I found necessary to my Subject: The far greatest Part of our Inhabitants are unfurnish'd with those Books, or diverted from Reading them, by the necessary Affairs of their Plantations, and the innocent Pleasures of a Country Life.

THIS

THIS is a true Account of the following Sheets: My Design and Method being new, I make no Doubt but Critics will be Carping at the Performance; tho' 'twere better, they'd be less ill-natured: My Advice to these Gentlemen, is, That they mend it by some of their own ingenious Compositions, their Work will be the easier, now I have found and clear'd a Road; if they do not, the World will have Room to suspect their Ability.



ACCESSORIES.

ACCESSORIES.

IN the lowest and highest Offences there are no Accessories, but all are Principals; as in Riots, Routs, forcible Entries, and other Transgressions by Force and Arms, which are the lowest Offences; and so in the highest Offence, which is Treason, there be no Accessories: But in Felony there are, both before and after. *Co. Lit. l. 1. cap. 8. §. 71.*

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

Accessories are Two-fold;

1. Before the Fact.
2. After the Fact.

1. An Accessory before the Fact, is he that commandeth, counselleth, or procureth, another to do Felony, and is not there present when the other doth it; for if he be present, he is also a Principal. *Dalt. 394.*

He that counsels or commands any evil Thing, shall be judged accessory to all that follows of this evil Act, tho' not of another distinct Thing; as if the Command is to rob in the Highway, and instead thereof, the Person is rob'd in his House, or to rob him one Day, and it is done at another Time, or to poison a Man, and he is stab'd; in these, and the like Cases, he is accessory before the Fact: So, if a Felony of another Nature than what was advised, proceeds from the Abetting, or Encouragement given by any ill Man, he is likewise accessory to it; as if he advises one Man to rob another, and he kills him, making Resistance: In this Case the Abettor is accessory to the Murder, because his Advice was to do an evil Act, which makes him accessory to all the Consequences of it. *Nels. 3. Dalt. 354.*

But when the Felony commanded is executed upon another Person, or where there is a Variance in the Nature of the Offence, he that gave the Command is not Accessory; as if *A.* advises *B.* to poison *C.*, who knowing thereof, delivers it to *D.*, who eateth, and dieth; this is Murder, but *A.* is not accessory to it. *H. P. C. 217.*

B

So

So if I command a Man to rob another in the Highway, and he commits Burglary; or if I command one to apprehend another, and instead thereof, he robs him; in such Cases I am not accessory: For there must be an evil Purpose, continuing 'til the Act commanded be completed, to make a Man accessory before the Fact. *Lamb. 285.*

After
the Fact.

2. An Accessory after the Fact, is he that receiveth, favoureth, aideth, assisteth, or comforteth, any Man that has done Murder, or Felony, to his Knowledge.

Buyers and Receivers of stolen Goods, knowing the same to be stolen, are Accessories after the Fact.

If Goods are stolen, and the Owner hath complained to a Justice of Peace; or if the Felon be taken upon Hue and Cry, or otherwise, by Virtue of a Justice's Warrant, and then the Owner takes his Goods, compounds with the Felon, or consents to his Escape, this makes him accessory after the Fact, because he once prosecuted the Offender as a Criminal: But if, in Pursuit, he retaketh his Goods, and suffers the Felon to escape, before any Complaint made to a Justice, &c. this is a Misdemeanor, for which he may be indicted and fined; but it does not make him an Accessory, because from the Beginning he has Liberty to proceed against the Offender, either by Civil or Criminal Process.

A Servant relieving his Master, or assisting him to escape, knowing him to be a Felon, is an Accessory after the Fact: For he is bound to accuse him, or to depart his Service.

So is a Master relieving his Servant.

And a Husband receiving his Wife, knowing her to have done a Felony: But not a Wife receiving her Husband. *Nels. 5.*

Who not
Accesso-
ries.

A Man is not an Accessory after the Fact, unless it be Felony at the very Time when he becomes Accessory; and therefore, the Receiver of one who gave a mortal Wound to another, before the Death of the Party struck, is not accessory to the Murder: For it could not be Felony in the Receiver, because the Man was then living.

To receive a Man bail'd for Felony; or to relieve a Felon in Prison; to send Letters or Messengers in his Favour; to teach him to read, or to advise him to make his Defence at his Trial, or that he endeavour to persuade the Witnesses not to appear against him, or doing charitable Offices for him, does not make an Accessory after the Fact.

Nor concealing a Felony which I know is intended to be done.

Nor

Nor suffering a Felon to escape, but giving him no Assistance. *Nelf. 6.*

By the Common Law, no Accessory could be convicted; Trial of
or suffer any Punishment, where the Principal was not at- Access-
tainted, or had his Clergy: But this is now remedied by ries.
Statute, 1 *Annæ, cap. 9.* and by an Act of Assembly,
3 & 4 *Geo. 2. cap. 4.* which Enacts, 'That if the Prin- Laws of
' cipal is convicted of Felony; or stands mute, or chal- Virginia,
' lenges above 20 of the Jury, it shall be lawful to pro- pag. 438:
' ceede against the Accessory, notwithstanding the Princi-
' pal had his Clergy, was pardoned, or otherwise deli-
' vered, before Attainder: And such Accessory shall suf-
' fer the same Punishment, if convicted, or stands mute,
' or challengeth above 20, as he should have suffered, if
' the Principal had been attainted.'

And by the same Act, Buyers and Receivers of stolen Goods, knowing the same to be stolen, may be prosecuted for a Misdemeanor, and punished by Fine and Imprisonment, although the principal Felon be not convicted.

Accessories before or after the Fact, shall, upon Con- Punish-
viction, be liable to the like Corporal Pains and Penalties ment of
as the Principal is subject to, for the same Offence. Access-
ries:

All Accessories in Felony are bailable until the Prin- How they
cipal be convicted; but not after; and it is in the Dis- may be
cretion of the Justices to consider the Circumstances of bailed:
the Case, and the Fame and Character of the Party:
For if he be not of good Fame, or do not tender very
sufficient Sureties, who will be bound in a considerable
Sum for his Appearance, he ought not to be bailed. *Dalt.*

ACKNOWLEDGEMENT.

BY an Act of Assembly, 13 *Car. 2. cap. 61.* it is Enact- Laws of
ed, 'That the voluntary Confession and Acknow- Virginia,
' ledgement of a Debt by the Debtor, under his Hand pag. 13:
' and Seal; before Two Commissioners, of which one of
' the *Quorum*, shall be accounted in Law in the Nature
' of a Judgment, the said Commissioners attesting the
' same under their Hands, and so certifying it to the
' Clerk of the County Court, to enter it upon Record:
' Upon which Writing, so acknowledged, attested, and
' recorded, Execution shall issue, in Case the Debt be
' not paid, as if Judgment had been granted for the same
' in open Court.'

The Debtor's Acknowledgement.

Acknow-
ledge-
ment of
a Debt.

I A. B. of the Parish of C, in the County of York, Planter, do by these Presents voluntary confess and acknowledge, That I do owe unto D. E. of the Parish of F, in the County of G, Merchant, the Sum of Twenty Pounds Current Money of Virginia, ---- (or Sterling, or Tobacco, as the Case is.) ---- Witness my Hand and Seal, this Fourth Day of May, Anno Dom. M,DCC,XXXIII.

This being sealed and acknowledged in Presence of the Justices, they are to grant a Certificate thereof, which may be written upon the same Paper, underneath the Acknowledgement, to this Effect, viz.

To the Clerk of the Court of York County.

Certifi-
cate.

2 Justi-
ces, (one
Quorum.)

York sc. *WE* H. I. and K. L. Gent. Two of His Majesty's Justices of the Peace for the said County, certify, That on this Fourth Day of May, personally came before us, A. B. of the Parish of C, in this County, Planter, and voluntarily confess'd, that he owes and is indebted unto D. E. of the Parish of F, in the County of G, Merchant, the Sum of Twenty Pounds Current Money of Virginia; and he did, before us, acknowledge the same by the above Instrument of Writing, under his Hand and Seal: Which is hereby certified to you, that the same may be entered upon Record, according to an Act of Assembly in that Case made and provided. Given under our Hands, this Fourth Day of May, 1733.

And hereupon the Creditor may take Execution, in the same Manner as upon a Judgment obtained at Common Law.

A D D I T I O N.

What in
Law.

*I*N Law it signifies a Title given to a Man, over and above his Christian and Sirname, denoting his Degree, Mystery, Trade, and Place of Dwelling.

Where
necessary.

It ought to be inserted in every Warrant, or other Criminal Process, that the Person of the Offender may be the more certainly known; and it is required by the Common Law, because it is Parcel of the Name.

By the Statute 1 H. 5. cap. 5. where Process of Outlawry lieth, the Condition and Dwelling of the Defendant must be inserted, or else the Outlawry is void.

Eut

But Surplusage of Addition doth no hurt. If there is no proper Addition in an Indictment, for any Matter where Process of Outlawry lieth, such Indictment may be quashed. *Cro. Eliz.* 224.

This Addition must be as the Defendant then is ;

1. Of Place ; the Town, or Parish and County, whereof he or she is, or last was, must be set forth.
2. Of Degree or Estate, Mystery or Trade.

A D U L T E R Y.

Fornication.

ANY Person, not being a Servant, or Slave, convicted of Adultery, by Two Witnesses, or Confession, shall forfeit and pay 1000 *lb.* Tobacco, and Cask, for every Offence. Punishment of Adultery,

Or if convicted of Fornication, 500 *lb.* Tobacco, and Cask. And Fornication.

If the Offender refuses to pay the Fine, or to give Security for Payment at the laying the next Parish Levy, he or she shall receive 25 Lashes, on his or her bare Back, well laid on. Laws of Virginia. p. 180.

Penalties to be recovered in any Court of Record, by the Churchwardens of the Parish where the Offence is committed, to the Use of the Poor. 4 *Annæ*, cap. 30.

A F F R A Y.

THIS is a Fighting between Two, or more ; but there must be a Stroke given, or offered, or Weapon drawn ; otherwise 'tis not an Affray. *H. P. C.* 135. What it is.

It differs from an Assault, which is an Injury done to a particular Person ; but an Affray is a common Wrong, for which the Offender may be indicted, fined, and imprisoned. *Dalt.* 35, 36.

'Tis to be consider'd, under this Head, what may be done.

1. By a Justice of Peace.
2. By a Constable.
3. By a private Person.
1. By a Justice.

If an Affray is in his Presence, he may lay Hands upon the Offenders, take away their Weapons, and commit them, 'till they find Sureties : And if they resist, he may command others to aid and assist him in apprehending the Offenders ; if they fly, he may pursue them, tho' Duty of Justices.

into another County, and may break open any House to take them. *Dalt.* 35.

If the Affray be not in his Presence, he may, upon Complaint, or without, if he sees Cause, issue his Warrant for apprehending the Offenders, and cause them to find Sureties for the Peace; or, on Refusal, commit them to Goal.

If any Person is dangerously hurt, he may, within a Year and a Day after the Hurting, commit the Offender; and in this Case, 'tis not Discretion to bail the Party, tho' he may do it by Law. *Nels.* 11.

He may, by his Office, require those who threaten, or strike, in his Presence, to find Sureties for their Good-behaviour; and upon Refusal, commit them.

If an Affray, or Assault, be made upon a Justice of Peace, or Constable, they may not only defend themselves, but also apprehend and commit the Offenders, 'til they find Surety for the Peace, and for their Appearance at the next Court: The Justice may presently cause them to be arrested and carried before another Justice, who may send them to Goal, if he see Cause: The Constable may put them in the Stocks, or otherwise secure them for the Present, and after carry them before a Justice of the Peace. *Dalt.* 37.

2. By the Constable.

Constables.

He may command the Affrayers to depart, and if they refuse, may apprehend them, without Warrant, if the Affray be in his View: If they resist, he may call others to his Assistance, and may justify the wounding in such Case; and if the Affray be great and dangerous, he may commit them until he can procure Help to carry them before a Justice: And if any Person is wounded, he may apprehend the Offender, and carry him before a Justice of Peace. *Dalt.* 37.

He may break open an House to take the Offenders, and may pursue them into another County; but then, when taken, he must bring them before a Justice of Peace of that County where taken.

If he is assaulted doing his Duty, or if the Affray be in his Presence, he may put the Offenders into the Stocks, or otherwise secure them, according to their Quality, 'til he can get Assistance to bring them before a Justice of Peace. *Lamb.* 133.

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

If there is threatening to kill, or beat, or hurt; tho' this is no Affray, yet he may apprehend the Persons, and carry them before a Justice: But when an Affray is over, he

he cannot apprehend any one, without a Warrant, unless some Person is dangerously wounded. *Nels.* 10.

If he neglect his Duty in not endeavouring to suppress an Affray, it is presentable at the County Court, and he ought to be fined.

3. By a private Person.

Any Man may stay Affrayers, who are about to break the Peace, and deliver them to a Constable. Private Persons.

Likewise any Man may apprehend an Offender, who hath dangerously wounded another, and carry him before a Justice of Peace, or deliver him to a Constable. *Dalt.* 35.

If any Person is wounded, or hurt, in an Affray, he may prosecute the Offender; and it is in the Election of the Party injured, whether he will have Remedy by Action of Trespass, wherein he may sue for, and recover his Damages; or by Indictment, whereupon the Offender may be fined and imprisoned.

Upon Complaint made to a Justice of Peace, he may issue his Warrant to apprehend the Offenders; but if it be at the Suit of a particular Person, he ought to administer an Oath to the Party requiring such Warrant, *viz.* Process.

THE Information which you shall give against E. F. of the Parish of G, in the County of New-Kent, Labourer, shall be the Truth, the whole Truth, and nothing but the Truth. Oath.
So help you God.

A Warrant against an Affrayer.

To all Constables, and other Officers, in the County of New-Kent.

New-Kent sc. **W**Hereas A. B. of the Parish of G, in this County, Planter, hath this Day made Oath before me, C. D. Gent. one of His Majesty's Justices of the Peace of the said County, That on Tuesday, the Second Day of this present Month, at in the Parish and County aforesaid, E. F. of the same Parish and County, Labourer, and other Persons unknown, being then and there unlawfully assembled, with Force and Arms, an Assault and Affray did make, and him the said A. B. did beat and wound, and other Enormities then and there did commit, contrary to the Peace of Our Sovereign Lord the King: These are therefore, in His Majesty's Name, to command you to apprehend the said E. F. and to bring him before me, or some other Justice of the Peace of this County, to be examined concerning the Premises wherewith he is charged. Hereof fail not at your Warrant.

Affray.

Perils. Given under my Hand, this Fourth Day of May, 1733.

If the Offender is taken upon this Warrant, he may be admitted to Bail, or committed to Goal, at the Discretion of the Justice, and as the Circumstances of the Case may require.

Bail.

Upon his being bailed, the Justice must cause him to enter into Recognizance, with good Sureties, for his Appearance at the next Court, to be held for the same County: The Number and Sufficiency of the Sureties, and the Sums in which they are to be bound, is discretionary in the Justice before whom the Recognizance is acknowledged; the Principal is to be bound in double the Sum the Sureties are bound in; and in ordinary Cases, 'tis usual to bind the Principal in 20*l.* and Two Sureties in 10*l.* each; but these Sums may be enlarged, if the Justice see Cause; and if he is deceived in the Ability of the Sureties, he may compel the Party to find better Security; or, on Refusal, commit him.

A Recognizance.

Recognizance.

New-Kent *sc.* **M**emorand. *On this Second Day of June, Anno Dom. 1733, personally came before me, C. D. Gent. one of His Majesty's Justices of the Peace for the said County, E. F. of the Parish of G, and County aforesaid, Labourer, and I. K. and L. M. both of the same Parish and County, Planters, and acknowledged that they do owe to our Sovereign Lord King George the Second, viz. the said E. F. Twenty Pounds, and the said I. K. and L. M. each severally Ten Pounds of lawful Money of Virginia, to be levied of their respective Goods and Chattels, Lands and Tenements, to the Use of Our said Lord the King, His Heirs and Successors, if Default is made in Performance of the Condition here under-written.*

THE Condition of this Recognizance is, That if the above-bounded *E. F.* shall personally appear before His Majesty's Justices of the Peace at the next Court to be held for the County of *New-Kent*, on the Second *Thursday* of this present Month of *June*, to answer unto such Matters as shall be then and there objected against him, by *A. B.* of the same County, Planter, concerning the assaulting, beating, and wounding, of the said *A. B.* by him the said *E. F.* and concerning some other Misdemeanors, tending to the Breach of the Peace; and that if
he

Affray.

he do not depart without Leave of the Court, then this Recognizance to be void ; or else to remain in Force.

Acknowledged before me,
C. D.

When this Recognizance is enter'd into, the Justice reads the Condition to the Parties bound, calling them by their Names, thus :

You acknowledge to owe to Our Sovereign Lord the King, *viz.* You *E. F.* Twenty Pounds, and you *I. K.* and *L. M.* Ten Pounds each ; to be levied, &c.

After which the Justice subscribes his Name, but the Parties bound need not set their Names to it.

This Recognizance must be certified, by the Justice, to the same Court before whom the Offender is bound to appear, that he may be called, and thereupon further Proceedings had : If he appears, the Matter of the Complaint is to be examined, and Witnesses heard ; and then, if the Court see Cause, they will direct the Attorney for the King to prefer an Indictment against the Offender, and may commit, or bail him, as the Case requires ; or he may be bound to the Good-behaviour, for such Time, and with such Sureties, and in such Sums, as the Court shall think fit to direct ; or he may be discharged.

Appearance.

If the Defendant fail to appear, the Clerk is to record the Default. that the King may be entitled to the Forfeiture of the Recognizance.

But if the Offender refuses to be bound, or to give Security, when brought before the Justice, he may be committed to Goal.

To the Sheriff of *New-Kent* County ; or to the Keeper of the Common Goal of the said County.

New-Kent *sc.* *THESE* are, in His Majesty's Name, *Mittimus.*
to command you to receive into your Goal the Body of *E. F.* late of the Parish of *G.* in this County, Labourer, taken by my Warrant, and brought before me, being charged upon Oath by *A. B.* of the same Parish and County, Planter, with assaulting, beating, and wounding, the said *A. B.* in an Affray by the said *E. F.* and others, lately made ; and that you safely keep him in your said Goal and Custody, until he be thence discharged by due Course of Law. Given under my Hand and Seal, this Second Day of June, 1753.

If

Affray. Agreement.

If the Commitment is for an Affray, or Threatening, or Striking, in Presence of the Justice, the *Mittimus* may be as follows, *viz.*

To the Sheriff, &c,

New-Kent sc. *I* Send you herewith the Bodies of E. F. of, &c. and N. O. of, &c. whom I require you, in His Majesty's Name, to receive into your Custody, being convicted, by my own View, of an Affray by them made in my Presence: And you are hereby commanded to keep them, and each of them, the said E. F. and N. O. safely in your Goal, until they, or either of them respectively, shall procure Two sufficient Persons to be bound with them, or either of them, separately, to the King's Majesty; that is to say, each of the Sureties in the Sum of Ten Pounds, and the said E. F. and N. O. each in Twenty Pounds, to appear at the next Court to be held for the said County of New-Kent, on the Second Thursday of this present Month of June, to answer the Premises, and in the mean Time to be of the Good-behaviour; or, until they, or either of them, shall be otherwise discharged by due Course of Law. Given under my Hand and Seal, &c.

If an Offender is taken by the Constable, and brought before a Justice, upon Refusal of giving Security, the *Mittimus* may be in the like Form, only varying in the Manner and Cause of Commitment, which ought to be plainly expressed.

But where it is occasioned by some dangerous Wound, or Hurt, so that it appears to the Justice, that the Offender ought not to be bail'd; in this Case, after expressing the Cause, he must command the Goaler to keep the Party in Goal and safe Custody, without Bail or Mainprize, until he shall be discharged by due Course of Law: But the Prisoner may exhibit his Petition to the next County Court, or to any of the Judges of the General Court; and if they see Cause, he may be admitted to Bail.

A G R E E M E N T.

Laws of Virginia, pag. 31. **N**O Person shall recover any Thing for Diet, or Storage, against any whom he entertains, without making a certain Agreement. 15 Car. 2. cap. 16.

A P P E A L S.

A P P E A L S.

Supersedeas.

THE Signification of this Word, in Law, is different, according to the Nature of the Appeal, which is either,

1. In Civil, or } Proceedings.
2. In Criminal }

1. An Appeal in Civil Cases, is a Removal out of an Appeal Inferior to a Superior Court, for Reversing any erroneous Civil Judgment, or Decree, in Common Law, or in Chancery, in any Matter, Real or Personal.

It is to be allowed in every Inferior Court of Record, Where within this Dominion, upon Prayer of the Party, Plaintiff allowable or Defendant, Demandant or Tenant, Complainant or Respondent, who may appeal to the General Court in any Laws of Virginia, Matter where the Debt or Damage recovered, exclusive of Costs, shall exceed 5*l.* Current Money, or 1000*lb.* Tobacco, or where the Title or Bounds of Lands shall be in Question. 4 *Annæ*, cap. 19. & 1 *Geo.* 2. cap. 3. pag. 163, & 381.

If the Plaintiff appeals, he shall give Bond and Security in the Inferior Court, in 20*l.* Penalty, to the Defendant, to prosecute the Appeal: If he fails to prosecute, his Bond shall be forfeited; and if, upon Trial in the General Court, the Judgment of the Inferior Court is affirmed, he shall pay the Defendant 50*s.* or 500*lb.* Tobacco, and Costs. 9 *Annæ*, cap. 11. pag. 254.

If the Defendant appeals, he shall give the Plaintiff Bond and Security, to prosecute the Appeal, and to perform the Judgment thereupon: And if the Judgment of the County Court is affirmed, he shall pay the Plaintiff 15 *per Cent.* upon the principal Sum, Costs and Damages recovered by the first Judgment, in Actions Personal; and in Real Actions, 2000*lb.* Tobacco. *Ibid.*

Persons convicted before any County Court, for Hogsstealing, may appeal to the General Court, but shall give Bond and Security, in 20*l.* Penalty, to appear and prosecute the Appeal, and to perform the Judgment of the General Court. 4 *Annæ*, cap. 14. pag. 150.

Persons agrieved by any Judgment, or Order of the County Court, made in Pursuance of the Act, *For appointing Rolling-houses and Public Landings*, may appeal to the General Court. 11 *Annæ*, cap. 5. Laws of Virginia, pag. 286.

In all Cases where an Appeal is by Law allowable, and sufficient Security tendred, if the same shall be denied in Superse-
deas. any pag. 164.

any Inferior Court of Record, the Party grieved giving Security, as required upon an Appeal, may have a Writ of Superfedeas, issued by the Governor and Council, directed to the Sheriff, to stay any Execution, or other Process issuable upon such erroneous Judgment; and thereupon the Cause shall be removed, heard, and determined, in the General Court, in the same Manner, and subject to the like Damages, as upon an Appeal. 4 *Annæ*, cap. 19.

Where
not grant-
able.

pag. 381.

But no Appeal, or Superfedeas, shall be granted for Reversing the Judgment of any Inferior Court, where the Debt or Damages recovered, shall not exceed 5*l.* Current Money, or 1000*lb.* Tobacco, exclusive of Costs, unless the Title or Bounds of Lands shall be in Question. 1 *Geo.* 2. cap. 3.

pag. 250.

Nor for any Matter under 20*s.* *Sterling*, or 200*lb.* Tobacco, which shall be finally determinable by One Justice of Peace. 9 *Annæ*, cap. 11. & 1 *Geo.* 2. cap. 3.

Appeal
Criminal.

2. An Appeal in Criminal Cases, signifies an Accusation, and is of Three Sorts, to be brought either by Writ, or Bill;

1. By the Heir Male, for the Death of his Ancestor.
2. By the Wife, for the Death of her Husband.
3. By the Appellants, for Wrongs done to themselves, as Robbery, Rape, and Mahem. *Co. Lit.* 287.

But these Appeals are not so commonly used as Indictments, because the Prosecution is not only more chargeable, but 'tis the most nice Suit in Law, for the Omission of any material Word will abate the Writ; and this varies from all other Proceedings, for a Fault in it can never be amended, and a Nonsuit in any Appeal for Felony is peremptory, because it is in Favour of Life. *Nels.* 26, 27.

By the ancient Saxon Laws, made in the Reigns of King *Alfred*, and his Grandson *Athelston*, the Punishment for Killing, was not by Blood, but by Fine; and the Offender was to make Compensation in Money, to the Relations of the Person killed, according to his Quality: Which Mr. *Selden* has thus computed;

	<i>l.</i>	<i>s.</i>	<i>d.</i>
A Country-man killed, at - - - -	40	1	0
Clergy-man, - - - - -	300	0	0
General, or Captain, - - -	600	0	0
Bishop, or Alderman, - - -	1200	0	0
Arch-bishop, or Nobleman, - -	2250	0	0
The King, - - - - -	4500	0	0
For a Woman with Child, the Value of her Head, and for the Child in her Womb, Half as much as for a living Child, according to the Quality of the Father.			

A *Welshman*, if he had Land, and a Family, and paid Tribute, was valued at 6*l.*; if he had no Land, 3*l.*

These Fines were only in Case of Manlaughter, where the Person was killed by Misfortune: But Murder was never excused by these Paiments; that was always punished by Death, and so was Manlaughter likewise, where the Party was not able to pay the Valuation of him who was killed.

And so the Law continued a long Time afterwards, 'til by the Statute of *Marlbridge*, 53 *H.* 3. Killing a Man by Misfortune, was adjudged Murder; but yet redeemable by Paiment of the Fine.

And from hence, it is probable, that Appeals of Death are derived to the Heir, or Wife, at this Day.

A R M O U R.

Justices of Peace, upon their own View, or upon Complaint, may apprehend any Person who shall go or ride armed with unusual and offensive Weapons, in an Affray, or among any great Concourse of the People, or who shall appear, so armed, before the King's Justices sitting in Court, and may bind such Offender to the Peace, or Good-behaviour; and if he refuses to be so bound, may commit him. *Dalt.* 37.

And any Justice of the Peace may command Weapons to be taken from a Prisoner brought before him.

Any Person may, without Warrant, seize Gun, Powder, Shot, Club, or other Weapon, offensive or defensive, found in the Hands, Custody, or Possession of any Negro, Mulatto, or Indian, bond or free, who is not a free House-keeper, and listed in the Militia, nor licenced by a Justice of Peace to keep the same; the Arms and Ammunition so seized, shall be forfeited to the Seisor, upon Proof of such Seizure made before a Justice of the same County, who shall also order the Offender to be whip'd, not exceeding 39 Lashes: But free Negros, Mulattos, or Indians, being House-keepers, and listed in the Militia, may keep One Gun, Powder, and Shot; and all Negros, Mulattos, and Indians, bond or free, seated at Frontier Plantations, may keep Arms offensive or defensive, by Licence from a Justice of the County wherein such Plantations lie; which may be granted upon Petition of such as are free, or upon Application of the Masters of Slaves. 9 *Geo.* 1. *cap.* 4.

Whomay
be disar-
med.

Where
Armsmay
be seized.
Laws of
Virginia,
pag. 342.

Certificate, upon a Seifure.

Certi- Brunswick sc.
ficate.

(a) or,
Negro
Man-
Slave, be-
longing
to G. H.
as the
Case is.

Whereas A. B. of the Parish of C. in this County, Planter, this Day brought before me, H. F. Gent. one of His Majesty's Justices of the Peace of the said County, One Gun, with Powder and Shot, by him found and seised in the Hands and Possession of a certain free Mulatto (a) Man, commonly called and known by the Name of D. E. who is not by Law qualified to keep the same; and the said A. B. having also before me made due Proof of such Seifure: By Virtue of an Act of Assembly in that Case made and provided, I hereby order and direct, That the said A. B. shall and may keep and retain the said Gun, Powder, and Shot, to his own proper Use and Beboof; and that the said Mulatto Man shall have and receive 25 Lashes, upon his bare Back, well laid on. Given under my Hand, &c.

A Licence to keep Arms.

Licence. Brunswick sc.

I H. F. Gent. one of His Majesty's Justices of the Peace for the said County, do, according to an Act of Assembly in that Case made and provided, upon Application to me made by A. B. of the County of C. Gent. licence and allow Guns, Powder, Shot, and other Weapons, offensive or defensive, to be kept and used by any Slave, or Slaves, living at a Frontier Plantation within this County, and belonging to the said A. B. Given under my Hand, &c.

Value
of Slaves,
killed
upon a
Seifure,
shall be
paid by
the Pub-
lic.

Who
may arm
them-
selves.

Upon Seifure of Arms, &c. kept or carried contrary to this Act, if any Slave shall be killed, making Resistance, the County Court shall value such Slave in Money, and certify such Valuation to the next Session of Assembly, for a suitable Allowance to the Owner. 9 Geo. 1. cap. 4.

Any Man may use Force and Arms in Defence of his Person, House, Goods, Family, &c. against Robbers, or those that shall assemble to do him any Violence: So he may, in endeavouring to suppress Riots: but here the safest Way is, to be arm'd in Assistance of the King's Officers. Nels. 55.

ARREST and IMPRISONMENT.

What is
an Ar-
rest.

AN Arrest is, when a Man is taken and restrained from his Liberty, by Power or Colour of a law-ful Warrant.

'Tis

'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.* 405.

The Person of a Baron, who is a Peer of Parliament, shall not be arrested in Debt, or Treipais.

Nor the Person of any Member of his Majesty's Council in this Dominion : For the Law intends they assist the King in His Council, for the Common Weal, and have sufficient in Lands, whereby they may be distrained.

4 *Annæ*, cap. 19.

Nor any Member of the General Assembly, during the Session, and Ten Days before and after. 4 *Annæ*, cap. 2.

Nor the Person of a Sheriff of any County : For that would be to suffer all his Prisoners to escape. 4 *Annæ*, cap. 19.

Nor any Person summoned as a Witness at the General Court, during his Attendance there, coming to, and returning from Court, allowing One Day for every 20 Miles Distance. *Ibid.*

By Warrant from a Justice of Peace, directed to the Sheriff, or Constable, or any sworn Officer, all Offenders against the Peace, or Good-behaviour, or Penal Laws, and, generally, all Persons guilty of Crimes, or Misdemeanors, tending to the Breach of the Peace, may be arrested.

A Clergy Man, but not in Divine Service.

A Feme Covert, for Felony, or Riot.

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

In all Criminal Cases, where any One is in Danger of Life, or Member, any private Man may arrest another, without Process or Warrant, and deliver him to the Sheriff, or Constable, to be brought before a Justice of Peace : So likewise, where a Felony is committed, every Person present must endeavour to take the Offender, or he may be fined and committed himself ; and in this Case of a Felony actually done, 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 Offenders, when so taken, must be brought before the Constable, or Sheriff ; and if either of them is not found, then to a Justice, in order to their Commitment. *Dalt.* 408.

An Arrest in the Night is lawful : For the Officer ought to arrest a Man when he is to be found, otherwise peradventure he shall never arrest him ; and if the Officer do not arrest him, when he findeth him, and may arrest him,

Who may not be arrested.

Laws of Virginia, pag. 157.

p. 131.

p. 158.

p. 162.

Who may be arrested by an Officer.

By a private Person.

When an Arrest is lawful.

the

the Plaintiff shall have an Action upon the Case, against such Sheriff, and may recover all his Loss in Damages. *Cook. 9 Rep.*

Laws of
Virginia,
pag. 134.

No Person shall be arrested in any Civil Action, upon a Sunday, nor at any Muster of the Militia, nor at an Election of Burgeesses: But Traitors, Felons, Rioters, Breakers of the Peace, or of Prison, may be apprehended at any Time, or Place. *4 Annæ, cap. 3.*

Where
Doors
may be
broke o-
pen.

A sworn Officer need not shew his Warrant. *Dalt. 405.* Officers of Justice, having lawful Warrant, and any Persons aiding them, may break open an House to apprehend a Felon.

Or one who hath dangerously wounded another.

Or where an Affray is in a House, and the Doors shut.

Or upon forcible Entry, and Detainer, either upon View of Justices, or upon an Inquisition taken before them.

So may the Sheriff, upon Outlawry in a Personal Action.

And also upon a Warrant for the Peace, or Behaviour.

So may the Collector, accompanied by a Constable, and in the Day-Time, to search for, seise, and carry away Goods and Merchandises liable to a Duty, or Custom, upon Importation, and where such Duty hath not been paid, or secured.

And, generally, in all Cases where the King is Party.

But the Officer ought first to acquaint the Persons in the House of the Cause, and require the Doors to be opened. *Dalt. 264. Nels. 57.*

Com-
mitment.

When an Offender is arrested, and brought before a Justice, if he hath Power, by Law, to bind him over, or to cause him to do any Thing, and he refuseth, he may commit him 'til he is conformable: But the Commitment must be to the Common Goal.

Time
of Impri-
sonment.

Where Imprisonment is directed by Law, and no Time limited when the Offender shall be committed, it must be presently: So where 'tis not limited how long he shall continue in Custody, there 'tis in the Discretion of the Court.

The
Manner.

He must be kept in safe and close Custody; and if the Goaler suffer him to go Abroad at any Time, tho' he return to Prison, 'tis an Escape, and the Goaler may be Fined: For Imprisonment is for a Punishment of the Offender, as well as the safe keeping him to answer his Fault. *Style.*

ASSAULT and BATTERY.

What it
is.

ASSAULT is the offering some Hurt to the Person, as by striking, &c. And Battery is the wrongful beating another. The

The lifting up of the Hand in Anger, against a Man, without striking, is an Affault in Law. *Style. 124.*

But it may be justifiable in many Cases : As,

1. Where Men have a Natural Power over others ; as Parents have over their Children, 'til they come of Age, to chastise them for Offences, without Breach of the Peace. Where justifiable.

2. 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 attempteth to do Mischief.

3. In Defence of one's Person, any Man may strike another, to defend his own Person from being wounded, or beaten.

If one hurt another, by Misfortune, or Negligence, and not wilfully ; or, if Two agree to play, and One is hurt, 'tis no Breach of the Peace, because it was by Consent.

4. In Defence of the Person of another ; I may justify the beating One who would do Mischief to my Wife, Child, 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, or Child.

A Master may justify the beating another, in Defence of his Servant : And likewise a Servant, in Defence of his Master ; but not of his Master's Father, Mother, &c. because he owes no Obedience to them.

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 offered the Violence. *Dalt. 206.*

5. In Defence of my Goods ; as if any One would, by Force, wrongfully take them away, whether I have a Property in them, or a bare Possession only, 'tis justifiable to resist : So 'tis, if another endeavour to put me out of Possession of Land, or House, or to turn a Highway, or to direct a Water Course, &c. But the Offender must not be wounded ; and if he is killed, 'tis Felony.

Persons guilty of this Offence may be prosecuted by Indictment, and punished by Fine and Imprisonment ; or, by Action of Trespass, at Common Law, for Recovery of Damages, at the Election of the Party grieved.

A S S E M B L Y.

TH O' nothing under this Head is within the Jurisdiction of a Justice of Peace ; yet, as it is one of the main Fundamentals of our Constitution, and the chief
C Support

Support of the Liberty and Property of the Subject, some Knowledge of the Law in this Matter may be useful, or necessary, to every Freeholder within this Dominion; that he, considering the great Trust reposed in every Representative of the People in General Assembly, may give his Vote for Persons of Knowledge, Integrity, Courage, Probity, Loyalty, and Experience, without Regard to Personal Inclination, or Prejudice.

What
is a Ge-
neral As-
sembly.

A General Assembly is, a Meeting of the Governor, Council, and Burgeses, in Public Assembly, at a certain Day appointed, for the debating Matters touching the Common-Wealth; and especially, the making, amending, or repealing, of Laws.

It is, of all other Courts, the Highest, and of greatest Authority; and to be summoned, held, continued, prorogued, or dissolved, as the Governor, in Council, shall think fit.

Burges-
ses.

The respective Freeholders of every County, within this Colony, shall elect Two of the most able Men of such County, to be Burgeses; the President, Masters, and Professors, of the College of *William and Mary*, shall elect One Burges; and the Inhabitants of every respective City, or Town Corporate, One Burges.

Laws of
Virginia,
pag. 126.

How to
be sum-
mon'd.
pag. 127.

Writs for Election of Burgeses shall be issued by the Governor, and delivered to the Secretary, at least Forty Days before the Day appointed for the Assembly to be held: The Secretary shall cause the Writs, within Ten Days after Date, to be delivered to the respective Sheriffs, on Penalty of 40 *l.* to the King, and Informer: The Sheriff shall, within Three Days after Receipt, deliver a Copy of such Writ to the Minister, or Reader, of every Parish in his County, and endorse upon the Back of such Copy, the Day and Place of Election; which shall be at the Court-house, at least Twenty Days after the Sheriff has received the Writ, on Penalty of 2000 *lb.* Tobacco, to the King, and Informer: The Minister, or Reader, shall publish such Copy and Endorsement, after Divine Service at Church, or Chapel, every *Sunday*, between his Receipt, and the Day of Election; and shall then return such Copy to the Sheriff, with a Certificate of the Publication, on Penalty of 1000 *lb.* Tobacco, to the King, and Informer.

Free-
holders
to vote.
page 129.

Who
shall be
Free-
holders.

Every resident Freeholder, shall appear at such Election for his County, and give his Vote, on Penalty of 200 *lb.* Tobacco, to the Informer.

Tenant of Estate Real, for Life, or of any Estate of greater Dignity, shall be accounted a Freeholder.

But

But Feme Sole, or Covert, Infant under 21 Years of Age, and Popish Recufant Convict, tho' Freeholders, shall be disabled excluded from Voting : Persons not qualified, or disabled, to vote. presuming to vote, forfeit 500 *lb.* Tobacco to the King, *pag.* 128. and Informer : Upon Suit brought for the Penalty, if the Freehold be in Issue, the Proof shall lie upon the Defendant. *Penalty.*

If the Election cannot be determined upon View, by Method Consent of the Freeholders, the Sheriff shall take a Poll, of Elec- by taking, in Writing, the Name of every Freeholder tion. who votes, and for whom he gives his Vote : Every Person, taking the Poll, shall be sworn by the Sheriff, or Under-Sheriff, for his true and impartial taking the Poll : It shall be in the Court-house, and the Candidates, or any Persons, by any of them appointed, may be present to see it fairly taken : No Freeholder shall vote for more than Two Persons : After the Votes so taken, and Proclamation Thrice made at the Court-house Door, if no more Freeholders appear to vote, the Sheriff shall close the Polls ; and the Persons who have the greatest Number of Votes shall be, by the Sheriff, declared and returned Burgeffes duly elected for such County.

If any Candidates have an equal Number of Votes, the Sheriff, if a Freeholder, may return which he thinks fit.

If required by a Candidate, or any Freeholder, on his Behalf, the Sheriff, or Under-Sheriff, shall administer the following Oath to every Person, before he is admitted to poll, *viz.* *Freeholders may be sworn.*

YOU shall swear, *That you are a Freeholder of the County of* *and that you have not been before* *The Oath.* *pag.* 129. *So help you God.*

And if any Person shall be convicted of wilful Perjury, in taking this Oath, or of procuring, or suborning another to commit such Perjury, he shall forfeit 10 *l.* to the King, and Informer. *Punishment of Perjury, or Subornation.*

Infants under the Age of Twenty One Years, and Persons who are not Freeholders in the same County, at the Time of Election, shall be incapable of being chosen Burgeffes, and such Election void. *Persons incapable of being elected.*

After the Election made, the Sheriff shall return the Writ to the Secretary's Office, One Day, at least, before the Day of Return mention'd in the Writ, on Penalty of 2000 *lb.* of Tobacco, to the King, and Informer. *Returns. pag.* 130.

The Return, to be endorsed upon the Back of the Writ.

The Execution of this Writ appears in a certain Schedule hereto annexed.

The Schedule, to be annexed to the Writ.

For a County.

BY Virtue of this Writ to me directed, in my full County, held at the Court-house for my said County, upon the Day of in the Year of the Reign of by the Grace of God, of Great-Britain, France, and Ireland, King, Defender of the Faith, &c. by the Assent of my said County, I have caused to be chosen Two Burgeses of my said County; to wit, A. B. and C. D. to act and do, as in the said Writ is directed and required. E. F. Sheriff.

For a Town, or Corporation.

BY Virtue of this Writ to me directed, I did make lawful Publication thereof, and afterwards, upon the Day of in the Year of the Reign of by the Grace of God, of Great-Britain, France, and Ireland, King Defender of the Faith, &c. at the said Town of by the Assent of the Freeholders thereof, I have caused to be chosen One Burgess for the said Town; to wit, A. B. of to act and do, as in the said Writ is directed and required.

Laws of In case of Death, or Disability of any Burgeses, during *Virginia*, the Session, if the Sheriff receives a Writ for another Election, he shall give immediate Notice of the Day and Place, to every particular Freeholder, and cause the Election to be made as soon as possible, in Manner before directed: Sheriff refusing to take a Poll, when required by any Candidate, or Freeholder; or taking it otherwise than by this Act directed; or refusing a Copy thereof, upon Request, attested under his Hand; or making false, or insufficient Return; or failing to make any Return, forfeits 40 *l. Sterling*, to the King, and Informer.

Penalty on Sheriffs.

Persons giving Treats, &c. Disabled.

pag. 131.

Privilege of the Members.

All Members of the General Assembly, during their Attendance, and Ten Days before and after every Session, shall be privileged in their Persons, Servants, and Estates Real and Personal, from Arrests, Attachments, Executions, and all other Process whatsoever, except for Treason, Felony, or

or Breach of the Peace: Process commenced before any Session, shall be staid, during such Session, and Ten Days before and after, but may be then continued: When the Assembly is adjourn'd, or prorogued, longer than Twenty Days, Process may commence in the Interval.

Burgeſſes Wages, 130 *lb.* Tobacco, and Cask, *per* Day, for Attendance, Going, and Returning, besides Ferriages, to those that travel by Land: To the Burgeſſes coming by Water, 120 *lb.* Tobacco, and Cask, *per* Day, and for a Boat and Two Hands, to be provided by the respective Sheriffs of such Counties, 36 *lb.* Tobacco, *per* Day; but for the Burgeſſes of *Accomack*, and *Northampton*, a Sloop and Men, at 60 *l.* Tobacco, *per* Day: Shall be paid only for so many Days as they actually attend the Service of the House, including *Sundays*, and for the traveling Days to them respectively allowed by Law; and also, if Sick, or Lame, but not for any other Days, when they do not attend the Service of the House: To be levied and paid by each County, respectively.

But when there shall be 1500 *l.* in the Treasurer's Hands, after all Public Debts, and the Burgeſſes Wages are paid, then they shall receive their Wages out of the Public Money in the Hands of the Treasurer, at the Rate of 10 *s.* *per* Day; those coming by Water, 9 *s.* for Attendance, and 3 *s.* 6 *d.* *per* Day, for a Boat and Hands; and to the Burgeſſes of *Accomack*, and *Northampton*, 6 *s.* *per* Day, for a Sloop and Hands.

At every Election of Burgeſſes, and before every Session of Assembly, the Sheriff of each respective County shall, by Proclamation to be Thrice made, at the Courthouse Door, between the Hours of One and Three a Clock in the Afternoon, and by Publication at every Church and Chapel in his County, give publick Notice of the Day appointed for holding a Court, to receive Propositions and Grievances, and the Publick Claims: The Propositions and Grievances shall be sign'd by the Party presenting the same to Court; and, by Direction of the Court, shall be by the Clerk certified, and delivered to the Burgeſſes for such County, to be by them presented to the General Assembly. 4 *Annæ*, cap. 2. & 3 & 4 *Geo.* 2. cap. 7.

No Person who is a Sheriff shall be capable to sit in the House of Burgeſſes; and every Member of the House, during his being such, shall be exempted from being appointed Sheriff.

If a Burgeſſis accepts any Office of Profit in this Government, and holds such Office in his own Name, or the Name of another in Trust for him, or to his Use, he shall

Wages.

Laws of
Virginia,
pag. 442.

pag. 443.

Court
for re-
ceiving
Proposi-
tions, &
Grie-
vances, &
Publick
Claims,
to be
held be-
fore eve-
ry Ses-
sion.

pag. 152.

Sheriffs
disabled
to be
Burgeſſes.

pag. 451.

Persons
be accepting

any Place be disabled to sit, or vote, as a Member of the House of
 of Profit, Burgeses, and a Writ shall issue for Electing another Per-
 disabled son in his Stead: And if such disabled Person shall sit, and
 from be- vote, as a Burgeses, he forfeits 50*l.* to the Informer. 3
 ing Bur- & 4 Geo. 2. cap. 9. But the Party accepting such Place
 geses; of Profit, may be re-elected.
 but may
 be re e-
 lected.

General Assemblies are not dissolved by the King's Death;
 but may be continued and held Six Months after such De-
 mise, unless sooner prorogued or dissolved by the Gover-
 nor. 4 Annæ, cap. 28.

The King's Death, no Dissolution of Assembly. pag. 176.

ATTACHMENT.

Laws of Virginia, pag. 251. **T**HIS is an Authority granted to the Justices of this
 Dominion, by Act of Assembly, 9 Annæ, cap. 11,
 which Enacts, 'That it shall be lawful for any Justice of
 ' Peace, upon Complaint made to him by any Person,
 ' that his Debtor is removing himself out of the County
 ' privately, or absconds and conceals himself, so as the or-
 ' dinary Process of Law cannot be served upon him, such
 ' Justice may grant an Attachment against the Estate of
 ' such Debtor, or so much thereof, as shall be of Value
 ' sufficient to satisfy the Debt of the Party praying such
 ' Attachment, returnable to the next County Court; which
 ' Estate, being so attached, shall be repleviable by Secu-
 rity given, and Appearance at the said next Court: But
 pag. 252. ' before granting such Attachment, the Justice shall take
 ' Bond and Security of the Person praying the same, to
 ' pay all Damages to the Defendant, if the Plaintiff, or Par-
 ' ty praying the Attachment, shall be cast in the Suit.'

A Bond, to be given by the Party praying Attachment.

Bond. **K**NOW all Men by these Presents, That we A. B.
 of, &c. and C. D. of, &c. are held and firmly bound
 to E. F. of, &c. in the Sum of Twenty Pounds lawful
 Money of Virginia: To which Paiment to be made to the
 said E. F. or his Heirs, Executors, Administrators, or
 Assigns, we bind ourselves, and each of us, our, and each
 of our Heirs, Executors, and Administrators, jointly and
 severally, by these Presents. Witness our Hands and Seals,
 this Sixteenth Day of June, 1733.

THE Condition of this Obligation is, That whereas
 the above-bounden A. B. hath this present Day, be-
 fore G. H. Gent. one of His Majesty's Justices of the
 Peace for the County of Hanover, pray'd an Attachment
 against

against the Estate of the above-named *E. F.* for Twenty Pounds, and hath obtained the same, returnable to the next Court to be held for the said County of *Hanover*: If therefore the said *A. B.* shall pay to the said *E. F.* all Damages which shall be to him awarded, in Case the said *A. B.* shall be cast in his said Suit; then this Obligation to be void; or else to remain in Force.

Sealed and delivered, before me,
G. H.

The Bond, generally, may be for the same Sum for which the Plaintiff prays an Attachment; and when so taken by the Justice, must by him be returned to the same Court, to which the Attachment is returnable.

Warrant for Attachment.

To the Sheriff of *Hanover* County.

Hanover *sc.* *Whereas*, *A. B.* of, &c. hath this Day *Attach-*
complained before me, *G. H.* one of His ment.

Majesty's Justices of the Peace for the said County, That E. F. late of, &c. is indebted to him the Sum of Twenty Pounds Current Money of Virginia; and that the said E. F. hath privately removed himself out of this County, or so absconds, that the ordinary Process cannot be served upon him: These are, in His Majesty's Name, to require you to attach the Estate of the said E. F. or so much thereof, as shall be of Value sufficient to satisfy the said Debt, and Costs; and such Estate, so attached, in your Hands to secure, or so to provide, that the same may be liable to further Proceedings thereupon to be had, at the next Court to be held for this County, on the First Friday in July next; and that you then and there make Return how you have executed this Warrant. Given under my Hand, this Sixteenth Day of June, 1733.

This Precept is to be executed by the Sheriff, or other Officer, to whom directed, who must thereupon return what Estate he has attached. Return.

Slaves, Cattle, or other Personal Estate, belonging to the Defendant, though the same be found in another County, may be in like Manner attached, by Warrant from a Justice of Peace of that County, wherein such Estate is found. What Estate liable.

So likewise, may Debts due to the Defendant in the Hands of any other Person, who, after the Attachment is executed upon the Effects in his Hands, is to be summoned

to appear at the next County Court; where he shall declare, upon Oath, how much of the Defendant's Estate he hath in his Hands.

Attach-
ment re-
turnable
before a
Justice.

Laws of
Virginia,
pag: 385.

By a later Act, 1 Geo. 2. cap. 3. it is Declared, ' Upon Complaint that any Person, indebted to the Complainant in any Sum less than 20s. Sterling, or 200lb. Tobacco, is removing himself out of the County privately, or absconds and conceals himself, so that a Warrant cannot be served upon him, it shall be lawful for any Justice of Peace, taking Bond and Security, as directed by the former Act, to grant an Attachment, returnable before himself, or any other Justice of the County, who shall and may proceed thereupon, as upon an Attachment returnable to the County Court.' And if such Attachment shall be returned executed, and not replevied, by Appearance of the Defendant, and Security given, the Plaintiff, proving his Debt, shall have Judgment, and may take Execution thereupon; and the Goods attached, shall be sold, as Goods taken by *Fieri Facias*, at Common Law.

Process
returna-
ble before
a Justice.

The Process issuable, by Virtue of this Act, varies little from the former; the like Bond and Security is here required, and the Warrant to be issued, executed, and returned, in like Manner; and the Defendant's Personal Estate, where-ever found, equally liable: The only Difference is in the Sums, and the Authority before whom returnable; and this being finally determinable before a Justice of Peace, it may not be amiss here to describe the whole Process.

The Bond.

Bond.

K NOW all Men, &c. ----- as before, unto ----- the Sum of Four and Twenty Shillings Current Money of Virginia, &c. as before.

T H E Condition, &c. as before, --- unto --- prayed and obtained an Attachment against the Estate of the above-named *E. F.* for Four and Twenty Shillings Current Money, returnable before *G. H.* Gent. or any other Justice of the Peace for the said County of *Hanover*: If therefore, &c. as before,

This Bond may remain in Custody of the Justice, to the Use of the Defendant.

Warrant of Attachment.

To any Constable, or sworn Officer, of the County of
Hanover.

Hanover *sc.* **W** Hereas A. B. &c. --- as before, unto --- *Attachment.*
Indebted to him Four and Twenty Shil-
lings Current Money; and that the said E. F. is remo-
ving himself out of the County privately, or conceals him-
self, so that a Warrant cannot be served upon him: I
therefore command you to attach the Estate of the said
E. F. or so much thereof, as shall be of Value sufficient to
satisfy the said Debt, and Costs, and the same in your
Hands to secure, so as to be liable to further Proceedings
thereupon to be had before me, or some other Justice of
this County; to whom you shall make Return how you
have executed this Warrant. Given under my Hand, this
Twenty Fourth of June, 1733.

Which Warrant shall be executed by such Constable, or
other Officer, and returned according to the Truth of the
Case: If the Defendant hath no Estate, the Return may
be in this Form, *viz.*

THE within named E. F. hath no Estate in my Pre- *Returns*
cinct, whereof I can make the Sum within-mentioned.
I. K. Constable.

If the Attachment is executed, Return ;

BY Virtue of this Warrant to me directed, I have at-
tached *of the Goods and Chat-*
tels of the within-named E. F.; which I have ready, as
that Warrant requires.

In Case a Debt due to the Defendant be attached in the
Hands of another Person, then say ;

BY Virtue, &c. I have attached the within-mentioned
Sum of Four and Twenty Shillings, and Costs, of
the Estate of the within-named E. F. in the Hands of
L. M. of, &c. as that Warrant requires.

And hereupon, if the Defendant does not appear, and
replevy his Goods, the Plaintiff may prove his Debt, and
shall be entitled to a Judgment; which is to be granted
him by the Justice.

Judgment

Judgment for the Plaintiff.

June 26, 1733.

Hanover sc.

A. B.

against

E. F.

} in Debt.

Judge-
ment.

THE Attachment obtained by the said Plaintiff against the Estate of the said Defendant, being returned executed, before me, G. H. Gent. one of His Majesty's Justices of the Peace for the said County, and the said Defendant failing to appear, and replevy his Goods, the said Plaintiff proved his Debt, according to Law: And it is thereupon considered, that the said A. B. recover against the said E. F. Four and Twenty Shillings Current Money, and the Costs of this Suit.

Serving the Attachment, --- 10 lb. Tobacco.

G. H.

Upon this Judgment, the Justice may issue Execution, directed to the Officer who made Return of the Attachment.

Execu-
tion.

Hanover sc. *GEORGE the Second, by the Grace of God, of Great-Britain, France, and Ireland, King, Defender of the Faith, &c. To I. K. one of our Constables of the said County of Hanover. Greeting. We command you, that of the Goods and Chattels of E. F. late in your Precinct, by you attached, you cause to be made the Sum of Four and Twenty Shillings Current Money, which A. B. lately, before G. H. Gent. one of our Justices of our said County, hath recovered against him for Debt; also, the Sum of Ten Pounds of Tobacco, which to the said A. B. before the same Justice, were adjudged for his Costs, in that Suit expended, whereof he is convicted, as appears to Us of Record: And that you have the said Four and Twenty Shillings, and Ten Pounds of Tobacco, before our said Justice, the Twelfth Day of July next, to render to the said A. B. of the Debt and Costs aforesaid; and that you have there then this Writ. Witness the said G. H. the Twenty Seventh Day of June, 1733, in the Seventh Year of our Reign. G. H.*

There must be always at least Fifteen Days between the Date of the Execution, and the Day limited for Return.

Notice. Upon Delivery of this Writ to the Officer, if the Defendant shall not, within Three Days, satisfy the Debt and Costs, such Officer shall sell by Auction to the highest Bidder, the Goods attached, or so much, as shall be sufficient to

to satisfy the Judgment; but shall give Notice of such Sale, by setting up the same at the Church or Chapel of the Parish where the Goods are taken, and by Publication in the Church-yard, immediately after Divine Service, upon the next *Sunday* after Execution is delivered to the Officer; the Sale must be on the Third Day after such Notice: But if the Defendant shall, before, or on the Day appointed for Sale, tender the Debt, and Costs, the Officer shall accept the same, and restore the Goods. 12 Geo. 1. cap. 3.

Notice, to be publish'd at Church.

Hanover^{sc}. To be sold by Auction.

ON Wednesday next, the Fourth Day of July, at the Plantation late of E. F. in this Parish of Saint Paul, (here describe the Estate seized,) of the Goods and Chattels of the said E. F. taken upon an Attachment, and Execution obtained by A. B. against the Estate of the said E. F. July 1, 1733. I. K. Constable.

The Goods must be sold for ready Money, or Tobacco, according to the Specie in the Execution commanded to be levied; and after Sale so made, the Officer is to make his Return upon the Writ of Execution, in this Form, viz.

B*Y* Virtue of this Writ to me directed, I have caused to be made the within-mentioned Sum of Four and Twenty Shillings, and Ten Pounds of Tobacco, of the Goods and Chattels of the within-named E. F.; which said Sum of Four and Twenty Shillings, and Ten Pounds of Tobacco, before the Justice within-mentioned, at the Day within contained, I have ready, as that Writ requires. I. K. Constable.

The Money and Tobacco, so levied, must be by the Monies Officer immediately paid to the Plaintiff, or his Attorney; levied, to who may, in Case of Failure, have Execution against be paid to such Officer, for the Money and Tobacco so by him le- Plaintiff. vied. 12 Geo. 1. cap. 3. Laws of

The Overplus, (if any arising by the Sale,) after Charges deducted, must be paid to the Owner of the Goods, Virginia, or his Attorney, if to be found; otherwise, it may remain pag. 362. in the Officer's Hands, 'til claimed.

If the Attachment be returned executed, in the Hands of another Person, the Party must be summoned to appear Attach- before a Justice of Peace, where he is to declare, upon ment ex- ecuted, in Oath, how much of the Defendant's Estate is in his Hands; the Hands and

Attachment.

of ano-
ther Par-
ty.

and if it appear that he hath sufficient, the Plaintiff may have Judgment for his whole Debt, or so much as appears to be in the Hands of the Party summoned, against such Party.

To I. K. Constable, &c.

Summons

Hanover sc. *YOU* are hereby commanded, in His Majesty's Name, to summon L. M. of, &c. personally to appear before me, or some other Justice of this County, To-morrow Morning by Ten of the Clock, to shew Cause why Judgment should not be granted against him, for Four and Twenty Shillings Current Money, which you have attached at the Suit of A. B. of the Estate of E. F. late of, &c. in the Hands of the said L. M. otherwise a Judgment will be issued forth against him the said L. M. for the Debt aforesaid, and Costs. Given under my Hand, &c.

And upon such Summons returned executed, if the Party does not appear, and prove that he hath not any of the Defendant's Estate in his Hands, the Plaintiff may have Judgment.

Hanover sc.

June 28, 1733.

A. B. }
against } in Debt.
E. F. }

Judge-
ment.

THE Attachment, &c. --- as before, unto --- being returned executed, in the Hands of L. M. of, &c. and it appearing to me, that there now is in the Hands of the said L. M. of the Estate of the said E. F. sufficient to satisfy the said Plaintiff's Debt, and Costs; and the said Plaintiff having, before me, proved his Debt aforesaid: It is considered, that the said A. B. recover against the said L. M. Four and Twenty Shillings Current Money, and the Costs of this Suit.

Serving the Attachment, - - 10 lb. Tobacco.

Summoning a Witness, - - 5
15

G. H.

And hereupon Execution may issue against the Body or Goods of L. M. See *Tit. Debt.*

But if the Defendant appears, and, upon Trial, the Plaintiff is cast, the Defendant replevies his Goods, and is entitled to a Judgment for his Costs, against the Plaintiff; which may be entered up, thus:

Hanover

Hanover sc.

June 28, 1733.

A. B. &c.

THE Attachment, &c. ---- as before, unto ---- being For De-
 returned executed, and the said Defendant, as well fendant.
 as the said Plaintiff, this Day personally appearing be-
 fore me; It is considered, that the said Plaintiff take no-
 thing by his Plea; and that the said Defendant replevy
 his Estate, at the Suit of the said Plaintiff, attached;
 and that the said A. B. do pay to the said E. F. his
 Costs by him in this Behalf expended.

Here tax the Defendant's Costs, (if any.)

ATTAINDER and CONVICTION.

TH E S E Words are used promiscuously; and some- What it
 times one is signified by the other: But in Propriety is.
 of Speech, a Man is said to be convicted, when he confes-
 seth the Fault, or is found guilty by a Jury, and before
 Judgment given; and he is said to be attainted, when, af-
 ter Conviction, Judgment is passed by the Court.

When a Man hath committed Treason, or Felony, and,
 after Conviction, Judgment hath passed upon him, he is
 then attainted: His Children cannot be Heirs to him, or
 any other Ancestor; if he were Noble, or Gentile before,
 he and his Posterity are made base and ignoble, in Re-
 spect of any Nobility or Gentry which they had by their
 Birth. This Corruption of Blood cannot be salved, but
 by Authority of Parliament; the King's Letters Patents
 will not do it. *Co. Lit. l. 3. s. 745.*

Attainder by Outlawry, is, where the Party flies, or
 doth not appear, after he hath been Five Times publicly
 called in the County Court, on Five successive Court Days,
 and at last, upon his Default, is pronounced or returned
 Outlaw'd.

The Punishment of a Person attainted, is,

1. Loss of Life.
2. Corruption of Blood.
3. Forfeiture of Fee Simple Estate, from the Time
 of the Offence committed.
4. Forfeiture of Goods from the Time of the At-
 tainder: But before Attainder, he may sell his
 Goods, for his Maintenance in Prison. *Dalt. 363.*

Punish-
 ment up-
 on Attain-
 der.

At Common Law, if a Felon was found Guilty upon
 the Coroner's Inquest, or that he is fled, returned by the
 Coroner, the Sheriff or Coroner might seize his Goods, be-
 fore Trial, for the Use of the King; which ought to be
 appraised.

appraised, and left in Custody of the Neighbours where the Offender lived: The Law was the same, if he did not fly, but was indicted; but then, after Appraisement, they ought not to be removed out of his House, before Attainder, if the Offender could give Security that they should not be imbezzled; if not, they were to be delivered to the Neighbours, who ought to keep them during his Imprisonment, and he was to have reasonable Maintenance out of them, 'til Conviction. The Common Law is in this Particular confirmed by Statute; 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.* 362, 363.

After Conviction, or, that he is fled, return'd by the Coroner, all his Goods, Corn growing, Profits of his Fee Simple Estate for a Year and a Day, and of his entailed 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 Action, in his own Name, to recover them. *Nels.* 62.

If an Attainder by Outlawry is erroneous, the Party may appear at any Time, and reverse the Outlawry.

A Person attainted, is notailable by Justices of Peace.

B A I L.

Mainprize. Appearance. Securities. Sureties.

Bail.

BA I L is so called, because the Party bailed, is delivered by the Law into the Custody of those that are his Bail, and who are to answer for him, if they do not produce the Principal to do it. *Style* 113.

It also signifies the setting at Liberty of one arrested, or imprisoned, upon an Action Civil, or Criminal, under Security taken for his Appearance, at a Day and Place certain, and thereby delivering the Prisoner into the Hands of his Friends.

Bail differs from Mainprize, for that he that is bailed is, by the Law, accounted to be always in the Custody of those Persons that bailed him: But he that is mainprised, is always at large, to go at his own Liberty, from the Time he is mainprised, 'til the Day of his Appearance. *2 Inst.* 78.

Main-
prize.

Where,
and by

By the Statute of *Westm.* 1. *cap.* 15. made *Anno* 3 *Edw.* 1. it is directed where Bail shall be taken, and where

where not: And the Statute, 1 & 2 *Phil. & Mar. cap.* 13. gives Justices of Peace Power to Bail. whom, Bail may be taken.

Justices may bail any Prisoner committed for an Offence within their Jurisdiction, and cognizable before them; but they cannot bail Persons arrested in any Personal Action, by Writs issuing out of any Court of Record: For they cannot hear and determine such Actions, but only in open Court. *Style.* 182.

Persons arrested in any Personal Action, upon Civil Process, are notailable by Justices of Peace; because the Sheriff is answerable for his Prisoner, and must, at his Peril, bail him, and make Return of the Process to the same Court whence the Writ is issued. *Dalt.* 424.

If Justices of Peace bail any Person who is notailable by Law, they ought to be fined; and if they refuse to admit any Person to bail, where he isailable by Law, it's a Misdemeanour, and finable.

It is therefore to be considered;

1. In what Cases Bail is by Law allowed.
2. Where it is in the Discretion of the Magistrate, to allow or deny it.
3. Where, by Law, Bail is taken away.

1. Bail is to be allow'd generally, in all Criminal Cases, where the Offender, upon Conviction, is not adjudged to suffer Death, as a Felon, or where the Punishment does not extend to Life, or Member. Where granta-ble.

So 'tis likewise to be allowed in Offences for Breach of any Penal Laws, if by such Law Bail be not expressly taken away.

So also to Accessories in Felony, before or after the Fact, until the Principal is convicted. *Dalt.* 381. And to Buyers and Receivers of stolen Goods, who may be prosecuted for Misdemeanour, and punished by Fine and Imprisonment, altho' the principal Felon be not convicted. *Laws of Virginia, pag.* 438.

But in all these Cases, it is to be observed, when any Offender taken, and brought before a Justice of Peace, shall be admitted to Bail, that the Sums wherein he and his Sureties are bound for his Appearance, ought to be proportioned to the Nature, Quality, and Circumstances of the Offence, whereof he is accused: If it be for Breach of the Peace, Good-behaviour, or a slight Trespass, or any Matter of the like Nature, it may be sufficient to bind the Principal in 20*l.* and his Sureties in 10*l.* each; but if it be for any Crime of a higher Degree, the Sums may be considerably enlarged, according to the Circumstances of the Fact, appearing to the Justice.

Discre-
tionary.

2. Bail, at the Discretion of the Justices, is in some Cases to be allowed, or denied : As if a dangerous Blow is given, the Offender may be bail'd, 'til the other is dead. *Dalt.* 420.

By the Statute, 1 & 2 *Phil. & Mar. cap.* 13. Man-slaughter isailable by Two Justices, whereof One to be of the *Quorum*, who must be present when they take the Bail; and it must be after Examination, that it may appear, whether the Party accused, isailable, or not; for it must stand indifferent, whether he did the Fact: Manslaughter is notailable, if the Fact is confessed, or 'tis certainly known that he killed the Person; or if 'tis found Man-slaughter upon the Coroner's Inquest.

Persons taken upon Suspicion of Burglary, Robbery, Theft, or other Felony, or indicted of Petty Larceny under the Value of 12 *d.* if they be not of evil Fame, nor any strong Presumption appear against them, may be bailed. *Dalt.* 423.

Accessories in Murder, as well as other Felonies, if they be of good Fame, areailable, until the Principal be convicted, or attainted: But after Conviction of the Principal, the Accessory shall not be bail'd, but kept in Prison, until he appear, and plead the Indictment; and then the Court may admit him to Bail. *Ibid.*

Persons charged with any Trespass, not touching Life, or Member, areailable by the Statute of *Westm.* 1. *cap.* 15. if Bail be not prohibited by any later Statute: And Persons in Custody, upon Process issued out of any Court of Record, upon an Indictment, if Bail be not expressly prohibited by the Statute whereupon such Party stands indicted, may be bail'd by Two Justices, One being of the *Quorum*. *Ibid.*

Any Person who is appealed by an Approver, if he be no common Thief, nor defamed, after the Death of the Approver, isailable by the said Statute of *Westm.* 1. *Dalt.* 424.

An Approver, or Appellor, is a Person who hath committed Felony, and being in Prison for the Fact for which he is indicted, and arraigned, and there being a Coroner assign'd him by the Court, confesseth that very Fact before him, and then impeacheth other Persons, as Coadjutors with him in the same Crime: And so much Credit is given to this Confession, that Process shall issue against the Party so impeached, or appealed; and he shall be arraigned, as if an Indictment by a Grand-Jury had been found against him. *Nels.* 54.

No Person can be an Approver, but in Felony, or Treason, and upon an Indictment only ; and an Approver must accuse the other of such an Offence, as he himself did, together with the other : If a Felon will be an Approver, that is, will confess the Felony, and accuse others that were Coadjutors with him in the same Felony, before a Justice of Peace ; such Justice may take his Confession in Writing, and commit him to Goal ; and may issue his Warrant for apprehending the Persons accused. *Dalt.* 424, 425.

3. Bail is taken away from Offenders in any of the Cases here under-mentioned, by the Statute of *Westm.* 1. *cap* 15. confirm'd by another Statute, 1 & 2 *Phil.* 8 *Mar. cap.* 13. Which Statutes, and all Acts of Parliament, made before the Fourth Year of the Reign of King *James* the First, whereby the Benefit of Clergy is taken away from any Offence, shall be binding in this Colony, in Respect of Principals, and Accessories, standing mute, or challenging above Twenty of the Jury. 5. & 6 *Geo.* 2. *cap.* 7.

Not allowable. Laws of Virginia, pag. 474.

Abjarors. ---Of the Realm. } *W.* 1. *cap.* 15.
Accessories. ---In Treason. }
Appeals. ---Of Death. *H. P. C.* 103.

Approvers. { Nor Persons appealed by an Approver, so long as the Approver liveth, except the Party accused, be of good Fame, or the Approver waves his Appeal, or is vanquish'd. *W.* 1. *cap.* 15.

Armour. { Persons going arm'd in an Affray, or before the King's Justices, or Ministers, and committed by Justices of Peace. *Stat. North.* 2 *Edw.* 3.

Arrest. { Procured in the Name of another, not privy nor consenting thereto, Six Months Imprisonment, without Bail; and before Enlargement, shall pay the Party arrested, Treble Costs, Damages, and Expences, and Ten Pounds to the Party, in whose Name the Arrest issued, 8 *Eliz.* *cap.* 2.

Breakers of Prisons.
Burners of Houses.
Coiners of false Money.
Counterfeiters of the Great Seal.
Excommunicate Persons.
Felons, and notorious Thieves, taken with stolen Goods, or, by Hue and Cry.

} *W.* 1. *cap.* 15.

Bail.

Forgers	{ Of Deeds, Wills, or Writings seal'd, or of any Acquaintance : Those who assent to it, and those who knowingly publish such. 5 <i>Eliz. cap. 14.</i>
Fraudulent Conveyances.	{ Those who put them in Suit; and those who assign Lands, or Goods, so to them convey'd, knowing thereof. 13 <i>Eliz. cap. 5, 14. cap. 11, & 27. cap. 4.</i>
Manlaughter.	{ After Confession of the Offender. 2 <i>Inst. 187.</i> Self-Defence, notailable by Justices of Peace. <i>H. P. C. 99. 161.</i>
Mahem.	{ Where, upon Evidence, the Fact shall appear heinous, the Offender shall not be bail'd. 6 <i>H. 7.</i>
Murder,	{ Notailable at Common Law : Yet it hath sometimes been allow'd by the Justices of the King's Bench, and adjudged, That the Statute of <i>Westm. 1.</i> should receive a favourable Construction, according to the Discretion of the Judges, and the Circumstances of the Case. If Bail is allow'd in Murder, 'tis taken Body for Body.
Outlawry.	---In Case of Felony. <i>W. 1. cap. 15.</i>
Perjury,	{ In any Court of Record, and the Procurers of such Perjury. 14 <i>Eliz. cap. 11.</i>
Propheciers,	{ Intending to make Disturbances in any of the King's Dominions : First Offence, One Year's Imprisonment ; Second Offence, Imprisonment, during Life. 5 <i>Eliz. cap. 5.</i>
Rioters,	{ Attainted of great Riots, shall be imprisoned One Year, without Bail. 2 <i>Hen. 5. cap. 8.</i>
Rogues incorrigible,	{ Being committed, must continue in Custody, 'til the next Sessions. 39 <i>Eliz. cap. 4.</i>
Sheriff,	{ Under-Sheriff, or other Officer, making any Warrant for an Arrest, without Original Process, or Writ ; to be committed 'til he pay 10 <i>l.</i> and Costs and Damages, to the Party grieved, and 20 <i>l.</i> to the King.
Suit,	{ In another Man's Name, there being no such Person, or without the Consent of the Person, convicted by Two Witnesses, Six Months Imprisonment ; and until he pay 10 <i>l.</i> and Treble Costs and Damages to the Party grieved. 8 <i>Eliz. cap. 2.</i>
Treason.	--- <i>W. 1. cap. 15.</i>

Conjurers,

Witches,

Conjurers, Sorcerers, and others, who take upon them to hurt another, by Witchcraft, Conjurament, &c. tho' it is not done; or to tell where Goods lost, or stolen, may be found; or to provoke Love; or shall hurt any Cattle, or Goods; One Years Imprisonment, after Conviction. *1. fac. 1. cap. 21.*

Women.

Taking them unmarried, and under Sixteen Years of Age, out of Possession of Father, or Mother, or Guardian, and against their Wills; except such Taking, shall be in Behalf of the Master, or Mistress, or Guardian, in Soccage of such Child, Two Years Imprisonment. Deflowering such Child; or contracting Marriage, without Consent of the Father, if living; or else of the Mother, Five Years Imprisonment, without Bail, or pay such Fine as the Court shall assess; to be divided between the King and Prosecutor. *4 & 5 Phil. & Mar. cap. 8.*

Besides these, there are other Offences, where Bail is taken away by Statute; but they being such as are otherwise provided against, by the Laws of this Dominion, or such as are not likely to be practicable, or Criminal here, I purposely omit them.

There are also divers Offences, where, upon Conviction, by the Laws of *Virginia*, the Offender is notailable; which I shall here recite, in the same Order, those Laws were made.

Defaming the Person of the Governor of this Dominion, One Year's Imprisonment, without Bail, or Mainprise, and Fine to the King, not exceeding 500 *l.* Defaming the Person of a Counsellor, Judge, or Principal Officer, Three Months Imprisonment, without Bail, and Fine, not exceeding 100 *l.* *32 Car. 2. cap. 1.* Laws of *Virginia*, pag. 78.

Publication.

That the Acts of Assembly of *Virginia* are not of Force, or not Binding in this Colony; First Offence, 1000 *lb.* Tobacco, and One Month's Imprisonment; Second Offence, Two Month's Imprisonment, and 2000 *lb.* Tobacco: For every Offence thereafter, Fine and Imprisonment to be doubled, besides other Legal Punishments. *34 Car. 2. cap. 8.* pag. 86.

Hog-stealing.--Third Offence, Felony. *4 Anne, cap. 14.* pag. 150.

Laws of
Virginia,
pag. 278. Religion.

pag. 114.

pag. 215. Marriages.

pag. 216.

pag. 221.

pag. 222. Servants &
Slaves.

pag. 329.

pag. 473.

pag. 423.

pag. 433.

Tobacco.

Persons convicted of Atheism, Deism, or Infidelity ; Second Offence, Three Year's Imprisonment, without Bail, besides other Disabilities and Punishments. 4 *Annæ, cap. 30.*

Ministers marrying any Person without Licence, or Thrice Publication of Banns ; or going out of this Dominion, and there to marrying an Inhabitant of this Colony, shall be imprisoned One Year, without Bail, or Mainprise, and forfeit 500 *l.*

Minister, Reader, or Clerk, granting a false Certificate of Publication of Banns, One Year's Imprisonment, without Bail, 500 *l.* Fine, and liable to Penalties of Forgery.

County Court Clerk issuing Marriage Licence, contrary to this Act, One Year's Imprisonment, without Bail, and forfeits 500 *l.* 4 *Annæ, cap. 48.*

Persons dealing with any Servant, or Slave, without Licence of the Master, or Owner, shall be imprisoned One Month, without Bail, bound to Good-behaviour One Year, and forfeit Four Times the Value of Goods so bought, or sold.

White Free Man, or Woman, marrying with a Negro, or Mulatto, Six Months Imprisonment, without Bail, and forfeit 10 *l.* to the Parish. 4 *Annæ, cap. 49.*

Meeting of Slaves, above Five in Number, to comprise, plot, &c. Rebellion, Insurrection, or Murder, Felony, without Clergy. 9 *Geo. 1. cap. 4.*

Stealing any Negro, Mulatto, or Indian Slave, Felony, no Clergy. 5 & 6 *Geo. 2. cap. 6.*

To land, or take Tobacco out of any Hogshhead, in carrying to or from a Public Warehouse ; Forging Inspector's Note, Receipt, or Stamp ; Tendring in Paiment any Forged Note, knowing it to be such ; Exporting Tobacco under a Counterfeit Stamp ; Demanding Tobacco, upon a Forged Note, or Receipt, knowingly ; Putting Tobacco into any Hogshhead, &c. after it's stamp'd ; Drawing any Heading, or Stave, out of a stamp'd Hogshhead, and fixing the same in another Hogshhead, Felony. 3 & 4 *Geo. 2. cap. 3.* Ma-

Burning } Maliciously, any House whatsoever, or being
 } ing accessory thereto, Felony, without
 } Clergy. Laws of Virginia.
pag. 437.

Burglary. } Breaking into any Ware-house, or Store-
 } house, and taking thence, Goods to the Va-
 } lue of 20 s. or being Aiding, or Abetting
 } thereto, Felony, without Benefit of Cler-
 } gy. 3 & 4 Geo. 2. cap. 4.

Persons committed by Judgment of any Court of Record, for Misdemeanor, or any other Matter within the Jurisdiction of such Court, are notailable: For such Imprisonment is for Punishment of the Offender. *Dalt.* 420.

One that is in Execution, is notailable by Law: For Bail is put in to secure the Plaintiff, that the Defendant shall perform the Judgment of the Court; and now the Law hath determined the Matter, and what remains is, for the Defendant to perform the Judgment, and for the not performing it, he lies in Execution. *Style.* 102.

No Person arrested for Manslaughter, or Felony, or Suspicion thereof, and being by Lawailable, shall be bailed, or mainprised by any Justices of Peace, but in open Court, or by Two Justices of the Peace, whereof One to be of the *Quorum*, and both to be present, and to take the Examination of the Prisoner, and the Depositions of the Witnesses, in Writing, before they bail him: Which Examination, together with the Recognizances enter'd into by the Witnesses, and the Prisoner and his Sureties, shall be, by such Justices, certified to the Court before whom such Prisoner is to be tried. 1 & 2 *Phil. & Mar.* cap. 13. Two Justices,
One *Quorum*.

When any Prisoner, after his Trial, before the Justices of the County, shall be remanded to the County Goal, if his Offence beailable, he shall not be removed to the Public Goal, in less than Twenty Days, that he may, within that Time, procure and give Bail, in the County: And after Removal to the Public Goal, he may be admitted to Bail, at any Time before the Day of his Appearance in the General Court, if his Offence isailable by Law. Laws of Virginia,
pag. 190.
191.

4 *Anne*, cap. 38.

Mr. *Dalton* has well observed, That it behoveth Justices to be very circumspect in this Matter; for if Bail be refused, where, by Law, the Party isailable, and offers sufficient Sureties, the Justice or Justices so refusing, shall be grievously amerced to the King; and he that taketh any Fee or Reward, for admitting a Prisoner to Bail, shall be amerced to the King, and forfeit to the Prisoner, double the Value of the Reward so taken: And if Justices do bail or mainprise any Person, by Law notailable, such Justice

Caution
to Justices.

tice shall be fined by the Justices of Goal-Delivery. *Dalt.* 417, 418.

One single Judge will not bail a Prisoner, in a difficult Case, but will advise with his Companions: So cautious are they not to do any Thing against Law. *Style* 111.

Prisoner
must offer
Sureties.

Rules, in
Bail.

Where a Man isailable, he must offer Sureties to the Justices, and pray that he may be admitted to Bail, otherwise he may be committed to Prison. *Dalt.* 419.

The Sureties and Sums are left to the Discretion of the Justices, where no Sum certain is limited by Law: But if the Crime be Suspicion of Felony, they must take very sufficient Persons for the Appearance of the Party, and bind them in a good Sum: The Justices may examine, upon Oath, the Sureties concerning their Sufficiency; and if, at any Time before the Day of Appearance, they think the Sureties taken, not sufficient, they may compel the Party to give better, or commit him: Likewise, if the Sureties suspect the Offender will run away, they may bring him before the Justices, and desire to be discharged; whereupon, he must give other Security, or be committed. *Nels.* 73, 74.

Infant
no Bail.

One that is within Age, ought not to be admitted Bail for another; for he is not a Person responsible at the Law, as one that is Bail must be, for him for whom he becomes Bail. *Style* 110.

For want of taking sufficient Bail, the Justices of Peace are finable. *Dalt.* 417.

Mittimus
ought to
shew
Cause of
Commit-
ment.

Every *Mittimus* ought to express the Cause of Commitment, that it may appear, whether the Prisoner isailable, or not: If he isailable, any other Justices of the same County wherein he is committed, may admit him to Bail.

If a Justice of Peace commit a Man for any Felony, for which, by Law, he is notailable, but by his *Mittimus*, he is committed generally, with these Words, *viz.* without Bail or Mainprise, but not expressing the Cause of Commitment; and thereupon, other Justices admit him to Bail, they shall be fined: For they, at their Peril, ought to inform themselves of the Truth of the Matter, before they bail him. *Dalt.* 419.

For more Certainty, I have, under each respective Head of Criminal Offence, declared the Penalties inflicted by Law for such Offence; and whether the Offender isailable, or not.

B A R R E T R Y.

Who is a
Barretor.

A Barretor, is a common Mover, Exciter, or Maintainer, of Suits, Quarrels, or Parties, either in Courts of Record, or in the Country: In Courts, by maliciously stirring up

up unjust Actions, or Suits, between other Men; or if a Man, in his own Causes, is a common Oppressor of his Neighbours, by such Suits: In the Country, by making Affrays, or being a common Quarreler, Fighter, and Disturber of the Peace; or by taking or keeping Possession, by Force, or Fraud, of Lands, Houses, or Goods, in Controversy; or by inventing, or spreading abroad false Reports, whereby Differences arise among Neighbours: He is never quiet, but at Variance with one or other. *Co. Lit. l. 3. cap. 13. §. 701.*

Suing one in another's Name, is a Species of Barretry: He that procureth a Man to be arrested, in the Name of another, where there is no such Person, or without his Consent, upon Conviction by Two Witnesses, shall be imprisoned Six Months, without Bail, and pay 10*l.* and Treble Costs, to the Party grieved. *8 Eliz. cap. 2.*

A Feme Covert cannot be indicted of Barretry. *Rolls Rep. 2, 39.*

Forging, or divulging false Reports, tending to the Trouble of the Country, is a Species of Barretry, specially punishable by Act of Assembly, 13 *Car. 2. cap. 91.* and the offender, if he produce not his Author, shall be fined 2000*lb.* Tobacco, and bound to Good-behaviour. Laws of Virginia, pag. 18.

Any Justice of Peace, upon Complaint, or at his Discretion, may bind to the Peace, or Good-behaviour, such as are common Barretors. *Dalt. 38.*

A Warrant against a Barretor.

To *A. B.* or any other Constable of the County of *Henrico*, and to the Keeper of the Common Goal of the said County.

Henrico sc. **F**Orasmuch as it appears to me, *C. D. Gent.* Warrant.
 one of His Majesty's Justices of the Peace for the said County, That *E. F.* of, &c. Bricklayer, is a common Quarreler, and Disturber of the Peace, whereof he is convicted by my own View: These are, in His Majesty's Name, to command you to cause the said *E. F.* to come before me, or some other Justice of this County, to find sufficient Security; (that is to say,) himself in Forty Pounds, and Two Sureties in Twenty Pounds each, for his Personal Appearance at the next Court to be held for this County, and to do what shall be then and there enjoined him by the said Court; and in the mean Time, to be of the Good-behaviour. And if he the said *E. F.* shall refuse so to do, that then you convey him to the Common Goal of this County, and deliver him safely to the Keeper thereof, together with this Precept. And you, the said

Barretry.

Keeper, are hereby required to receive the said E. F. into your Custody, and him safely to keep in your Goal, until he shall find such Security, as aforesaid, or until he be thence delivered by due Course of Law. Herein fail not, at your Perils. Given under my Hand and Seal, this Eleventh Day of July, 1733.

If the Offender is taken upon this Warrant, and brought before a Justice, he must enter into Recognizance, with Two sufficient Sureties, as by the Warrant is required; which Recognizance such Justice is to certify to the same Court, that thereupon the Party may be called, and further Proceedings had; but if he refuses to give Security, he may be committed.

To the Keeper of the Common Goal of the County of Henrico.

Mittimus Henrico sc. I Send you herewith the Body of E. F. of, &c. taken upon my Warrant, and brought before me, for common Barretry, and other Misdemeanors by him committed, against the Peace: And you are hereby required, in His Majesty's Name, to receive the said E. F. into your Custody, and him safely to keep in the Common Goal, until he shall procure Two sufficient Persons to be bound with him in a Recognizance to the King's Majesty; (that is to say,) himself in the Sum of Forty Pounds, and each of the said Sureties in the Sum of Twenty Pounds, for his personal Appearance at the next Court to be held for this County, and to do what shall be then and there enjoined him by the said Court; and in the mean Time, to be of the Good-behaviour. Given under my Hand and Seal, &c.

Upon an Information exhibited before a Justice of Peace, against any Person, for Barretry, such Justice ought to cause the Informers, of whom there must be Two, at least, to enter into Recognizance for their Appearance at the next Court, viz.

Recognizance
for Wit-
nesses.

Henrico sc. Memorand. That on this Eleventh Day of July, 1733, H. I. of, &c. and K. L. of, &c. came before me, C. D. Gent. one of His Majesty's Justices of the Peace for the County aforesaid, and personally acknowledged that each of them is indebted to Our Sovereign Lord King George the Second, in the Sum of Ten Pounds lawful Money of Virginia; to be levied of their Goods and Chattels, Lands and Tenements, respectively, to the Use of Our said Lord the King, His Heirs and

and Successors, upon Condition, That if they, the said H. I. and K. L. do personally appear before His Majesty's Justices of the Peace, at the next Court to be held for this County, on the first Monday in August next, and do then and there prefer, or cause to be prefer'd, a Bill of Indictment against E. F. of, &c. for the Matters wherewith he is by them charged before me; and do also, then and there give Evidence concerning the same, to the Jurors as shall enquire thereof, on Behalf of Our said Lord the King, and upon the Trial of the said E. F. for the same: Then this Recognizance to be void; or else to remain in Force.

Acknowledged before me,
C. D.

After such Recognizance taken, the Justice may issue his Warrant against the Offender.

A Warrant upon an Information.

To the Constable, &c. and to the Keeper, &c.

Henrico sc. *W*Hereas, H. I. of, &c. and K. L. of, &c. *this Day came before me, C. D. Gent.* *one of His Majesty's Justices of the Peace for the County aforesaid, and made Information, That E. F. of, &c. (b) is a common Mover and Maintainer of unjust Suits and Quarrels: These are, &c. as before.*

Warrant.

(b) Here
recite the
Substance
of the In-
forma-
tion.

The Justice must certify, to the next Court, the Recognizance entred into by the Witnesses, as well as that acknowledged by the Offender, and his Sureties; but if he refuses to give Security, he may be committed.

Mittimus.

To the Keeper, &c.

Henrico sc. *I* Send you herewith the Body of E. F. &c. --- as before, unto --- before me, for his being a common Mover and Maintainer of unjust Suits and Quarrels, (c) wherewith he is charged: And you are hereby required, &c. as before,

(c) Or as
the Case
is.

This is an Offence, for which a Man may be indicted, fined, imprisoned, without Bail, and bound to Good-behaviour; at the Discretion of the Court, before whom such Trial shall be.

Punish-
ment.

The Offender isailable, 'til Conviction.

BASTARDY.

BASTARDY.

Who is a
Bastard.

A Bastard, is he that is born of any Woman not married, so that his Father is not known by the Order of the Law; and therefore, he is sometimes called the Son of no Man, and sometimes, the Son of every Man. A Bastard may purchase Lands, &c. by his reputed, or known Name, to him, and his Heirs; altho' he can have no Heir, unless it be the Issue of his Body. *Co. Lit. l. 1. s. 1.*

This is an Offence against the Spiritual, as well as Common Law, and punishable in both Courts.

What
may be
done, be-
fore the
Child is
born.

Every Justice of Peace, by Virtue of the Power which he hath at Common Law, as Conservator of the Peace, to punish Incontinency, may, before the Child is born, issue his Warrant to apprehend the reputed Father: But it ought to be upon the Oath of the Woman with Child.

A Warrant against the putative Father.

To *A. B.* or any other Constable of *King William* County.

Warrant
against
the repu-
ted Fa-
ther.

King William sc. **W**Hereas, upon the Examination of *C. D.* single Woman, this Day taken, upon Oath, before me, it appears, that she is now with Child; which Child, when it shall be born, will be a Bastard, and may be chargeable to the Parish of Saint John, in this County: And whereas she, the said *C. D.* hath confessed, That *E. F.* of the same Parish and County, Taylor, did beget the said Child on her Body, and hath, before me, charged him with the same: These are, in His Majesty's Name, to command you to apprehend the said *E. F.* and to bring him before me, or some other Justice of this County, to answer what is laid to his Charge, as aforesaid. Given under my Hand, this Fifteenth Day of July, 1733.

When the Party is taken, and appears before the Justice, he must enter into Recognizance, with Sureties, for his Appearance at the next Court; and so he may be continued upon his Recognizance, from Court to Court, 'til the Child is born.

The Condition of the Recognizance.

Recogn-
izance.

THE Condition of this Recognizance is, That whereas, the above-bounden *E. F.* is charged by *C. D.* of, &c. single Woman, that he had Carnal Knowledge of her

her Body, and that she the said C. D. is now with Child by him the said E. F.; which Child, when born, will be a Bastard: If, therefore, the said E. F. shall personally appear before His Majesty's Justices of the Peace, at the next Court to be held for the said County of *King William*, then and there to abide, and receive what shall be by the said Court enjoined, concerning the Premises; and if he be, in the mean Time, of the Good-behaviour, then this Recognizance to be void; else to remain in Force.

But if he refuses to give Security, he may be committed.

To the Sheriff, or Keeper of the Common Goal of *King William* County.

King William *sc.* *I* Herewith send you the Body of E. F. *Mittimus*
late of the Parish of Saint John, in this County, Taylor, who was this Day brought before me, A. M. Gent. one of His Majesty's Justices of the Peace for the said County, being charged by C. D. of, &c. single Woman, to have gotten her with Child; which Child, when born, will be a Bastard: And the said E. F. having refused, before me, to find Security for his Appearance at the next Court to be held for this County, to answer the said Charge: These are therefore, in His Majesty's Name, to command you to receive the said E. F. into your Custody, and him safely to keep in the Common Goal, until he shall be thence discharged by due Course of Law. Hereof fail not, at your Peril. Given under my Hand and Seal, &c.

After the Child is born, upon Complaint of the Churchwardens made to a Justice of Peace, he may issue the like Warrant against the reputed Father, to compel him to an Appearance before the Court of that County, wherein the Child is born. After Birth of the Child.

To the Constable, &c. and to the Keeper, &c.

King William *sc.* *W*Hereas Complaint is made to me, *Warrant*
by N. O. and P. Q. Churchwardens of the Parish of Saint John, in the said County, That C. D. of the same Parish and County, single Woman, hath been lately, within the said Parish, delivered of a Bastard Child; which Child is likely to become chargeable to the said Parish: And whereas, the said C. D. hath charged E. F. of the same Parish and County, Taylor, to have begotten the said Child on her Body: These are, in His Majesty's Name, to command you to cause the said E. F. to appear before me, or some other Justice of this County, to find

Bastardy.

find sufficient Security for his personal Appearance at the next Court to be held for this County, then and there to abide, and to do what shall be enjoined him by the said Court; and in the mean Time, to be of the Good-behaviour: And if the said E. F. shall refuse so to do, that then you may convey him to the Goal aforesaid, and deliver him safely to the Keeper thereof, together with this Warrant. And you, the said Keeper, are also hereby commanded to receive the said E. F. into your Custody, and him safely to keep in the Common Goal, until he shall find such Security, as aforesaid, or until he be discharged by due Course of Law. Given under my Hand and Seal, &c.

Penalties on Servants, having Bastards, Laws of Virginia, pag. 222. By an Act of Assembly, 4 *Annæ*, cap. 49. it is Declared, ' That if a Woman Servant shall be delivered of a Bastard, she shall serve her Master One Year, or pay 1000*lb.* Tobacco; and the reputed Father, if a Freeman, shall give Security to the Churchwardens, to maintain the Child, and keep the Parish indemnified, or he shall be compelled so to do, by the County Court, upon the Churchwarden's Complaint: And if he be a Servant, he shall make Satisfaction by Service, after Expiration of his then present Time of Servitude. If a Woman Servant is got with Child by her Master, he, nor his Heirs, or Assigns, shall claim any Service for such Child; but the Woman, after Expiration of her present Service, shall be sold, by the Churchwardens, for One Year, or pay 1000*lb.* Tobacco, to the Use of the Parish: And if a Woman Servant shall have a Bastard, by a Negro, or Mulatto, she shall pay 15*l.* Current Money to the Churchwardens, or be sold for Five Years, to the Use of the Parish, over and above the former Penalty of 1000*lb.* Tobacco, or One Year's Service: And such Bastard Children of Women Servants, in both the said Cases, shall be by the Churchwardens bound out to Service, 'til they are Thirty One Years of Age. '

But if the reputed Father of a Bastard Child will voluntarily tender to the Churchwardens sufficient Security, to indemnify the Parish, this shall discharge him from further Prosecution, for Maintenance of the Child; and the Churchwardens ought to accept such Security.

A Bond, to be taken by the Churchwardens, for indemnifying the Parish, from Maintenance of a Bastard.

Bond. *KNOW* all Men by these Presents, That we E. F. of, &c. and R. S. of, &c. are held and firmly bound unto N. O. and P. Q. Churchwardens of the Parish of Saint

Saint John, in the County of King William, in the Sum of Fifty Pounds lawful Money of Virginia: To which Paiment to be made to the said N. O. and P. Q. Churchwardens, as aforesaid, and to their Successors, we bind our selves, and each of us, our, and each of our Heirs, Executors, and Administrators, jointly and severally, by these Presents. Witness our Hands and Seals, &c.

TH E Condition of this Obligation is, That whereas, *C. D.* of the said Parish of Saint *John*, and County of *King William*, single Woman, hath lately been delivered of a Male Bastard Child, within the same Parish; of which Child, the above-bounden *E. F.* stands charged, according to Law, to be the reputed Father: If therefore, the said *E. F.* his Heirs, Executors, or Administrators, or any of them, do, and shall, from Time to Time, and at all Times hereafter, acquit, discharge, and save harmless, as well the above-named *N. O.* and *P. Q.* Churchwardens of the aforesaid Parish of Saint *John*, and their Successors, for the Time being; as also, the Inhabitants and Parishioners of the said Parish, of, and from all Costs, Charges, and Troubles whatsoever, for, or by Reason of the Birth, Maintenance, and bringing up, the said Child; and of, and from all other Suits, Charges, and Demands, whatsoever, touching, or concerning the same: Then this Obligation to be void; or else to remain in Force.

If the Bond is given before Birth of the Child; say,

TH E Condition, &c. That whereas, *C. D.* of, &c. was lately got with Child, she being then, and still unmarried; to which Child, the above-bounden *E. F.* stands charged, &c.

Upon Security thus given, the Justices have no further Power; but the Bond must be put in Suit, if the Condition is not performed. *Nels. 82.*

A Bastard of a Person able to keep it, and not likely to be chargeable to the Parish, is not within the Statute of 18 *Eliz. cap. 3.*

The Constable, or other Officer, having a Warrant to apprehend the reputed Father, and willingly, or negligently, suffering him to escape; such Constable may, by One Justice, be bound over to Court, and there he may be ordered to contribute towards Maintenance of the Child; or he may be fined for Misdemeanour: So may any other Person, who shall persuade, procure, or convey away, the reputed Father, or assist him to escape. *Dalt. 39.*

The

Condi-
on, to in-
demnify
the Pa-
rish.

Penalty
on Offi-
cer, on an
Escape.

The Mother may be examined, upon Oath, concerning the reputed Father, the Time, and other Circumstances. *Dalt* 40.

Punish-
ment of
the Mo-
ther, and
of Con-
cealers.

Laws of
Virginia,
pag. 397,
398.

Con-
cealing
the Death
of a Bas-
tard,
Murder.
pag. 256.

Every lewd Woman deliver'd of a Bastard, shall forfeit 500 *lb.* Tobacco, or 50 *s.* to the Churchwardens of the Parish wherein she shall be delivered, to the Use of the Parish; on Failure of paying the Fine, or giving Security for Paiment, at the laying the next Parish Levy, she shall receive Twenty Five Lashes: The Person in whose House such Woman shall be delivered, shall give Notice of such Birth, to the Churchwardens of the same Parish, and secure the Person of the Woman; neglecting to give Notice, or suffering the Woman to escape before Notice given, the same Penalty; recoverable by the Churchwardens, by Action of Debt, &c. 1 *Geo.* 7. *cap.* 7.

If any Woman deliver'd of a Bastard Child, born alive, shall endeavour to conceal the Death of such Child, by Drowning, private Burial, &c. she shall, upon Conviction, suffer Death, as in Case of Murder. 9 *Annæ*, *cap.* 12.

A Warrant against a Woman, upon Suspicion.

To *A. B.* or any other Constable, &c.

Warrant. King William *sc.* *W* Hereas, I am credibly inform'd, That *C. D.* of, &c. Widow, hath been lately deliver'd of a Bastard Child, born alive of her Body, and is suspected to have murdered, or else made away the said Child, since the Birth thereof: These are, in His Majesty's Name, to command you to apprehend the said *C. D.* and to bring her before me, or some other Justice of this County, to be examined concerning the Premises: And you are also to make diligent Search, by all lawful Means, to find out the Truth, and to bring before me, or some other Justice of this County, all such Persons as can give any Information, on Behalf of His Majesty, touching the Premises. Hereof fail not, at your Peril. Given under my Hand, this Eighteenth Day of July, 1733.

If she confess the Fact, the Justice may take her Examination, by her subscribed, but not upon Oath, viz.

Exami-
nation.

King William *sc.*

The Examination of *C. D.* of &c. Widow, taken before me, *A. M.* Gent. a Justice of Peace of the said County, this Nineteenth Day of July, 1733.

*T*HE said *C. D.* being brought before me, upon Suspicion, for the Murder of her Bastard Child, she the said *C. D.* did, upon her Examination by me this Day, confess,

fees, (d) That she was lately delivered of a Male Child, born (d) Or, alive of her Body, and that she did endeavour to conceal as the the same, and did privately bury the Body of the said Case is Child, at ; and farther saith not. C. D. A. M.

Notwithstanding such Confession, the Witnesses must be also examined, severally, and upon Oath.

Oath to
Witnesses

YOU shall true Answer make to all such Matters as shall be demanded of you, concerning the Prisoner C. D. Widow, taken upon Suspicion for the Murder of her Bastard Child: You shall speak the Truth, the whole Truth, and nothing but the Truth. So help you God.

King William sc.

The Examination of R. S. of the Parish of Saint John, in the County of King William, Planter, T. V. &c. of, &c. taken upon Oath before me, A. M. Gent. a Justice of Peace of the County aforesaid, this Nineteenth Day of July, 1733.

THE said R. S. being sworn, saith, That --- (here recite the Substance of the Evidence;) --- and further saith not. R. S.

THE said T. V. being sworn, &c. as before. Sworn before me, A. M.

After such Examination, so taken, the Witnesses must enter into Recognizance for their Appearance before the Court to be held, for further Examination of the Prisoner, viz.

King William sc. Memorand. That on this Nineteenth Day of July, 1733. R. S. of, &c. Recognizance.

T. V. &c. of, &c. came before me, A. M. Gent. one of His Majesty's Justices of the Peace of the said County of King William, and personally acknowledged, that each of them, severally, is indebted to Our Sovereign Lord King George the Second, in the Sum of Ten Pounds lawful Money of Virginia; to be levied of each of their Goods and Chattels, Lands and Tenements, respectively, to the Use of our said Lord the King, His Heirs and Successors, upon Condition, That if they, the said R. S. T. V. &c. and every of them, respectively, do personally appear before His Majesty's Justices of the Peace, at a Court to be held at the Court-house of the said County of King William, on Monday the Twenty Sixth Day of this Instant July, and do then and there, respectively, give Evidence on the Behalf

Bastardy.

Half of our said Lord the King, against C. D. of, &c. Widow, charged with the Murder of her Bastard Child; and that they do not depart thence, without Leave of the said Court: Then this Recognizance to be void; or else to remain in Force.

Acknowledged before me,
A. M.

This Recognizance, together with the Examination of the Prisoner and Witnesses, is to be certified by the Justice to the Court, by him to be summoned and held, not less than Five, nor more than Ten Days after. *See Tit. Criminals.*

And then the Prisoner is to be committed to Goal.

To the Sheriff of *King William* County, or to the Keeper of the Common Goal of the said County.

Mittimus King William *sc.* **T**HES E are to charge and command you, in His Majesty's Name, to receive into your Goal, the Body of C. D. late of, &c. Widow, taken upon Suspicion, and brought before me, for the Murder of her Bastard Child, (e) wherewith she is charged; and that you safely keep her, the said C. D. in your said Goal and Custody, without Bail or Mainprise, until she shall be thence discharged by due Course of Law. Given under my Hand and Seal, this Nineteenth Day of July, 1733.

(e) Or, having confels'd the Fact, as the Case is.

Tho' it appear, upon Examination before the Justice, that the Prisoner is not Guilty, yet she is not to be discharged: But if there be no direct Charge against the Person, but only Suspicion, she may be bail'd, with Condition to appear before the Court to be summoned, as above directed.

Condition, for a suspected Person to appear, &c.

TH E Condition of this Recognizance, is, That if the above-bounden C. D. shall personally appear before His Majesty's Justices of the Peace, at a Court to be held at the Court-house of the said County of *King William*, on Monday the Twenty-Sixth Day of this Instant *July*, and do then and there answer all such Matters and Things which shall be objected against her, being suspected to have feloniously murdered her Bastard Child; and that she do not depart without Leave of the said Court: Then this Recognizance to be void; or else to remain in Force.

But

But it is to be observed in This, and all other Cases of Felony, that the Fact must be actually done, and Felony committed, before a Justice of Peace issues his Warrant to apprehend the Offender, upon Suspicion.

If any Person shall marry within the Levitical Degrees; that is to say, if the Son marry his Mother, or Step-Mother; the Brother his Sister; the Father his Son's Daughter, or his Daughter's Daughter; the Son his Father's Daughter by his Step-Mother, or his Father's, or Mother's Sister, or his Uncle's Wife; the Father his Son's Wife; the Brother his Brother's Wife; or any Man shall marry his Wife's Daughter, or his Wife's Son's Daughter, or his Wife's Daughter's Daughter, or his Wife's Sister: Every Person so married, shall be separated by Sentence of the General Court, and punish'd by Fine at their Discretion, and shall give Bond and Security not to cohabit thereafter; and the Children proceeding from such Marriage, shall be accounted illegitimate: And if any Persons shall, without marrying, Carnally know, or have Copulation within the said Degrees, the Persons so offending, convicted in any Court of Record, shall be fined, at the Discretion of such Court; and upon Refusal of Paiment, or Security, shall be whip'd, not exceeding Thirty Nine Lashes, and shall give Bond and Security for their future Separation, or be committed. 3 & 4 Geo. 2. cap. 2.

Marriages within Levitical Degrees prohibited, and the Children illegitimate.

Incestuous Copulations, punishable by Fine, and Imprisonment.

Laws of Virginia, pag. 420.

B E H A V I O U R.

Peace.

AS the Good-behaviour includeth the Peace, I have therefore placed it under this Head.

Surety for the Good-behaviour is most commonly granted in open Court, or by Two or Three Justices out of Sessions, at the Suit of divers Persons, being Men of Credit, and to provide for the Safety of Many: Whereas Surety of the Peace is usually granted by One Justice, out of Sessions, at the Request of One Person, and for Preservation of the Peace, chiefly towards One. *Dalt.* 291.

Where, and by whom, the Behaviour is grantable.

But it may be granted by One Justice, at the Instance of One Person, to prevent some great and sudden Danger, or for some Public Misdemeanor: Yet it is good Discretion in Justices of Peace, not to grant it out of Sessions, but either upon sufficient Cause appearing to themselves, or upon Complaint of divers honest and credible Persons, especially against a Man of good Estate, Carriage, or Report. *Ibid.*

E

A

A Justice of Peace, upon his own Discretion, and without Complaint, may bind to the Good-behaviour, any Person, who, in his Presence, or Hearing, shall mis-behave himself in some outrageous Manner of Force, or Fraud; and may commit such Person to Goal, if he refuses to be bound. *Dalt.* 292.

If a Man make an Affray, or assault another, in Presence of a Justice, who thereupon commands him to keep the Peace, and he answers, that he will not, he may be bound to the Good-behaviour; and if he refuses, committed. *Dalt.* 294.

The Good-behaviour is not to be granted upon a general Accusation, but some special Matter must be expressed, for which the Party ought to be bound: For a general Accusation is no Accusation, for the Incertainty of it, and the Party cannot tell what Answer to make to such a general Accusation. *Style*, 324.

If a Man do affront any Court of Justice, this is good Cause to bind the Party to his Good-behaviour: For the affronting of Justice, is a Public Misdemeanour, and not a Private, altho' it be done but to the Person of One Man; as to the Judge of a Court, or a Justice of Peace, in the Execution of his Office; because such Persons are Public Ministers of Justice, and act for the Common-Wealth. *Ibid.*

A Woman that is a common Scold, may be bound to the Good-behaviour; for she is a common Disturber of the Peace.

One was bound to his Good-behaviour for affrighting People in the Night, in their Houses, by shooting of Muskets, and for the assaulting of One, going in the High-way: For this was accounted more than a particular Breach of the Peace.

The Good-behaviour was granted against One, upon an Article sworn against him, that he had maliciously pull'd down a Piece of another's House: For this is a riotous Act, and a high Breach of the Peace; which concerns the Public.

One was bound to his Good-behaviour for stopping a Constable from making Pursuit after a Felon: For this is a Public Offence against the Common Wealth.

The Good-behaviour is not to be granted against One, for speaking of Words only against one Person; but it may be granted against One for speaking Words against divers Persons, at several Times: For this is a General Mis-behaviour, the other is but Particular.

The Good-behaviour was granted against One, upon an Article sworn against him, that he said he would burn down another Man's House: For a Man shall be judged, in many Cases, by his Words, though no Actions accompany them. *Style*, 325.

Persons

Persons who are of evil Fame, or common Disturbers of the Peace; those who are accused, or guilty, of any of the Offences here under-specified, may be required, by One Justice, to enter into Recognizance, with Sureties, or without, at the Discretion of the Justice, to be of the Good-behaviour; and upon Refusal, may be committed.

Bastardy. } The reputed Fathers of such Bastard Children as are likely to become chargeable to the Parish.

Barretry. --- Common Barretors.

Bawdry. } Those who frequent Bawdy Houses, and the People who keep such Houses; likewise Whoremongers, and Common Whores: For 'tis a Temporal Offence, and against the Peace of the Government.

Felons, } Acquitted of Felony, or convicted and pardoned; if the Person be of evil Fame: But this is Discretionary.

Gaming. } Such who frequent Gaming Houses; those who Game, and have no Estates to support themselves; all Cheaters, and Cozeners, by Cards, Dice, false Letters, or any other Games whatever.

Hue & Cry. --- Those who raise it without Cause.

Idle Persons } Living well, and having no Estates, or Callings, to support themselves.

Justices of Peace. } Those who mis-behave themselves before him, or before any other Officer, in the Execution of Justice; those who speak contemptible Words of him, or abuse his Warrants; those who delude his Authority, by Complaints, without Prosecution.

Libels. } Those who contrive, procure, or publish, scandalous Letters, or Libels, whether true or false, either against Persons living, or dead, by Writings, Words, Pictures, or any other Signs of Reproach.

Mis-behaviour. } Of any Kind whatsoever: This must be left to the Discretion of the Justice, it being a general Word.

Murderers & Manslayers. } Such who are likely to commit either of these Offences.

Night-Walkers. } Those who are suspected to steal any Thing in the Night, or to commit any Misdemeanor against the Person or Goods of another.

Peace. } Those who break it in any Manner whatsoever. Poison.

Poison.	{ Mingling it with Corn, and giving it to Poultry ; or attempting to destroy the Person or Beasts of another.
Repute.	---Those of a bad Report, or Name.
Riot.	{ Those who continue in the very Act : But if the Riot is over, then the Inquiry must be by Jury.
Robbery.	{ Those who lie in Wait, or attempt to rob another.
Suspicion.	{ Persons suspected to lie in Wait to rob, or commit any Felony, or Burglary.
And by several Acts of Assembly, now in Force in this Colony, Offenders in any of the Cases here under-mentioned, shall be bound to the Good-behaviour, <i>viz.</i>	
Laws of Virginia, pag. 400. Gaming.	{ Those who support themselves by Gaming, and have no visible Estate, or Calling, Two Justices may bind such to Good-behaviour ; and if they refuse to be so bound, or to find Sureties, they shall be committed. 1 Geo. 2. cap. 8.
pag. 268. Hunting	{ Upon other Men's Lands, without Licence of the Owners ; Third Conviction. 9 Anne, cap. 14.
pag. 18. Libels.	{ Divulger of false Reports ; if it appear to the Court, that he did maliciously publish or invent it. 13 Car. 2. cap. 91.
pag. 221. Servants, or Slaves.	{ Those who deal with such, without Licence of their Master, or Owner. 4 Anne, cap. 49.
pag. 325. Seamen,	{ Convicted of Mutiny, or Disobedience, before Two Justices, whereof One of the Quorum, fined and bound to Good-behaviour, and due Performance of the Voiage ; failing to give Security for the Behaviour, &c. Thirty Nine Lashes : Commander, immoderately beating any of his Sailors, may be bound to the Behaviour, by One Justice. 8 Geo. 1. cap. 6.
pag. 326. Vagabonds---	Found wandring, or begging. 1 Geo. 2. cap. 7.

A Warrant, for the Good-behaviour.

To *A. B.* or any other Constable of the County of *Essex.*

Warrant. *Essex sc.* **W** Hereas I am credibly inform'd, that *C. D.* of, &c. *Wheelwright*, is a Person of lewd Life and Conversation, (*f*) and common Disturber of the Peace : These are, in His Majesty's Name, to command you to bring

(*f*) Here
express
his Of-
fence.

bring the said C. D. before me, or some other Justice of this County, to answer unto such Matters as shall be objected against him, by E. F. of, &c. G. H. of, &c. and I. K. of, &c; and also, that you require him the said C. D. to bring sufficient Sureties for his Appearance at the next Court to be held for this County; and in the mean Time, to be of the Good-behaviour. Given under my Hand, &c.

Upon this Warrant the Officer may break open an House to take the Party. *Nels. 90.*

This Warrant may be issued by One Justice, at the Request of several credible Persons, and to prevent some great or sudden Mischief: But for any general Mis-behaviour, the Parties grieved, ought to apply themselves to the County Court, by Petition.

When the Offender is taken, and brought before the Justice, he may, if he see Cause, order the Party to enter into Recognizance, with, or without Sureties, at the Discretion of the Justice.

Recognizance, for the Good-behaviour.

Effex *sc.* **M** Emorand. That on this Twenty Fourth Day of July, 1733, C. D. of, &c. L. M. of, &c. and N. O. of, &c. personally came before me, W. D. Gent. one of His Majesty's Justices of the Peace of the said County of Effex, and acknowledged themselves indebted to Our Sovereign Lord King George the Second; viz. The said C. D. in the Sum of Forty Pounds, and the said L. M. and N. O. each in the Sum of Twenty Pounds lawful Money of Virginia; to be levied of their Goods and Chattels, Lands and Tenements, respectively, to the Use of Our said Lord the King, His Heirs and Successors, upon Condition, that if the above-bounden C. D. shall personally appear at the next Court to be held for the said County of Effex, to do and receive what shall be then and there enjoined him by the said Court, and that he do not depart without Leave of the said Court; and that, in the mean Time, he be of the Good-behaviour: Then this Recognizance to be void; or else to remain in Force.

Acknowledged before me,

W. D.

The Justice must certify this Recognizance to the next Court, on Penalty of 10 *l.*; and if the Party doth not appear, the Recognizance is forfeited, and may be put in Suit. *Dalt. 190.*

But if the Offender refuses to enter into Recognizance, or to find Sureties, being required so to do by the Justice, or Justices, he may be committed.

To the Sheriff of *Essex* County, or to the Keeper, &c.

Mittimus. Essex sc. **I** Send you herewith the Body of C. D. of, &c. *Wheelwright*, taken upon my Warrant, and brought before me, for his being a Person of lewd Life and Conversation, and a common Disturber of the Peace, (g) wherewith he is charged; and he having refused to find sufficient Sureties for his Appearance at the next Court to be held for this County, and in the mean Time, to be of the Good-behaviour: I therefore command you, in His Majesty's Name, to receive the said C. D. into your Custody, and him safely to keep in the Common Goal, until he shall give such Security; (that is to say,) himself in Forty Pounds, and his Two Sureties in Twenty Pounds each, for his Appearance and Good-behaviour, as aforesaid, or until he shall be discharged by due Course of Law. Given under my Hand and Seal, &c.

(g) Here certify the Offence.

Surety of the Peace, where grantable.

Surety of the Peace may be demanded, by the Justice, of Persons guilty of Breach of the Peace, in any Manner whatsoever, by Affrays, Assault, Battery, Fighting, Quarreling, Riot, Threatning to kill, wound, or beat another, &c. *Nels.* 92.

A Justice of Peace may require a Bond, or Recognizance, with a great Penalty, of a Person, for his keeping the Peace, if such Justice see Cause for it, in Regard that the Party to be bound is a dangerous Person, and likely to break the Peace, and to do much Mischief: For there cannot be too much Caution used, in preventing the Breach of the Peace in such Cases. *Style* 388.

But Surety of the Peace is generally granted by the Justice, at the Instance of the Party requiring the same: And before he grants it, he is to administer an Oath to such Party, viz.

Oath.

YOU shall swear, That you are in Fear of your Life, or of some bodily Hurt to be done, or to be procured to be done you, by C. D. of the Parish of _____ in the County of _____ *Wheelwright*; and that you do not require the Peace of him for any Malice, Vexation, or Revenge, but for the Causes aforesaid.

So help you God.

This

This being done, the Justice may issue his Warrant to cause the Offender to be brought before him, and to find Surety.

To *A. B.* or any other Constable of *Essex* County, and to the Keeper of the Common Goal of the said County.

Essex *sc.* *W* *Hereas, E. F. of, &c. Planter, hath this* Warrant.
present Day made Oath before me, W. D.

Gent. one of His Majesty's Justices of the Peace of the said County, That he is afraid that C. D. of, &c. will beat, wound, maim, or kill him; (b) and hath therefore prayed (b) Or, Security of the Peace against him: These are therefore, as the in His Majesty's Name, to command you to cause the said Case is. C. D. to come before me, or some other Justice of this County, to find sufficient Security for his personal Appearance at the next Court to be held for this County, then and there to abide, and to do what shall be enjoined him by the said Court; as also, in the mean Time, to keep the Peace, especially towards the said E. F. and if the said C. D. shall refuse so to do, that then you convey him to the Goal aforesaid, and deliver him safely to the Keeper thereof: And you, the said Keeper, are also hereby commanded to receive the said C. D. into your Custody, and him safely to keep in the Common Goal, until he shall find such Security, as aforesaid, or until he be otherwise discharged by due Course of Law. Given under my Hand and Seal, &c.

If this Warrant is directed to a sworn Officer, he need not shew it to the Party; but he ought to tell him the Contents, or to acquaint the Persons in the House therewith, and require the Doors to be opened; and, upon Refusal of the Party to surrender himself, the Officer may break open the Doors to take him. *Dalt.* 404.

And if the Party is taken, and brought before the Justice, he must enter into Recognizance, with Sureties, or without, at the Discretion of the Justice, as before directed, for the Good-behaviour.

Condition of the Recognizance.

----- as before, unto ----- County of *Essex*, to answer
unto such Matters as shall be then and there objected against him, by *E. F. of, &c.* concerning some Misdemeanors, tending to the Breach of the Peace, and that he do not depart, without Leave of the said Court; and in the mean Time, that he keep the Peace towards our said Lord the King, and all his Liege People, but more especially towards the said *E. F. Then, &c.*

This Recognizance must be certified to the next Court; but if the Party refuses to be bound, he may be committed.

Mittimus, for the Peace.

Mittimus ---- as before, unto ---- before me, upon Complaint, and Oath made, by E. F. of, &c. that he is afraid that the said C. D. will beat, wound, maim, or kill him;

Or,

FOR several Misdemeanors by him committed against the Peace, wherewith he stands charged by E. F. of, &c.

Or,

FOR several Misdemeanors by him committed against the Peace, whereof he is convicted by my own View; and he having refused to find sufficient Sureties, &c. as before.

The Sums, wherein the Party and his Sureties are to be bound, may be lessened, or increased, as the Circumstances of the Case require; so likewise, if the Party shall be bound with Sureties, or without: All which lies in the Discretion of the Justice of Peace, and ought to be accordingly expressed in the *Mittimus*.

Against whom Surety of the Peace may be granted. Surety of the Peace is grantable against a Feme Covert, or Infant; but they are not to be bound, only their Sureties; and if they cannot find any, they must be committed. 'Tis also grantable to the Husband against his Wife, or to the Wife against her Husband.

So likewise, against a Lunatick, or Madman, having lucid Intervals, or Returns of Sense and Reason: And also, against a lame, or impotent Person, for he may procure another to do Mischief.

And in all these Cases, if the Offender refuses to give Bail, when required, he or she may be committed. *Dalt.* 268.

An Infant, under the Age of Fourteen Years, may demand this Surety, and it shall be granted him. *Dalt.* 269.

But Surety of the Peace, without great and apparent Cause, is not to be granted for or against Persons blind, deaf, dumb, or those who are not of sound Sense and Memory: Yet, if there be Cause, the Justice of Peace, in his Discretion, ought to provide for their Safety. *Ibid.*

Neither is Surety of the Peace grantable by Justices against the Person of a Peer, or a Councillor, or a Sheriff; but the Party grieved, may have Remedy, by *Subpoena* in Chancery.

This Surety may be commanded by Justices, either,

1. By

1. By Word only; the Offender being in his Presence: *How Surety*
 As if he then threaten, or assault another, or doth any *act* of
 Thing tending to the Breach of the Peace, or for any other the Peace
 Mis-behaviour in View of the Justice; or, if Surety be may be
 prayed by any Man against another, then in Presence of the *command-*
 Justice, and the Party praying Surety will be sworn, that *ded.*
 he is afraid of him: In such Cases, the Justice may, by
 Word only, command the Constable, or any other Officer,
 or his own Servant, being then present, to arrest the Of-
 fender, and require him to find Sureties for the Peace; and
 on Refusal, may commit him. *Dalt. 271.*

2. By Warrant, or Precept, in Writing, under his Hand
 and Seal, if the Party be absent, directed to some Officer,
 or other indifferent Person, and containing the Cause, and
 at whose Suit, that the Party may provide Sureties, and
 take them with him.

The Constable, or Officer, before he arrest the Party, *How to*
 ought to acquaint him with the Matter of the War- *be execu-*
 rant, and require him, in the King's Name, to go before a *ted and*
 Justice, and find Sureties: If he refuses, the Officer must *returned.*
 immediately arrest him, and carry him before a Justice,
 or convey him to Goal, there to remain, until he give Se-
 curity, according to the Command of the Warrant: And
 thereupon, the Officer must make Return of his Warrant,
 by certifying how he has executed the same, to the Justice,
 or Court, before whom the Party was, by such Warrant,
 bound to appear.

If the Party will find Sureties, the Officer may not ab-
 solutely arrest him, but may keep him 'til he can procure
 Sureties to come to him: But if he make Resistance, or
 endeavour to escape, the Officer may carry him to Goal,
 or secure him, 'til he can provide a Guard.

When the Offender is taken, and brought before a Justice
 of Peace, if he then refuse to give Security, the Officer,
 without further Warrant, may commit him to Prison, by
 Force of the first Warrant, if he refuse so to do, &c.

If the Party, refusing to find Sureties, is arrested, but not
 brought before a Justice, nor committed to Goal, the Of-
 ficer may be indicted, and fined; and the Party may have
 an Action of false Imprisonment against the Officer: For
 he hath not pursued the Effect of his Warrant. *Dalt. 272.*

Upon a general Warrant, to cause any Man to appear be-
 fore One, or any other Justice of Peace, to find Sureties, &c.
 it is in the Election of the Officer to carry the Party at-
 tached before any Justice, at his Discretion: For the Of-
 ficer is the Minister of Justice; and the Law presumes, that
 he is a Person indifferent, and sworn to execute his Office.

Every

Every Justice of Peace, before whom the Party attached shall come, and tender such Security, as by the Warrant is required, ought to admit the Party to Bail, and bind him and his Sureties in a Recognizance, upon Condition expressed in the Warrant whereupon such Party was taken; and then, upon Request of the Party, may grant a Superfedeas to discharge him from other Arrest for the same Cause.

Superfedeas.

The Form of a Superfedeas.

To all Sheriffs, Constables, and other His Majesty's Officers, within the County of *Essex*, and to every of them.

Essex sc. *W*hereas, C. D. of, &c. *Wheelwright*, hath personally come before me, W. D. Gent. one of His Majesty's Justices of the Peace of the said County, and hath entred into Recognizance, with sufficient Sureties; (that is to say,) himself in Forty Pounds, and L. M. of, &c. and N. O. of, &c. in Twenty Pounds each, upon Condition, That he the said C. D. shall personally appear before His Majesty's Justices of the Peace at the next Court to be held for this County; and in the mean Time, shall keep the Peace towards his said Majesty, and all his People, but more especially towards E. F. of, &c. Planter: 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 C. D. for or by Reason of the said Occasion, and no other; and if he shall be already taken, or imprisoned, for the same, that then you forthwith discharge, and set him at Liberty; for which, this shall be your Warrant. Given under my Hand and Seal, &c.

This Writ of Superfedeas is grantable by any one Justice of Peace, by Virtue of his Office: And every Officer, to whom the same shall be produced, is bound to yield due Obedience thereto, or he may liable to an Action of false Imprisonment, at the Suit of the Party grieved.

Supplicavit.

A Superfedeas is also grantable upon a Supplicavit: This is a Writ issuing out of the Chancery, directed to the Justices of the Peace of the County, and the Sheriff, for taking the Surety of the Peace against a Man; and it is grounded upon a Statute of 1 *Edw. 3. cap. 16.* But as it is a Writ not much in Use, nor grantable without special Cause shewn, upon Oath, in open Court, I shall say no more of it here.

Recognizance

Every Recognizance taken by a Justice, for Surety of the Peace, or Good-behaviour, must be by him certified

to that Court, before whom the Party is bound to appear, must be that it may be, by the Clerk, entred upon Record; and certified if forfeited, Proccs may thereupon issue against the Party to Court. and his Sureties: If the Justice neglects to certify it, he forfeits 10*l.* *Dalt.*

The Party bound, forfeits his Recognizance, if he fails to appear at the Day and Place in the Condition limited, or departs thence without Leave of the Court; as also, by doing any Thing which may tend to the Breach of the Peace, or procuring such Act to be done; as by appearing a Party in an Affray, or unually armed, or assaulting another, or threatening either the Witnesses, or the Person, at whose Suit he is bound; or by imprisoning another without Warrant, &c. And if he break his Recognizance, 'tis a new Offence; for which he may be indicted, fined, and imprisoned. What shall be a Forfeiture.

But Defence of a Man's Person, Family, House, or Goods, or taking Goods wrongfully, but not from the Person of another; or an Offence, in the Execution of his Office, striking any Man; or threatening to beat some absent Person; or Trespasses in Corn, &c. shall not be a Forfeiture of Recognizance. *Nels.* 93.

If the Cause be removed, by Certiorari, into the General Court in Chancery, before the Justice hath certified the Recognizance, to the Clerk of the County Court, then the Party bound need not to appear at such County Court; but the Recognizance, together with the Record of the whole Cause, is, by the Justice, to be certified, as in the Writ of Certiorari, shall be commanded; and the Party bound, shall make his Appearance at the Day and Place by such Writ required. *Nels.* *Dalt.* 278. Appearance.

Upon Appearance of the Party bound, in Court, if the Peace be required towards a particular Person, as well as generally towards all the King's People, then the Party may be continued upon his Recognizance, for Half a Year, or more, if the Court shall see Cause: But if it be not at the Instance of a particular Man, and no Body appear against the Party, he may be discharged.

If the Justice of Peace shall not certify the Recognizance, yet the Party bound ought to appear in Court, and pray, that his Appearance may be recorded. *Dalt.* 279.

If the Party bound, is so sick that he cannot travel, or is imprisoned for some other Cause, or is hindred by Tempest, or Inundation of Waters, so that he cannot appear; upon Proof of such Sicknes, or Inability, by Oath of Witnesses in open Court, he may be continued upon his Recognizance, 'til the next succeeding Court. *Ibid.*

The

Release. The Recognizance may be discharged, in Part, by a Release thereof: If 'tis taken at the Suit of a particular Person, he alone may release it before the Day of Appearance, by coming before the Justice of Peace, and acknowledging such Release; which is to be certified, by such Justice, together with the Recognizance.

Release, to be written under the Condition of the Recognizance.

Memorand. *The aforesaid E. F. personally came before me, W. D. Gent. this Twenty Eighth Day of July, 1733, and did, as much as in him lay, freely release the said Security of the Peace formerly desired by him, as above-mentioned, against the above-bounden C. D. Witness my Hand and Seal.* W. D.

But tho' this Release is certified, as it ought to be, yet it doth not discharge the Appearance of the Party, because he is bound to the King, and likewise to appear, as well as to keep the Peace, which cannot be discharged by the Release of the Party, and therefore he ought to appear at the next Court.

Dis-charge.

A Recognizance may also be discharged by the Death of the King, or by Death of the principal Party bound, but not by the Death of their Sureties; for if 'tis forfeited, their Executors are liable: And notwithstanding the Death of the King, or of the Party bound, yet the Recognizance must be certified. *Nels. 94.*

B I G A M Y.

What it is.

IS a double Marriage, or, the Marriage of Two or more Wives, or Husbands, the first being then living.

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

3 Inst. cap. 27.

But this Statute doth not extend to the Cases here under-mentioned; as, 1. Not to a Person whose Husband or Wife is beyond Sea.

2. Not to such who shall be absent from one another the Space of Seven Years, and the one not knowing the other to be living.

3. Nor to such whose Marriage is, by Sentence of the Ecclesiastical, or other Supreme Court of Judicature, declared void, and the Parties declared capable to marry any other.

4. Not

4. Nor to those who have married within the Years of Consent, *viz.* the Man under 14, and the Woman under 12 Years of Age, who afterwards disagree to that Marriage.

Upon Information made, before a Justice of Peace, against any Person for this Offence, he may issue his Warrant, to cause the Party to come before him, and then proceed, as in other Felonies. *See Tit. Criminals.*

The Offender has Clergy, and may be bailed by Two Justices, whereof One to be of the *Quorum*, and after Examination: But the Party ought to find very sufficient Sureties, and be bound in a considerable Sum.

B L A S P H E M Y.

ANY Person bred in the Christian Religion, and who shall, by Writing, Printing, Teaching, or advised Speaking, deny the Being of a God, or of the Trinity; or assert, that there are more Gods than One; or deny the Christian Religion to be true; or the Holy Scriptures to be of Divine Authority; and convicted thereof, by Indictment, or Information, in the General Court, shall be disabled to hold any Office; and if he hath any, the same shall be void. Laws of Virginia, pag. 178. 1st Offence.

If convicted a Second Time, he shall be disabled to sue in any Court of Record, or to be a Guardian, or Executor, or Administrator, and incapable of any Gift, or Legacy, or of any Office; and shall be imprisoned Three Years, without Bail, or Mainprise. *4 Annæ, cap. 30.* 2d Offence.

Conviction must be by Oath of Two credible Witnesses.

Information for Words spoken, must be upon Oath, before a Justice of Peace, within One Month after the Words spoken; and Prosecution, within Twelve Months after such Information. Information.

But if any Person convicted of the first Offence, within Six Months after such Conviction, shall make a public Acknowledgement and Renunciation of his Offence, in that Court where he was convicted, he shall be discharged from the Penalties and Disabilities.

If Information for Words spoken be made to a Justice of Peace, he is to administer to the Informers, the following Oath, *viz.*

THE Information which you shall give on the Behalf of our Sovereign Lord the King, against A. B. of, &c. Surgeon, shall be the Truth, the whole Truth, and nothing but the Truth.
So help you God.

Then

Blasphemy. Buggery.

Then take the Informations, severally thus:

Goochland *sc.*

The Informations of *C. D. E. F.* of, &c. Planters, against *A. B.* of, &c. Surgeon, for blasphemous Words by him spoken, made before me, *I. F.* Gent. one of His Majesty's Justices of the Peace of the said County of *Goochland*, this Eleventh Day of *August*, 1733.

TH E said *C. D.* being sworn, saith, *That on the Second Day of this present Month of August, he the said A. B. (i) at the House of G. H. in the Parish of and County aforesaid, Ordinary-keeper, did advisedly speak these Words, viz. ---- [here recite the express Words ;] ---- and further saith not.* C. D.
 Sworn before me,
I. F.

(i) Here
mention
the Place.

And in like Manner continue the other Informations: There must be Two credible Witnesses, at least, to prove blasphemous Words spoken.

After such Information exhibited, and by the Justice of Peace certified to the Attorney General, Process against the Offender will be issued out of the Secretary's Office.

B U G G E R Y.

What
makes the
Offence.

Punish-
ment.

TH I S is an Offence against the Law of God, and the Order of Nature, committed by Mankind with Mankind, or Beasts, or by Women with Beasts. 3 *Inst.* 59.

By the Statute, 25 *Hen.* 8. *cap.* 6. revived, 5 *Eliz.* *cap.* 17. it is Enacted, ' If any Person shall commit the detestable Sin of Buggery with Mankind, or Beast, and be thereof convicted, such Person shall suffer Death, as a Felon, and be excluded all Benefit of Clergy. '

The Party consenting to the Fact, is guilty of Felony, as well as the Party committing the Fact; unless the Party consenting, is within the Age of Discretion, *viz.* the Man under Fourteen, or the Woman under Twelve; and then 'tis not Felony in them.

Upon Information made before a Justice of Peace against any Person for this Offence, he may issue his Warrant to apprehend the Offender, and thereupon proceed, as in other Felonies. See *Tit. Criminals.*

The Offender ought not to be bailed, but upon great Discretion, by Two or Three Justices, whereof One to be of the *Quorum*, who must be present, and take the Examinations, in Writing; and then may admit the Party accused

accused to be bail'd, if it stand indifferent whether he is guilty of the Fact, or not.

BURGLARY.

IS a breaking and entring of a Mansion-house, in the Night Time, with an Intent to kill, or steal, though a Burglar; none be killed, nor any Thing stolen. *Moor.* 660. Who is

But an Infant under Fourteen, a natural Fool, or Person *Non compos Mentis*, or a very poor Person, who shall enter a House being compell'd by Hunger, are not Burglars: *Dalt.* 362.

Upon this Definition, it may be considered,

1. What is a Breaking; and where Burglary may be committed without an actual Breaking.
2. What is an Entry; and where Burglary may be done without an actual Entry by the Person himself.
3. What the Law esteems a Mansion-house, and what Places make the Offence.
4. The Time.
5. The Intention of the Party.

1. The Entering of an House, the Doors being open, is a Breaking, in Law; yet, 'tis not Burglary, unless the Door, Window, or Wall, are broken, or the Latch drawn, or a Lock broken, or Door unlock'd: If a Man comes into an House, enters into a Chamber, and there breaks open a Trunk, and steals, this is no Burglary, because the Trunk is no Part of the House; but if he break open the Chamber Door, or any Door of a Cupboard, &c. which is fix'd to the Freehold, this is an actual Breaking the House. *Keel* 58, 59. Felonious
Breaking.

2. Burglary may be committed without an actual Breaking; Entry.

By those who watch to prevent a Discovery, whilst their Companions break the House. *11 H. 4. cap. 13.*

By coming down a Chimney. *Crompt.* 32.

By entring with the Help of a Key. *Dalt.* 360.

By entring, the Door being open, and the Master of the House retiring to a Chamber, which the Offender breaks open. *Moor.* 660.

By breaking a Window, and drawing out Goods. *Poph.* 42.

By pretending to be rob'd, raising Hue and Cry, and with a Constable demanding Entry; the Owner opens his Door, then they bind the Constable, and rob the House. *Dalt.* 360.

By

Burglary.

By the Help of a Servant within, opening the Door, or Window, and the Thief enters; 'tis Burglary in him, and Robbery in the Servant. *Nels.* 117.

If a Servant draws a Latch, and enters the Chamber of his Master, with an Intent to murder, or rob him, 'tis Burglary. *Hutt.* 20.

By putting the Hand, or a Hook, &c. in at the Window, and drawing out Goods. *Dalt.* 359.

What is a Mansion House. 3. A Church, Court House, or other Building set a-part for Public Use, is a Mansion-house within the Law. *Dalt.* 361.

So is every Dwelling House, and a Barn, Stable, or other Out House adjoining, or contiguous to a Dwelling House.

And every Ware-house, or Store-house. 3 & 4 *Geo.* 2. *cap.* 4.

And also the Chamber of a Guest entertain'd in any Man's House, or of a Traveler, or other Person, lodging in any House of public Entertainment; or of a Boarder in any Person's House: If the Master of the House, or any other Person, enter such Chamber in the Night Time, with Intent to kill, or steal, 'tis Burglary. *Dalt.* 359.

Time. 4. The Time; to break a House after Sun-set, and before Sun rising, is Burglary.

Laws of Virginia, *pag.* 437. And by a late Act of Assembly, 3 & 4 *Geo.* 2. *cap.* 4. founded upon divers Statutes, it is Enacted, ' That if a Ware-house, or Store-house, is broke open in the Night, or Day Time, and Goods stol'n, to the Value of Twenty Shillings, whether any Person be in such House or not; the Offenders, and every Person who shall aid, assist, hire, counsel, or command such Breaking, &c. and shall be thereof convicted, or shall stand mute, or will not answer directly to the Indictment; or shall peremptorily challenge above Twenty of the Jury, shall be debared the Benefit of Clergy.

Intention. 5. It must appear that the Intent of the Offender was to kill, or rob, otherwise 'tis neither Burglary, nor Felony: To break a House in the Night, with Intent to kill, or steal, is Burglary, tho' no Person be hurt, nor Goods stol'n; but if a Man break an House, only intending to beat another, 'tis but Trespass. *Dalt.* 362.

Entering in the Day Time, and lying privately 'til Night, then robs, and departs, 'tis not Burglary: But if he breaks open a Door to get out, 'tis Burglary. *Nels.* 118.

Punishment. By the Statute, of 18 *Eliz.* *cap.* 6. Clergy is taken away in all Cases of Burglary; and the Offender, if convicted, shall be hang'd.

Persons

Burglary.

65

Persons indicted of Burglary are not bailable by Justices of Peace.

When a Burglary is committed, if the Felon is taken in the Fact, or upon Pursuit, and brought before a Justice of Peace, he is to take the Felon's Examination, as also the Depositions of the Witnesses, severally, and bind them in a Recognizance, to appear before the Court by him to be summoned, for further Examination of the Prisoner; then and there to give Evidence, and not to depart without Leave of the Court; which being done, the Felon must be committed to Goal.

Mittimus.

To the Sheriff of Goochland County, or to the Keeper of the Common Goal of the said County.

Goochland sc. *T H E S E* are to charge and command you to receive into your Goal the Body of A. B. late of the Parish of Saint Martin, in the County of Hanover, Shoe-maker, taken, and brought before me, for Felony and Burglary by him committed, in Breaking and Entering the Dwelling-house of C. D. of the Parish of in the County of Goochland, Planter, on the Tenth of this present Month of August, in the Night Time, and feloniously Stealing thence to the Value of Ten Pounds lawful Money of Virginia, of the Goods and Chattels of the said C. D. wherewith the said A. B. stands charged before me: (k) And you are hereby commanded, in His Majesty's Name, to keep the said A. B. safely in your Goal and Custody, without Bail, or Mainprise, until he shall be thence discharged by due Course of Law. Given under my Hand and Seal, &c.

(k) Or, and the said A. B. having, before me, confessed the same. Information of Burglary.

But if the Felon is not taken in the Fact, or upon Pursuit, and the Party whose House was broke open, shall come before a Justice of Peace, and upon Oath, charge any Person with the Felony, then the Information may be recorded, thus;

Goochland, sc.

The Information of C. D. of the Parish of in the said County, Planter, made upon Oath, before me, I. F. Gent. one of his Majesty's Justices of the Peace for the County aforesaid, this Eleventh Day of August, 1733.

T H E said C. D. maketh Oath, That on the Tenth of this present Month of August, in the Night Time his Mansion-house (or Ware-house, or Store-house) was feloniously

Burglary.

feloniously broke open, and divers Goods and Chattels, viz. [here describe particularly the Goods taken,] of the Value of Ten Pounds lawful Money of Virginia, were thence stolen and carried away; and that he hath great Cause to suspect A. B. of the Parish of Saint Martin, in the County of Hanover, Shoe-maker, to have broken his said House, and stolen, and carried away, the Goods and Chattels aforesaid.

C. D.

Sworn before me,
I. F.

And thereupon, the Justice may issue his Warrant to apprehend the Felon.

To all Sherifs, Constables, and other His Majesty's Officers, within the County of Goochland.

Warrant. Goochland sc. *W*Hereas, C. D. of, &c. Planter, hath this Day made Oath before me, I. F. Gent. one of His Majesty's Justices of the Peace for the said County, That on the Tenth of this present Month of August, in the Night Time, his House was broke open, and divers Goods and Chattels, [here describe the Particulars,] of the Value of Ten Pounds, were thence feloniously stolen, and carried away; and that he hath great Cause to suspect A. B. late of the Parish of Saint Martin, in the County of Hanover, Shoe-maker, an idle Person, to have stolen, and carried away, the Goods and Chattels aforesaid: The said A. B. is a Person, [here describe his Stature, Complexion, Age, Cloths, &c.] These are therefore, in His Majesty's Name, to command and require you, and each of you, to search diligently within your several Precincts, for the said A. B.; and likewise to make Hue and Cry after him, from Town to Town, and from County to County, as well by Horsemen, as Footmen; and if you shall find the said A. B. that then you apprehend him, and carry him before some Justice of the County where he shall be taken, and there deliver him, together with this Warrant. Given under my Hand and Seal, &c.

The Offender being apprehended upon this Warrant, either in the same, or another County, is to be proceeded against, as directed in other Cases of Felony. See *Tit. Criminals.*

But if the Person of the Felon is certainly known, and he charged with the Burglary, upon Oath, the Warrant may be with, or without a Clause of Hue and Cry, and
with,

with, or without a particular Description of his Person, &c. and returnable before the Justice who grants the Warrant, or before any other Justice of the same County, as the Circumstances of the Case may require: The Justice may also, if necessary, issue his Precept to require Witnesses to appear before him, and give Evidence.

To G. T. or any other Constable of Goochland County.

Goochland sc. *Y*O U are hereby commanded, in His Majesty's Name, forthwith to Summon E. F. G. H. &c. of, &c. to come before me, at my House in this County, To-morrow Morning by Ten a Clock, to testify their Knowledge concerning a certain Burglary and Felony suspected to be done by A. B. of, &c.; and that you be there likewise with this Precept, to shew how you have executed the same. Given under my Hand, this Twelfth Day of August, 1733.

Summons

When a Felon is taken, and brought before a Justice of Peace, he is to take the Examination of the Felon, under his Hand, in Writing, but not upon Oath, attested by the Justice: Then the Witnesses must be sworn, examined, and their Depositions taken in Writing, by them severally subscribed; after which, they are to enter into Recognizance for their Appearance before the Court to be summoned and held, for further Examination of the Prisoner; and the Examinations so taken by the Justice, as also the Recognizance enter'd into by the Witnesses, must be by the Justice certify'd, and returned to such Court. The Forms of Examination, Recognizance, and Justices Precept, for summoning the Court. See *Tit. Criminals*.

BURNING of HOUSES.

BY the Common Law, maliciously and voluntarily to burn the House of another, is Felony. *Dalt.* 376. And by Act of Assembly, 3 & 4 Geo. 2. cap. 4. 'Every Person who shall maliciously and willingly burn any Tobacco-house, Ware-house, Store-house, or House, or Place, wherein Corn, or other Grain, is kept, or any other House whatever; and all Accessories before, or after the Fact, and who shall be thereof convicted, or attainted, or shall stand mute, or not answer directly to the Indictment, or peremptorily challenge above Twenty of the Jury, shall be adjudged a Felon, and suffer Death, without Benefit of Clergy.'

Burning another's House, Felony. Laws of Virginia, pag. 437. No Clergy.

What
Acts make
the Of-
fence.

It may be necessary, under this Head, to consider what Acts shall make a Man guilty of this Offence:

1. There must be an actual Burning: If a House is set on Fire, tho' only Part of it be burnt, it is Felony. *Dalt.* 377.
2. It must be done maliciously, and voluntarily: If it happens by Mischance, or Negligence, it is not Felony.

Sometimes the Law implies Malice; as if a Man intends to burn the House of *A*, 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. *Nels.* 120.

3. It must be the House of another: If a Man will burn his own House, this is no Felony; but if thereby, his Neighbour's House is set on Fire, this may be Felony, because it may be done with a malicious Intent.

Burning
a Ship,
Felony.

A Captain, Master, or Mariner, burning or destroying a Ship, or procuring the same to be done, to the Prejudice of the Owner, or Merchant, shall suffer Death, as a Felon, without Benefit of Clergy: If the Fact is committed where the Admiral hath Jurisdiction, it shall be tried before a Court of Vice-Admiralty. 22 & 23 *Car.* 2. cap. 7.

Bail is taken away from Burners of Houses, by the Statute of *Westm.* 1. cap. 15.

A Warrant, for burning a House.

To all Constables, and other His Majesty's Officers, of the County of *Charles-City*.

Warrant. *Charles-City* sc. *W*Hereas, C. D. of, &c. Planter, hath this Day made Oath before me, B. H. Gent. a Justice of Peace of the said County, and thereby charged E. F. of, &c. G. H. of, &c. and I. K. of, &c. with the felonious Burning the Tobacco House of C. D. on Tuesday last, being the Tenth Day of this present Month: These are therefore, in His Majesty's Name, to command you to apprehend the said E. F. G. H. I. K. and every of them respectively, and to bring them before me, or some other Justice of this County, to be examined concerning the Premises, wherewith they are charged, Given under my Hand and Seal, &c.

If it be for Suspicion of the Felony; say,

*W*Hereas, Complaint is this Day made to me, B. H. &c. by C. D. of, &c. That on the Tenth Day of this present

present Month, his Tobacco House was maliciously set on Fire, and burnt; and that he hath great Cause to suspect, that I. F. of, &c. did maliciously fire his said House; and that G. H. of, &c. and I. K. of, &c. did aid and assist the said I. F. in the same Felony: These, &c. --- as before.

If the Offenders are fled, or abscond, add to this Warrant, a Clause to search, and make Hue and Cry; and also, if necessary, a particular Description of their Persons.

CERTIORARI

THIS is a Writ issuing out of the Chancery, directed to an Inferior Court, to call up the Record of a Cause there depending, that conscionable Justice may be therein ministred, upon Complaint made, by Bill, that the Party seeking the said Writ, hath received hard Dealing in the said Court. *Fitzh. Nat. Brev. 242.*

It may be obtained to remove an Indictment, or a Recognizance, &c. or any Process in Civil Causes, before Judgment given in the Inferior Court; and in some Cases, after Judgment, but before Execution; and it removes the whole Record.

It may be also awarded to Justices of Peace, to remove Indictments, Informations, &c. given in before them.

A Certiorari to remove an Indictment is good, altho' it do bear Date before the taking of the Indictment, which is to be removed by the Certiorari: For the Date is not material, and it may be granted to remove a subsequent Indictment, as well as an Indictment preceding the Certiorari. *Style 155.*

It ought to be granted upon a Matter in Law only, and not upon a Matter of Fact: For Matters of Law only, are determinable by the Court, and Matters of Fact, by Juries. *157.*

It doth not lie to remove a Cause out of an Inferior Court, after a Verdict is given in it; for then the Cause is determined, and so in vain to remove it, but the Process then is by Writ of Error. *Ibid.*

But if the Justices of an Inferiour Court certify to the Judges in Chancery, that a Jury do find a Verdict against the Evidence given them; thereupon, the Superior Court usually, upon Paiment of Costs, grants a new Trial. *Style 156.*

Proceed- Upon Delivery of this Writ of Certiorari, to a Justice
ings upon of Peace, he is to stay all further Proceedings in the Cause
the Writ. specified in such Writ, and must certify the whole Record,
at his Peril, and make Return thereof to that Court whence
the Writ issues.

Return of a Certiorari, to be endorsed upon the Back of
the Writ.

Return. *THE Execution of the within Writ appears in a certain
Schedule to this Writ annexed.* R. B. Gent.

The Schedule, or Certificate of the Record, by itself, and
annexed to the Writ.

Surry sc. *I R. B. Gent. one of His Majesty's Justices of
the Peace for the County of Surry, do certify
to His Majesty, in his Court of Chancery, That I, by Vir-
tue of this Writ hereto annexed, to me delivered, the said
Information in the said Writ mentioned, and all Matters
touching the same, to His Majesty do hereby distinctly
send, under my Seal, as in the said Writ is of me required.
Dated at my House, in the said County of Surry, this Twen-
tieth Day of August, Anno Dom. 1733.*

When a Certificate of a Record is made by an Inferior
Court, or by a Justice of Peace, or Coroner, by Virtue of
a Certiorari, to them respectively directed, they ought to
make the Certificate as they will stand to it, at their Pe-
ril, for it cannot be amended after it is filed; and if the
Record be not truly certified, there lies an Action on the
Case, against the Party that made the Certificate. *Style*
155.

If a Certiorari to certify a Record be, by some Mishap,
so torn, or defaced, that the Record cannot be perfectly
certified by it, the Party may have an *alias* Certiorari:
But it must be upon Motion to the Court, because he had
no Fruit of the first; and so it is all one, as if he had not
any. *Style 158.*

But this Writ is seldom used in Criminal Proceedings, and
will be granted only in extraordinary Cases, and upon Spe-
cial Cause shewn, *viz.* that there cannot be an indifferent
Trial had in the County where the Information was made,
or the Indictment found.

Challenge. *See Furies.*

Champerty. *See Maintenance.*

C H U R C H W A R D E N S.

Churches. Glebes. Vestries. Minister. Reader. Clerk.

Churchwardens are very ancient Officers, and, by the Common Law, are made a Corporation to take Care of the Goods of the Church, the Property whereof is vested in them: They are to be Yearly chosen, according to the Custom of every several Place, to take Care of such Things as belong to the Church, Church-yard, or Poor; and to observe the Behaviour of the Parishioners, in such Matters, as appertain to the Ecclesiastical Jurisdiction. *Lamb. Duty Ch. W.*

The Antiquity, Power, & Duty, of Churchwardens.

They are a Corporation, only as to Moveables, *viz.* to take Goods, but not Lands, for the Use of the Church: For they cannot prescribe, as Churchwardens, to have Lands; neither can they have any Action, at Common Law, to recover Goods, of which they were never possessed, though they may recover such Goods, by Bill in Equity; but if once they had Possession, then they may have an Action of Trespass, &c. and recover Damages, to the Use of the Parish, if such Goods are taken away, or abused; and they may prefer an Indictment of Robbery, if stolen: But they cannot sell such Goods, or dispose of them, without Assent of the Parish; if they do, the Parishioners may chuse new Officers, who may have an Action of Accompt against them. *Nels. 139.*

They may maintain an Action for Defacing a Monument in the Church: But if any Thing belonging to the Freehold, is broken, or cut down, as the Walls, Windows, Doors, &c. Trees in the Church-yard, &c. the Parson, or Vicar, and not the Churchwardens, shall have an Action. *2 Cro. 367.*

They may apprehend those who disturb the Minister, during Divine Service, and bring them before a Justice of Peace.

They are to present Persons not coming to Church; those who prophane the Sabbath, by Working, Traveling, Tippling at Ordinaries, Drunkenness, Swearing, Cursing, and all Persons who shall transgress any Penal Laws, made for the Restraint of Vice and Immorality.

They are to accompt, at the End of every Year, and to deliver what remains in their Hands, to the new Churchwardens; upon Refusal, the new Officers may have an Action against them.

By the Custom of *Virginia*, the Churchwardens have proper Jurisdiction over Seats in Churches, and may place, or displace, whom they think fit.

But a Man may have a Seat in a Church, appendant to his Estate, and belonging to his particular Family, and may prescribe, that he, and all those whose Estate he hath, &c. usually set there, and repaired the Seat: In such Case, the Churchwardens have no Power over such Seat; and the Temporal Courts give Remedy in Case of Disturbance.

I shall now proceed to recite the Laws of this Colony, relating to the Church, and the Election and Duty of Vestries and Churchwardens.

A Church
to be e-
rected in
each Pa-
rish,

Laws of
Virginia,
pag. 2,

Vestries,
& Church
wardens.
pag. 3.

Shall
take the
Oaths, &c

A Church shall be built in every Parish of this Dominion: But where any Parish shall be poor, and unable to bear that Charge, there they may build a Chapel, at their own Cost, and such poor Parish shall be united to the next Parish. 13 *Car. 2. cap. 1.*

The major Part of the House-keepers in such Parish shall choose Twelve of the most able Men therein, to be a Vestry: The Minister and Vestry shall, Annually, choose Two of the Vestrymen to be Churchwardens: If a Vestryman dies, or removes out of the Parish, the Minister and Vestry shall choose another in his Room.

No Person shall be admitted a Vestryman, until he has taken the Oaths, and subscribed, to be conformable to the Doctrine and Discipline of the Church of *England*, as required by Act of Parliament.

The Oaths and Declaration to be taken, and subscribed, by Vestrymen, Churchwardens, and other Officers, are these, enjoined by the Statute, 1 *W. & M. cap. 1.*

The
Oaths, &
Declara-
tion.

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 by the Pope, or any Authority of the See of Rome, may be deposed by their Subjects, or any other whatsoever: And I do declare, That no Foreign Prince, Person, Prelate, State, or Potentate, hath, or ought to have, any Jurisdiction, Power, Superiority, Pre-eminence, or Authority, Ecclesiastical or Spiritual, within this Realm.*
So help me God.

The Declaration.

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.*

The Oath of a Churchwarden.

YOU shall execute the Office of a Churchwarden, in the Parish where you are chosen for this ensuing Year, according to your Skill and Discretion, in His Majesty's Laws Ecclesiastical, now in Force. So help you God.

No Minister shall be admitted to the Cure of any Parish, unless he produces, to the Governor, a Testimonial of his Ordination, and subscribes to be conformable to the Doctrine and Discipline of the Church of *England*, as by Law established; and thereupon, the Governor may induct such Minister into any Parish that shall present him: Any other Person presuming to teach, or preach, may be suspended and silenced, by Order of Governor and Council; and if he obstinately persists, shall be obliged to depart the Country. 13 Car. 2. cap. 4.

Every Parish, where there shall not be a Minister to officiate every *Sunday*, may choose a Reader, to read Divine Service every intervening *Sunday*. cap. 5.

The Canons of the Church of *England* shall be observed, and the Liturgy read every *Sunday*. cap. 6.

No Minister, or Reader, shall teach, or expound, any Catechism, other than that appointed by the Canons of the Church of *England*: And no (l) Reader shall expound any Catechism, or the Scriptures. cap. 7.

Ministers shall preach every *Sunday*, viz. one *Sunday* in every Month at each Chapel in their respective Parishes, and the other *Sundays* at the Parish Church; and shall there administer the Sacrament, Twice in a Year, at least. cap. 8.

January 30, shall be kept an Annual Fast, in Commemoration of the Massacre of King *Charles I.* cap. 10.

May 29, an Annual Holy Day, for the Restoration of King *Charles II.* cap. 11.

Sept. 13, to be Annually kept Holy, in Commemoration of a desperate Conspiracy and Plot, which should have been executed in this Colony, on that Day, *Anno* 1663, but was discovered. 15 Car. 2. cap. 14.

Burying

Ministers,
how to be
qualified,
& induc-
ted.

Laws of
Virginia,
pag. 3.

Readers.

Canons,
& Litur-
gy. p. 4.
Cate-
chism.

(l) Lay
Readers.
Preach-
ing, and
Adminis-
tration of
the Sacra-
ment.

Public
Fasts and
Holy Days

pag. 5.
pag. 13.

Burying
Places, &
Burials.

Laws of
Virginia,
pag. 6.

Burying Places shall be appointed, set a-part, and kept fenced in, for public Burial, in every Parish: And, upon the Decease of any Person, Three or Four Neighbours shall be called, to view the Corps, in Case of Suspicion, or to accompany the Body to the Grave: No Person, Free, or a Servant, shall be buried in any other Place, except otherwise by him or her desired, or appointed. 13 Car. 2. cap. 14.

Church-
warden's
Duty.

Churchwardens shall keep the Church in Repair, and provide Books and decent Ornaments, viz. a great Bible, Two Common-Prayer Books, a Communion Cloth and Napkins, a Pulpit and Cushion; and also, if the Ability of the Parish will permit, Communion Plate, Pulpit Cloth, and Bell: They shall see the Minister's Salary levied: They shall account to the Vestry, when by them required: The Vestry may levy upon the Parish, the Disbursements expended by the Churchwardens, and may give them a Discharge for what they have received, and accounted for, to the Use of the Parish. cap. 15.

Work-
houses.
pag. 48.

The Justices of each County Court, assisted by the Vestries, may build Houses for Educating poor Children in Spinning, Weaving, and other Trades: And they shall have Power to take the Children of poor Parents, and put them to Work in such Houses. 20 Car. 2. cap. 5.

Appren-
tices.
pag. 57.

Churchwardens shall, Annually, give an Account to the Orphan's Court, of all poor Children in their Parish, whose Parents are unable to bring them up: Such poor Children may, by the County Courts, be bound Apprentices, the Males 'til Twenty One, and Females 'til Eighteen Years of Age, to Tradesmen, or any necessary Employment. 24 Car. 2. cap. 7.

Distur-
bance in
Church.
pag. 83.

Persons causing Disturbance in the Church, during the Time of Divine Service, shall be put under immediate Restraint by any Justice of Peace, Sheriff, or other Officer, then present, and forfeit 200 lb. Tobacco, and Cask, for the first Offence; and for every Offence afterwards, 500 lb. Tobacco, and Cask; recoverable by the Churchwardens, before a Justice of Peace, to the Use of the Parish, and leviable, by the Justice's Warrant to the Sheriff, upon the Estate of the Offender: Justice of Peace neglecting to put this Law in Execution, forfeits 500 lb. Tobacco, and Cask, to the Parish. 32 Car. 2. cap. 13.

Absence
from
Church,
propha-
ning the
Sabbath.

If any Person, not being an Infant, nor Protestant Dissenter, shall wilfully absent him or herself from Divine Service, at the Parish Church or Chapel, or other Place of Public Worship tolerated by Law, during the Space of One Month; or shall not continue there 'til the Service is ended;

ended; or if any Person shall, on a *Sunday*, be present at any disorderly Meeting, or Gaming, or Tipling; or shall travel on the Road, except to and from Church, or in Cases of Necessity, or Charity; or shall, on that Day, work in Corn, Tobacco, or do any other Labour, except for necessary Sustenance: Every Person so offending, shall pay 5 s. or receive 10 Lashes: The like Penalty for being drunk, or swearing, or cursing: Every Person, not being a Servant, or Slave, convicted of Adultery, forfeits 1000 *lb.* Tobacco, and Cask; or of Fornication, 500 *lb.* Tobacco, and Cask; failing to pay, in either Case, 25 Lashes: The Fines, in all these Cases, are recoverable by, and shall be paid to, the Churchwardens, and by them to be accounted for to the Vestry, for the Use of the Poor: The Vestry shall, Annually, on *Easter Tuesday*, if fair, or else the next fair Day, distribute the Fines to the Poor. 4 *Annæ*, cap. 30.

Churchwardens may seize and sell Horses, Cattle, or Hogs, belonging to any Slave, or of any Slave's Mark, to the Use of the Poor. 4 *Annæ*, cap. 49.

They may also seize any Slave, freed without Order of the Governor and Council, and residing within the Parish One Month after so freed; but shall sell such Slave at the next County Court held after Seizure, by public Auction, to the highest Bidder, for the Use of the Parish. 9 *Geo.* 1. cap. 4.

The Mother of every Bastard Child, shall pay 500 *lb.* Tobacco, or 50 s. to the Churchwardens of the Parish wherein she shall be delivered: And the Party in whose House such Child shall be born, failing to give Notice of such Birth to the Churchwardens, or one of them, or suffering the Mother to escape, shall be liable to the like Penalty; recoverable by the Churchwardens, and by them to be accounted for, to the Use of the Parish. 1 *Geo.* 2. cap. 7.

Duty of Churchwardens, and Vestries, in processioning Lands, as directed by this Act, *For settling the Titles and Bounds of Lands, &c.* 9 *Annæ*, cap. 13. See *Tit. Processioning*. The Penalties on other Persons neglecting their Duty, as required by this Act, may be recovered by the Churchwardens, to the Use of the Parish, to be applied for purchasing Ornaments.

The Minister of every Parish, or the Clerk, during a Vacancy, shall keep a Register of all Births, Christnings, and Deaths, within their respective Parishes; the Names of Persons born, Male, or Female, Free, or Slaves; the like of Persons baptised; the Names of Persons deceased, and of the Owners of such as die Slaves: A Copy of such Register, sign'd by the Minister, or Clerk, keeping the same, shall be

Drun-
kenness,
Swearing,
Adultery,
or Forni-
cation.

Laws of
Virginia,
pag. 180.

Horses,
&c. be-
longing to
a Slave,
may be
seized &
sold.

pag. 226.
& Slaves
freed with

outlawful
Warrant.

pag. 342.

Bastards.

pag. 398.

Proces-
sioning.

pag. 265,

266.

Register,

pag. 292.

be returned to the Secretary's Office, *April 20*, and *October 20*, Annually, on Penalty of 200 *lb.* Tobacco for every Month, neglected to be kept, or returned: Fee to the Minister, or Clerk, keeping such Register, 3 *lb.* Tobacco for every Person registred; to be paid by the Parents of Free Children, or the Owners of Slaves, for Births and Christnings; and for Deaths, by the Party giving Notice of such Death. Notice of Births shall be given to the Minister, or Clerk of the Parish, by the Parents of Free Children, and by the Owners, or Overseers of Slaves; and of Deaths, by the Master, or Mistress, or Overseer, of the Family where any Person shall die, on Penalty of 200 *lb.* Tobacco, for every Person neglected, to the Informer, and Parish; recoverable before a Justice of Peace: The Fees for Registring, in Case of Refusal of Paiment, may be levied by Distress. 12 *Annæ*, cap. 4.

Minister's Salary. pag. 392. The Minister of every Parish in this Dominion shall have an annual Salary of 16000 *lb.* Tobacco, and Cask, of the Growth of his Parish. 12 *Geo.* 1. cap. 4.

Parish Levy. pag. 393. The respective Vestries shall lay the Parish Levy before *October 15*, Annually: Shall allow 10 *per Cent.* for Conveniency, or more, if the Parish is remote from a Landing; and 8 *per Cent.* for Cask, upon all Tobacco due and payable with Cask: Collectors shall make the same Allowances to Persons paying the Levies in Cask.

Collectors. They shall appoint Collectors of the Parish Levy, and take Bond, with sufficient Sureties, for Paiment of the Parish Creditors.

The Collectors shall have the Benefit of the Allowance for Conveniency; in Case of Refusal of Paiment of the Parish Levies, or any Part of the same, they may distrain; shall pay the Creditors before 31 *March*, Annually; and where Tobacco is due and paible with Cask, in Hogsheads containing 700 *lb.* Nett, at least, convenient within the Parish.

Remedy, if Tobacco due, is not levied, or paid. Glebes. If the Vestry refuses to levy Tobacco due to the Minister, or any other Parish Creditor; or if the Collector fails in Paiment, every Vestryman, and the Collector, shall be liable for Damages to the Party grieved.

In every Parish of this Dominion, where a good and convenient Glebe is not already appropriated, the Vestry may purchase a good Tract of Land, containing 200 Acres, at least, and appropriate the same for a Glebe, to the Use of the Minister of such Parish, for the Time being, and his Successors, for ever: And where a convenient Mansion, and other Out-houses, are not already built, the Vestry may cause such to be erected upon the Glebe Land; and may levy, upon the Parish, the Charge of such Lands and Tenements.

The

The Minister shall keep, and at his Removal, or Death, leave all the Tenements upon his Glebe, in good and tenantable Repair ; (Accidents, by Fire and Tempest, excepted.) If he neglects, or fails, the Churchwardens may recover Damages of him, or his Executors, to be applied towards Repairs.

Repairs.
Laws of
Virginia,
pag. 394.

When any Parish is vacant, the Vestry shall cause all Tenements upon the Glebe to be put in good Repair, fit for Reception of the next Minister : They may also levy Tobacco, not exceeding 16000 *lb.* with Cask, to be applied in paying some neighbouring Minister for serving in the Cure of the Parish, during such Vacancy.

Vacancies.

No Person shall be accounted an Inhabitant, so as to be legally settled in any Parish, until he or she has actually resided in such Parish, One whole Year. 1 *Geo. 2. cap. 7.*

What
shall be a
legal Set-
tlement.

Upon Complaint made to a Justice of Peace, by the Churchwardens, that a poor Person is come into the Parish, and likely to become chargeable thereto, the Justice may cause such poor Person to be removed, to the Parish where he or she was last legally settled ; but if such poor Person be sick, or disabled, and cannot be removed without Danger of Life, the Churchwardens shall provide for him, 'til Recovery, at the Parish Charge, and then cause him or her to be removed : The Parish, where such Person was last legally settled, shall repay all Charges ; and if the Churchwardens of such Parish, refuse to receive such Poor, upon the Justice's Warrant, every Churchwarden refusing, forfeits 20 *l.* to the Poor of that Parish, whence the Removal is made, and the Informer : If the Vestry of that Parish, where such Poor was last legally settled, refuses to repay the Charges of Maintenance, Cure, &c. the Court of that County wherein such Parish lies, shall, upon Petition to them exhibited, assess such Charges upon the Vestrymen refusing, and the Sheriff shall levy the same, and Costs, by Distress ; which shall be paid to the Churchwardens of the Parish grieved, to the Use of such Parish.

pag. 396.
Removal
of Poor.

If a Master of a Ship, or Vessel, shall turn away, or put on Shore, any sick or disabled Sailor, without providing for his Maintenance and Cure, such Master forfeits 10 *l.* to the Churchwardens of the Parish, where such Sailor is put on Shore ; and shall be liable to the Action of the Churchwardens of that, or any other Parish, where such Sailor shall become chargeable, for his Maintenance and Cure.

Sick, or
disabled
Sailors.
pag. 397.

Upon Certificate from the County Court, the Churchwardens may bind out to Service, or Apprenticeship, the Children of such poor Parents who neglect, or are unable, to provide for their Education.

Poor
Children

The

Presentments. The Churchwardens of every Parish in this Colony, shall make Presentment of all Offences against the Act.
 Laws of Virginia, 4 *Annæ*, cap. 30, viz.
 pag. 419.

Adultery, &
 Fornication.

Those guilty of either of these Offences, not being a Servant, or Slave: Conviction must be by Confession, or Oath of Two, or more, credible Witnesses.

Blasphemy.

Those, who by Writing, Printing, Teaching, or advised Speaking, deny the Being of a God, or the Trinity: Those that assert there are more Gods than One: Those that deny the Truth of the Christian Religion, or the Divine Authority of the Scriptures. Information for Words spoken, must be within One Month, before a Justice of Peace; and Prosecution, in Twelve Months after such Information.

Church.

Those who wilfully absent themselves from Divine Service, One Month, except Infants, under the Age of Twenty One Years, or Protestant Dissenters: Those that do not, when at Church, in a decent and orderly Manner, continue there 'til the Service is ended.

Drunkenness,
 Swearing, &
 Cursing.

Convicted by One Witness. Prosecution in Two Months.

Sabbath.

Those who break it, by being present at any disorderly Meeting, or Gaming, or Tipling: Those who make any Journey, or travel upon the Road, except to and from Church, or in Case of Necessity, or Charity: Those who work in Corn, Tobacco, or any other Labour, except for necessary Sustenance of Man, or Beast. Prosecution in Two Months.

Presentments for any of these Offences, must be made within the respective Times limited for Prosecution, at, and to the County Court held next, after such Offence shall come to the Churchwarden's Knowledge; and the Court may proceed thereupon, as if such Presentment had been made by a Grand Jury. 3 & 4 *Geo. 2. cap. 2.*

Laws to
 be pro-

A Copy of each of the several Acts of Assembly here under-mentioned, shall be provided by the Churchwardens of every Parish, at the Charge of the Parish, and read in publish'd. all Churches and Chapels respectively, by the Minister, Clerk,

Clerk, or Reader, immediately after Divine Service, at the respective Times, in the said Acts required, viz.

4 Annæ, cap. 30. *An Act for the effectual Suppression of Vice; and Restraint and Punishment of blasphemous, wicked, and dissolute Persons:* To be read on the first or second Sunday in April, and the first or second Sunday in September, Annually, on Penalty of Twenty Shillings for every Neglect, to the Churchwardens, for the Use of the Poor.

Cap. 49. *An Act concerning Servants and Slaves:* To be enter'd in the Register Books of each Parish, and read on the first Sermon Sundays, in September, and March, Annually, at the Church Door, after Sermon: The Sheriff of every County shall publish this Act, at the Door of the Court House, in March Court, Annually: Sheriff, or Parish Clerk, failing, forfeits 600 lb. Tobacco, to the King, and Informer.

9 Annæ, cap. 12. *An Act to prevent the Destroying and Murdering of Bastard Children:* To be read in May: Churchwardens failing to provide a Copy; and Minister, or Reader, failing to publish this Act, forfeit 500 lb. Tobacco, to the Informer.

12 Annæ, cap. 4. *An Act for Registering Births, Christnings, and Burials:* To be read in March, and September, Annually, on Penalty of 200 lb. Tobacco, for every Neglect: Churchwardens failing to provide a Copy, forfeit 500 lb. Tobacco. Penalties to the Parish, and Informer.

9 Geo. 1. cap. 4. *An Act directing the Trial of Slaves, committing Capital Crimes; and for the more effectual Punishing Conspiracies and Insurrections of them; and for the better Government of Negros, Mulattos, and Indians, bond, or free:* To be entred in the Register Book of each Parish, and read in April, and October, Yearly, at the Church Door; and by the Sheriff, in June or July Court, at the Door of every Court House: Churchwarden, or Sheriff, failing, forfeits 500 lb. Tobacco, to the Informer; Minister, or Reader, failing, forfeits 200 lb. Tobacco; recoverable by the Informer, before a Justice.

Churchwardens may demand and receive all Fines and Forfeitures, arising by Breach of any Penal Laws, within their respective Parishes, and appropriated to the Use of the

Fines.

the Parish, or Poor : But they must account to the Vestry, for all such Fines by them received.

Church. Any Man may build a Church, or Chapel ; but the Law takes no Notice of it, as such, 'til it is Consecrated : But after the Sacraments have been administred, and the Dead buried there, then it is accounted a distinct Church, by the Law. *Nels.* 144.

Striking, &c. in Church, or Church-yard. By a Statute, made 5 & 6 *Edw. 6. cap. 4.* He who shall strike another in a Church, or Church-yard, or draw a Weapon there, with Intent to strike, convicted by Two Witnesses, or Confession, shall have One of his Ears cut off ; and if he hath no Ears, shall be burnt in the Cheek, with the Letter F.

CLERGY.

Their Privileges.

BY the Common Law of *England*, confirm'd by the Statute of *Magna Charta*, 9 *Hen. 3.* the Clergy have some Privileges, which are not allow'd to the Laity, *viz.*

They are discharged of Purveyance ; by which, in ancient Times, certain Officers were impowered to take Victuals, or other Provisions, for the Use of the King's Household.

They are not to serve in any Temporal Office, tho' they hold Lands, by Reason whereof, other Men ought to serve.

They are not bound to serve in the Wars.

If a Man, in Holy Orders, is bound in a Statute, or Recognizance, his Body shall not be taken in Execution ; and if he is a Minister, having Cure of a Parish, no Writ of *Levari Facias* shall be brought against his Goods ; but a Writ to the Bishop, to levy the Debt of the Goods of the Church.

Laws of Virginia, pag. 141. pag. 334.

And several other Liberties, now obsolete.

By the Laws of *Virginia*, they are also privileged,

1. From Paiment of Levies for their own Persons.

4 *Anne, cap. 7.*

2. From being listed, or serving in the Militia.

9 *Geo. cap. 2.*

Salary, & Fees. pag. 392.

Every Minister shall receive, convenient within his Parish, an Annual Salary of 16000 *lb.* Tobacco, and Cask.

1 *Geo. 2. cap. 6.*

His Fee for Marriage, *viz.*

By Licence, - - - - - 20 *s.* or 200 *lb.* Tobacco.

Banns - - - - - 5 *s.* or 50 *lb.*

Publication of Banns, } 1 *s.* 6 *d.* or 15 *lb.*
and Certificate. }

If these Fees are not paid in ready Money, they shall be paid in Tobacco, in the Parish where the Feme resides; and on Refusal, may be levied by Distress, as Clerks Fees: But if the Minister refuses to serve for these Fees, or exacts greater Fees, he forfeits 4000 *lb.* Tobacco, if the Marriage be by Licence; and 500 *lb.* Tobacco, if by Banns; to the King, and Informer. Laws of Virginia, pag. 217.

He shall have the Benefit of all Perquisites for Marriages, and Funeral Sermons, within his Parish, if he does not neglect or refuse to perform the Service, altho' another Minister be employed. pag. 218.

He shall keep a Register of all Births, Christnings, and Deaths, within his Parish, and certify the Copy of such Register to the Secretary's Office, in *April*, and *October*, Annually, on Penalty of 200 *lb.* Tobacco *per* Month, neglected to be kept, or certified, to the Poor, and Informer; recoverable before a Justice of Peace: Fee for every Person registred, 3 *lb.* Tobacco. Duty. pag. 292.

Before any Person shall be admitted a Minister of any Parish, he shall produce his Letters of Ordination, subscribe to the Doctrine and Discipline of the Church of *England*, and be inducted by the Governor: He shall observe the Canons of the Church of *England*; read Divine Service, and preach every *Sunday*; administer the Sacrament Twice a Year, at least; and shall not teach, nor expound, any other than the Church Catechism. pag. 3.

He shall publish the Day of Election of Burgeses. *See Assembly.*

And several Laws, at certain Times limited. *See Churchwardens.*

And also, Notice of Runaways, committed to the County Goal. *See Runaways.*

His Duty in publishing Banns, granting Certificate, and celebrating the Rites of Matrimony: Penalties and Forfeitures upon Misdemeanors therein; and also, upon marrying White Persons with Negros, or Mulattos. *See Marriages.*

Every Minister, during his Incumbency, shall keep in tenantable Repair, all Buildings upon his Glebe, and so leave them, at his Removal, or Death, (Accidents by Fire, and Tempest, excepted:) If he neglects, or fails so to do, the Churchwardens may sue him, or his Executors, &c. and recover Damages, to the full Value of the Repairs, with Costs. pag. 39.

Clergymen convicted of Atheism, Deism, or Infidelity; or of Drunkenness, Swearing, Cursing, or Prophaning the Sabbath; or of Adultery, or Fornication; shall incur all the Penalties and Forfeitures, inflicted upon Offenders, in Punishment. pag. 181.

any of these Cases, by the Act, 4 *Anna*, cap. 30, and shall be liable to further Punishments.

Laws of
Virginia,
pag. 3.

If any Person, not qualified as the Law requires, but pretending himself a Minister, shall presume to teach, or preach, in Public, or Private, he may be silenced, by Order of the Governor and Council; and if he afterwards offends in like Manner, he may be expelled the Colony.

Benefit
of Clergy
Whatitis.

As to the Benefit of Clergy, in Criminal Cases, 'twas introduced by the Canon Law, to exempt Spiritual Persons from Temporal Jurisdiction.

It is a Privilege to save the Life of a Criminal, if he was a Man of Learning, that is, if he could read; for, as such, he might be useful to the Public, he declaring, that he had vowed, or was resolved to enter into Religious Orders; and the Reading was, to shew that he was qualified.

When a Man is arraigned of Felony, before a Temporal Judge, he prayeth his Clergy, that is, to have his Book; then the Judge commands the Ordinary, to try if he can read as a Clerk, in such a Book, and Place, as the Judge shall appoint: And if the Ordinary certifies, that he can, then the Prisoner shall not have Judgment for his Life. *Co. Lit. l. 2. cap. 11.*

In ancient Times, it was allowable for all Offences, except Treason, and Sacrilege, in robbing Churches of their Goods and Ornaments: But, by many Statutes since made, 'tis taken away in Murder, Burglary, Burning of Houses, Robbery, Horse-stealing, and sundry other Offences. *Stamf. P. C. l. 2. cap. 43.*

But once
grantable

Clergy is grantable but once, to one Person. 4 *Hen. 7. cap. 13.* & 1 *Edw. 6. cap. 12.*

Reading
not requi-
red.

By a late Act of Assembly, 5 & 6 *Geo. 2. cap. 7.* founded upon the Statutes of 5 *Anna*, cap. 6, & 31. Reading is not to be required; 'but any Person convicted of a Felony,

pag. 474.

Clergy
allow'd to
Women.

'for which he ought to have Clergy, and praying to have the Benefit of this Act, shall have Clergy allow'd, without Reading: And in all Cases, where a Man may claim the Benefit of Clergy, the same shall be extended to a Woman, for the like Offence, and she shall be burnt in the Hand, by the Goaler, in open Court, and further liable, as a Man, in like Case, might be.

And to
Negros,
&c. cer-
tain Cases
excepted.

'All Negros, Mulattos, or Indians, convicted of any Offence within the Benefit of Clergy, shall be burnt in the Hand; except in Man-slaughter, or Burglary, or House-breaking, and Stealing to the Value of 5 s. Sterling, or where he or she hath once had the Benefit of this Act.'

And

And where, by any Act of Parliament, made before the Fourth Year of King *James* the First, Clergy is taken away from any Offence, it shall be also taken away from the like Offence committed in this Colony. Where it shall be granted, or denied.

It is a Rule in Law, that where any Statute, or Act of Assembly, creates a new Felony, the Offender shall have Clergy, unless it is expressly taken away, by that, or any other subsequent Act.

And where-ever Clergy is taken away by a particular Statute, or Law, the Offence laid in the Indictment, must be brought within that very Statute, or Law, otherwise the Offender shall have Clergy. *Nels. 150.*

After Conviction, and Clergy allow'd, the Law is not satisfied, until the Offender is either burnt in the Hand, or pardoned: The Court may admit him to Bail, in Order to get his Pardon; but, 'til then, the Conviction is still upon him, his Credit is lost, and he is incapable of being a Witness. After Clergy allow'd, the Criminal to be burnt in the Hand, &c.

The first Statute made about Burning in the Hand, was 4 *Hen. 7. cap. 13*, where it is Provided, That an Offender shall have Clergy but once, and that he should be marked upon the Brawn of the Left Thumb, to be the better known again, upon a Second Offence: This was not intended as any Part of the Judgment, but only as a Mark set upon the Offender, that he might not have his Clergy a Second Time.

After Burning, or a Pardon, whereby he is restored to his Credit, he may be discharged by the Court; or he may be detained, if they see Cause, 'til he find Sureties for his Good-behaviour. 18 *Eliz. cap. 7.*

To avoid Repetition, I have shewn, under each Head of Felony, where the Offender shall not have Clergy, and by what Law it is taken away.

COIN

THE several Species of Coins here under-mentioned, are now Current within this Dominion, at these Rates following, viz.

1. Gold Coins; *British*, not mill'd.

1 *Geo. 1. cap. 1.* *Spanish,*

French,

German,

Portuguese,

Arabian,

Checqueens,

Guineas, at 20 s. each.

And all lesser Pieces, in Proportion.

G 2

At 5 s. per Pennyweight.

Current Coin, and its Value.

Laws of Virginia, pag. 298.

2. Silver

Laws of
Virginia,
pag. 401.

2. Silver Coins; *Mexico*.

1 Geo. 2. cap. 9. *Sevil,*

Pillar,

Duccatoons of }

Flanders, }

Ecues }

Louis }

Crusadoes,

Peru- }

Dollars, }

English Crowns, at 6 s. 3 d. each.

At 4 d. per
Pennyweight.

At 3 $\frac{3}{4}$ d. per
Pennyweight.

And smaller Pieces, in Proportion.

pag. 402.

If Copper Money is hereafter, by Proclamation, made Current here, it shall pass at the Rates of *Great-Britain*; but no Person shall be compellable to receive more than 2 s. 6 d. in any one Payment, nor above 1 s. in one Payment of less than 20 s.

Penalty
for refu-
sing to re-
ceive Mo-
ney at
these
Rates.

Persons refusing to receive Current Money, at the Rates settled, forfeit the Sum tendred, and refused, to the Party making the Tender, if less than 20 s.; recoverable before a Justice of Peace; Money Payments due before these Acts, the King's Revenues, Officers Salaries, protested Bills of Exchange, Specialties payable in *Sterling* Money, and Debts contracted in *Great-Britain*, excepted.

But the King may alter the Rates, by Proclamation.

Cut Gold,
not Cur-
rent.

Coin'd Gold, cut in Pieces, shall not be Current.

pag. 403.

Coining,
Exc. Trea-
son.

Coining, Counterfeiting, Falsifying, or Debasing any Coin, Current within this Dominion; and aiding, consenting, or counseling therein, Treason. 1 Geo. 1. cap. 1.

1 Geo. 2. cap. 9.

By the Statute, 5 *Eliz.* cap. 11. Clipping, Washing, Rounding, or Filing, any Current Money of the Realm, is made High Treason.

And by another Statute, 18 *Eliz.* cap. 1. Impairing, Falsifying, or making Light such Current Money, is Treason: These are Crimes of the same Nature with Clipping, but differ in the Punishment, *viz.* they work no Corruption of Blood.

Counterfeiting the Coin was Treason by the Common Law: And 'tis held, that Washing, Filing, Diminishing, Scaling, or Debasing, for Lucre, is Counterfeiting, within the Statute of 5 *Eliz.*; and the Counsellors, Consenters, and Aiders, within the Statute of 18 *Eliz.* *Nels.* 158.

Uttering false Money, knowing it to be so, is not High Treason, but a great Misdemeanour, and Finable: But if he, who utters such, doth know who coin'd it; or if he supplied the Coiner with Coining Tools, or with Silver, and

and Money is coined therewith : In either of these Cases, he who utters it is guilty of High Treason, because he is aiding and assisting to the Coining. *Keel. 33.*

Clergy is taken away from all Offenders in Coining, by the Statutes, 5 & 18 *Eliz.* and they shall not be bailed. No
Clergy.

The Judgment for these Offences, is, that the Offender shall be drawn to the Gallows, and there hang'd. Punish-
ment.

If sufficient Cause of Suspicion appear to a Justice of Peace against any Person for Coining, Counterfeiting, Falsifying, or Debasing the Current Coin ; or if Information thereof be made before him, by One, or more, credible Witnesses, upon Oath, he may issue his Warrant to apprehend the Offender.

To all Sheriffs, Constables, and other His Majesty's Officers, within the County of *Spotsylvania*.

Spotsylvania *sc.* *W* *Hereas I am credibly inform'd, that* Warrant.
several Pieces of the Current Coin of this Dominion, have been lately Counterfeited, (or Debas'd, as the Case is,) and that there is great Cause to suspect A. B. of the Parish of Saint George, in the County aforesaid, Blacksmith, to have Coined, or Debas'd, the same : These are, in His Majesty's Name, to command you, and every of you, to apprehend the said A. B. and to bring him before me, or some other Justice of this County, to answer the Premises ; and you are also hereby required to make diligent Search, in the Houses, Lodgings, and Dwelling-Places of the said A. B. and in all other suspected Places, for Coining Tools, Instruments, or Materials, Coin, Clippings, Filings, Shavings, or Bullion, of Gold, Silver, or other Metals ; and if you shall find any such, that then you seise, and bring the same before me, or some other Justice of the Peace of this County, to whom you shall make Return, how you have executed this Warrant. Herein fail not, at your Perils. Given under my Hand and Seal, this, &c.

Upon this Warrant the Officer may break open Doors, Locks, Trunks, &c. to take the Party, or to search ; but he ought first to declare the Contents of his Warrant, and require the Doors to be open'd.

The Offender being taken, and brought before a Justice, is to be by him examined, but not upon Oath ; and his Examination, the Depositions of Witnesses, and all other Matters appertaining thereto, shall be by such Justice cer-

Coin.

tified to the Court, to be by him summoned for further Examination of the Fact, as in other Criminal Cases, and the Prisoner must be committed.

To the Keeper of the Common Goal of the County of
Spotsylvania.

Mittimus. *Spotsylvania, sc.* **I** Send you herewith the Body of A. B, late of the Parish of Saint George, in the County aforesaid, Blacksmith, taken by my Warrant, and brought before me, upon Suspicion of (or being charged with) Counterfeiting (or Debasing, as the Case is,) the Current Coin of this Dominion : And you are hereby commanded, in His Majesty's Name, to receive the said A. B. into your said Goal and Custody, and him there safely to keep, until he shall be thence discharged by due Course of Law. Given under my Hand and Seal, &c.

Uttering
false Mo-
ney.

Any Person endeavouring to utter false Money, and discover'd in the Fact, may be stopt, and detain'd, 'til a Constable, or Officer, can be procured, who must arrest the Party, and carry him before a Justice of Peace, to be examined : If the Offence appears to be thro' Ignorance, Inadvertency, &c. and the Party be not of evil Fame, he may be discharged or bail'd, as the Circumstances of the Case appear to the Justice ; but if there be Proof, by Witnesses, or pregnant Circumstances, that the Uttering was wilful, and that he is aiding, or assisting, to the Coining, or Counterfeiting, he is not to be bail'd, but committed.

To the Keeper, &c.

Spotsylvania sc. **T**H E S E are, in His Majesty's Name, to command you to receive into your Goal, the Body of A. B. late of, &c. Blacksmith, taken by C. D. a Constable of this County, for Uttering false Money, knowing it to be such ; and for being aiding in Counterfeiting the Current Coin of this Dominion ; where-with he is charged : And that you safely keep him in your said Goal and Custody, until he shall be thence discharged by due Course of Law. Given, &c.

If a Man has received false Money, he may exhibit, to His Majesty's Attorney-General, an Information against the Party who utter'd it, and thereupon he may be Indicted : Or, upon Complaint to a Justice of Peace, and Oath before him made, that such Person did utter such false

false Money, the Justice may issue such his Warrant against the Offender, and proceed, as is above directed.

COMMON-P R A Y E R.

THE Book of Common-Prayer was first compiled, and established by Act of Parliament, *Anno* 1548, in the Second Year of King *Edw. 6.* When first established.

Afterwards it was reviewed, and some Alterations were made by a Committee of Learned Men, at the Command of Queen *Elizabeth*, in the First Year of Her Reign; and the Book so amended, confirm'd, and appointed to be read in Churches, by every Minister of each respective Church, by an Act of Parliament passed the same Year, 1 *Eliz. cap. 2.*

Some Alterations and Additions were made in the Reign of King *James* the First, by Authority of that King's Commission; and these, together with some Prayers and Thanksgivings, since added by the succeeding Kings and Queens, to be used on certain Public Fasts and Festivals, are still of Force, by Virtue of the Roial Proclamation.

The Statutes of 2 & 3 *Edw. 6. cap. 1. 5 & 6 Edw. 6. cap. 1.* and 1 *Eliz. cap. 2.* inflict divers Punishments upon Persons neglecting to use, or depraving the Book of Common-Prayer, or using any other Form of Public Prayer:

But I shall here consider the Penalties of the last mention'd Statute only; they are,

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. The Punishment of a beneficed Minister, convicted by Verdict, or Confession, of the Fact of Refusing to use it, or depraving it, or using any other Form. 1st Offence, Loses his Spiritual Livings One Year, and shall be imprisoned Six Months. 2^d Offence, Deprivation and Imprisonment One Year. 3^d Offence, Deprivation and Imprisonment for Life. 2. The Punishment of a Minister, not beneficed, depraving it, or using any other Form. 1st Offence, One Year's Imprisonment. 2^d Offence, Imprisonment for Life. 3. The Punishment of any other Person, convicted of depraving it, or procuring a Minister to use any other Form, or interrupting him in saying the Service. 1st Offence, 100 Marks Fine, or One Year's Imprisonment. 2^d Offence, 400 Marks Fine, or One Year's Imprisonment. | <p>Penalties, for not using it, or Depraving the Liturgy, or using other Form of Prayer.</p> |
|--|--|

Common-Prayer. Conspiracy.

3d Offence, forfeits all his Goods and Chattels, and to be imprisoned for Life.

Prosecution within a Year and Day after the Offence. But the Offences against this Statute, are not cognizable before a Justice of Peace.

CONFURATION. See Witchcraft.

CONSPIRACY.

What it is, **T**HIS is a Confederacy, or Agreement, between Two, or more, that they will contrive and aid each other falsely and maliciously to indict an innocent Man of Felony. 34 *Edw. 1. cap. 2. Moor. 562.*

Punishment, The Party grieved hath Two Remedies, after he is acquitted by Verdict of the Jury, to punish the Offenders:

1. By Writ of Conspiracy; which is a Civil Action, wherein Damages may be recovered: But this Action will not lie, unless it appears that the Accusation was false, malicious, voluntary, and the Conspiracy declared, by Prosecution, and that the Party was lawfully acquitted. *Noy. 116.*

2. By Indictment, at the Suit of the King; and if the Offenders are hereupon convicted, the Judgment is,

They shall lose their free Law; that is, they shall never be of a Jury, nor Witnesses in any Case, nor shall appear in Court, but by Attorney: Their Lands, Goods, and Chattels, shall be seized into the King's Hands, their Trees cut down, and their Bodies imprisoned.

Stam. P. C. 175, 6.

But there have also been other Judgments given against these Offenders, and they have been condemn'd to stand in the Pillory, with Papers denoting their Offence; to have their Ears cut off; to be branded in the Face; whip'd, imprison'd; and to pay grievous Fines.

It hath been also held, that a Confederacy, falsely and maliciously to indict another, is punishable by Indictment, tho' nothing is by the Conspirators put in Use. 1 *Lev. 62.*

Conspiracy of Slaves, Felony. If any Negroes, or Slaves, exceeding Five in Number, shall meet to consult, advise, plot, or conspire Rebellion, Insurrection, or Murder; every Slave thereof convicted, shall suffer Death, as a Felon, without Benefit of Clergy. *9 Geo. 1. cap. 4.*

CON-

CONSTABLE.

IS an Officer of great Antiquity, of whom the Common Law takes Notice; and it requires, that he be endued with these Three Qualifications, *viz.*

1. Honesty; to execute his Office truly, without Malice, Affection, or Partiality.
2. Science; to know what he ought to do.
3. Ability, as well in Substance, or Estate, as in Body; to execute his Office diligently, and not thro' Impotency, or Indigence, to neglect it: For if poor Men, who live by the Labour of their own Hands, are elected to this Office, they will rather permit Felons, and other Malefactors, to escape, and neglect the Execution of their Office in other Points, than intermit their Labour, by which their Wife and Children are to be maintained. *Leigh. Phil. Com. 47, 48.*

How to
be quali-
fied.

He is likewise to be Resident, where chosen; and if he is not thus qualified, Two Justices, upon Complaint, may appoint another. *Nels. 177.*

Anciently the High-Sheriff did appoint Constables, but afterwards, they were nominated by the Justices, in Sessions, and are now, with us, by the respective County Courts. *And appointed.*

Every Justice of Peace may swear a Constable; and upon just Cause may remove One, and appoint Another, who may be discharged, or continued, by the next County Court. *Dalt. 57.*

If a Constable die, or move out of the Parish, Two Justices may choose and swear another, who is to continue in the Office 'til the next County Court, who may either approve him, or appoint another, and swear him. *Nels. 177. Dalt. 58, 59.* *Death, or Removal.*

Justices of Peace, Clergymen, Lawyers, Physicians, Infants, Madmen, Poor, Old, and Sick or Lame Persons, are not to be appointed Constables. *1 Vent. 344.* *Who shall be exempted.*

If the Person appointed Constable, upon lawful Notice given, refuses to be sworn, or to serve, the Justices may bind him over to Court; and there he may be indicted and fined for his Contempt. *2 Roll. Rep. 78.* *Refusal to serve.*

If one that is elected to the Office of a Constable do refuse to take the Oath to serve in that Office, the General Court may send forth a Writ of *Mandamus*, to compel him to do it: For in all extraordinary Cases, which concern the Peace and good Government of this Dominion, this Court

is

Constable.

is to enforce Obedience where ordinary Means fail, as being the Supreme Court. *Style* 164.

The Oath of a Constable.

His Oath. *Y*OU shall well and duly, according to your Knowledge, Power, and Ability, execute the Office of a Constable, so long as you shall continue in that Office.
So help you God.

Deputy. A Constable may make a Deputy, but must be accountable for his Misconduct; unless the Deputy is sworn, and allow'd by the Court. *1 Roll. Rep.* 274.

Continuance in Office. He is to continue in his Office One Year; if longer, upon his Petition to the County Court, he may be discharged.

The Authority and Duty of a Constable in executing Warrants to him directed, is shewn under those respective Titles which require his Service; and in such Cases where particular Directions are requisite: I shall therefore, in this Place, collect such general Rules and Observations only, as may be necessary or useful to direct him in the due Execution of his Office; and these may be reduced to Two Heads:

Authority and Duty of a Constable.

1. His Duty in serving and executing Warrants, Precepts, Executions, or other Writs, or Process, to him directed by Magistrates, having lawful Jurisdiction.

2. His Authority and Duty, by Virtue of his Office, as a Minister of Justice, without other Warrant.

By Warrant.

1. As to Warrants, or other Process: He must not dispute, but execute them; and if the Justices exceed their Authority, the Constable is excused: But if a Justice of Peace issues his Warrant where he has no Authority, or where he is not a proper Judge, or where it is plain that the Warrant is mistaken in the Penalty; or if the Constable is commanded to inflict Corporal Punishment, contrary to Law; or where a Constable is to execute Something out of his County: In such, and the like Cases, he must not execute the Warrant; and may be punish'd, if he does. *Dalt.* 445.

But, upon Delivery of a lawful Warrant, the Officer is bound forthwith to execute it with Speed and Secrecy, and according to the Tenor of the Warrant, in all Respects; if he neglects, or refuses so to do, he may be indicted and fined, for his Contempt.

A sworn Officer need not shew his Warrant, but he ought to tell the Party the Contents, and thereupon arrest him, by taking Hold of his Person; if he resists, the Officer may command Others, to aid and assist him, and may justify the Beating of the Offender; and if he flies, or escapes, may pursue him, tho' into another County, and bring him back to the Justice who granted the Warrant. *Nels.* 187.

It is sufficient Notice for an Officer to pronounce the Words of an Arrest, *viz.* *I arrest you in the King's Name, &c.* And the Party, at his Peril, ought to obey him, tho' he does not know him to be an Officer: For, if he have no lawful Warrant, the Party grieved, may have his Action of false Imprisonment against him. *Dalt.* 444.

But if he lets the Person go, upon his Promise that he will return, and appear before the Justice, he cannot retake him upon that Warrant: And if the Offender fails to appear, or escapes, the Officer is liable to answer for such Escape.

If there are Two Persons of one Name, and the same Addition, and the Constable takes the wrong Person, 'tis no false Imprisonment: But if he apprehend a Person without Warrant, and obtain One afterwards; or if a Warrant is against a particular Person, by Name, and the Constable apprehends another, who is really the Offender, such Taking is wrongful, and the Party may have his Action of false Imprisonment; tho', in this last Case, he will recover but little Damages. *Nels.* 187.

In Cases of Treason, Felony, or Breach of the Peace, a Constable, having a Warrant from a Justice of Peace, may break open an House to take the Criminal; but first he ought to require the Opening of the Doors, and to acquaint the Persons in the House, for what Purpose he came thither. *Dalt.* 444.

A Man may be indicted, fined, and bound to Good-behaviour, for Contempt of a Justice's Warrant: For it is the King's Process. *Ibid.* 445.

When a Constable has executed any Warrant, or other Writ, or Precept, to him directed, he is to make his Return upon the Back of such Warrant, executed; but if it is not executed, he is to return the Truth of the Case, at his Peril: For he is a sworn Officer, of whom the Law takes Notice, and bound to make due Return of every Process to him directed; if he neglects so to do, or makes a false, or insufficient Return, he shall be liable to the Action of the Party grieved, for Damages, and to Indictment, and Fine, at the Suit of the King.

Returns
of War.
rants.

If a Warrant be General, to cause the Party to appear before One, or any other Justice of Peace, it's in the Election of the Constable to go before such Justice of the County as he thinks fit, and there to make Return of his Warrant ; but if it be Special, to appear before any particular Justice, or Justices, or at any certain Time, or Place, he must obey : For he is bound to pursue the Effect of his Warrant.

Securing
a Prisoner.

When any Person is apprehended for a Criminal Offence, with or without Warrant, the Constable may keep him in his own House, or put him in the Stocks, or otherwise secure the Party, according to his Quality, and the Nature of his Offence, 'til he can procure Assistance to carry him before a Justice, or convey him to Goal, as the Case may require : And every Person, by the Constable summoned, in the King's Name, to aid and assist him herein, ought forthwith to obey ; the Party neglecting, or refusing, may be indicted and fined for his Contempt, and liable to further Penalties, if the Offender escapes.

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

Constable's
Duty,
without
Warrant.

2. Every Constable, as a Minister of Justice, and Conservator of the Peace, is bound, by Virtue of his Office, and without other Warrant, to execute his Authority, upon certain emergent Occasions, either Public, or Private.

In Affrays, Quarreling, Fighting, or whatever is a Breach of the Peace, if it be in his Presence, he may apprehend the Offenders, and carry them before a Justice.

Such as are about to quarrel, he may command to depart, or to keep the Peace ; if they refuse, he may apprehend them ; and if they make Resistance, he may justify the Beating them, and call Others to his Assistance ; and if either he, or any of his Assistants, happen to be kill'd, 'tis Murder in the Party making Resistance.

If there be quarreling in a House, he may break open the Doors, to see the Peace kept. *Dalt.* 446.

And if any Person shall be wounded in Fighting, he may apprehend the Offender, tho' the Fighting was not in his Presence, and carry him before a Justice, who may bail, or commit him.

If Notice be given him of any Quarreling, or Fighting, and he refuses to go and keep the Peace, he may be presented by the Grand Jury, and fined for such Refusal.

He may take away Arms from such who ride, or go, offensively armed, in Terror of the People, and may apprehend

prehend the Persons, and carry them, and their Arms, before a Justice of Peace.

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

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 the Felon was taken, and then the Officer voluntarily suffers him to escape, or destroy himself, it is Felony in the Officer; if the Escape is by Negligence, or Involuntary, it is finable. *Cro.* 752.

If he discharges any Person taken upon Suspicion of Felony, it is justifiable, if no Felony was committed: But if a Felony has been actually done, he must not discharge the Party apprehended upon Suspicion, tho' he knoweth him to be Innocent; because it must be done by due Course of Law. *Nels.* 180.

Upon Notice given to a Constable, that a Felony is committed, together with a Description of the Felon, and which Way he is gone, the Constable must forthwith raise Hue and Cry, by calling upon the Parishioners to assist him, in Pursuit of the Felon, to the next Constable, and so from Constable to Constable, and from County to County; and in the mean Time, the Constable is to take an Inventory of the Offender's Goods, in Presence of the Neighbours, and attested by them: If the Constable refuses to pursue the Felon, he may be indicted, and fined. *Cro.* 10 *Eliz.* 654, 655.

He is bound, by his Office, to endeavour the Taking of Felons, and may raise Men to assist him: He may likewise apprehend, upon Suspicion; and upon Complaint of a Robbery committed, or upon common Fame, may search suspicious Houses. *Nels.* 181.

If a Felon fly, the Constable may seize, and take an Inventory of his Goods and Chattels, in Presence of the Neighbours, and must pursue the Felon, by raising Hue and Cry from Constable to Constable, and from one Town or County to another: If the Felon is taken in another County, he must be carried before a Justice of that County where taken, and by his Warrant, committed to the Common Goal of the same County.

Every Constable is to assist a Justice of Peace, when required, in removing a forcible Entry, in carrying the Offender to Goal: If the Constable refuses, he may be committed himself, and fined. Forcible Entry.

He

Disturbance in Church. He may apprehend any Person disturbing the Minister in Time of Divine Service, and bring him before a Justice of Peace.

Riots, &c. He is to suppress all Riots, and such who break the Peace, in any Manner whatever, either in his Presence, or upon Notice given him; and to arrest the Offenders, and bring them before a Justice.

Rogues, &c. He must endeavour to apprehend Rogues, Vagabonds, and idle Persons, wandring, or begging, or found loitering within his Precinct: If any such are brought to him, by any Person, he must receive him, or her, and cause such Offenders to go before a Justice of Peace.

Distress for Rent. He must, upon Request, assist the Party distraining for Rent, and swear Three Freeholders to appraise the Goods distrained: The Overplus, after the Rent is satisfied, and Charges of Distress deducted, may remain in the Officer's Hands, 'til claimed by the Owner, *See Tit. Rents.*

Laws of Virginia, pag. 165. The Constables of *Bruton* Parish may execute their Office in all Parts of *Williamsburg*, and Half a Mile round the City.

The Duty of Constables, in conducting Runaways, and Runaway Seamen. } *See Tit. Runaways.*
Conveying Runaways from the County Goal to the Public Goal. }

In apprehending Slaves, unlawfully assembled. } *See Slaves.*

Tobacco. pag. 372. Every Constable may seise, in his County, Tobacco brought from *North Carolina*: Upon such Seisure made, he is to exhibit an Information to the County Court, and they shall order such Tobacco to be sold Publicly; and the Money arising by such Sale, after Charges deducted, shall be to the King, and the Officer making the Seisure. 12 *Geo. 1. cap. 6.*

pag. 418. He shall view all Tobacco Grounds tended in his Precinct, between *July 31*, and *August 10*, and between *August 20*, and *September 10*, Annually, and at other Times, if he thinks fit; and if he discovers any Slips, or Suckers, above 9 Inches high from the Ground, turn'd out, or tended upon any Stalk, from which a Tobacco Plant has been before cut, he shall require the Owner, or Overseer of such Plantation, immediately to cut up and destroy such Slips or Suckers, and if he refuses, the Constable shall do it, or cause it to be done forthwith; every Owner or Overseer of such Plantation refusing to shew his Tobacco Grounds to the Constable, forfeits 500*lb.* Tobacco for every Tithable employed in making Tobacco upon the Plantation that Year, to the King, and Informer. Constable

Constable tending such Slips, or Suckers, liable to like Penalty.

He shall be sworn before a Justice of Peace.

The Oath.

I *A. B.* do swear, *That I will diligently and carefully view the several Fields and Places whereon Tobacco shall be planted, or tended, within the Precincts whereof I am Constable; and that I will cut up and destroy, or cause to be cut up and destroyed, all Stalks from which any Tobacco Plant shall be cut, or taken; and all Slips, or Suckers, growing from, or out of the same, which I shall find standing, or growing, in any of the Fields or Places aforesaid, above the Height of Nine Inches from the Ground: And that I will make Information of all Persons, within my said Precinct, whom I shall know to be guilty of the Breach of any Law of this Colony made against the Tending of Slips, or Seconds, to the next Court to be held for my County, after the same shall come to my Knowledge.* So help me God.

Constable failing, or refusing, to take this Oath, or to execute his Duty, as required by this Act, or allowing any Person to tend Seconds, forfeits 1000*lb.* Tobacco, to the King, and Informer.

One Pound of Tobacco *per* Poll shall be Annually levied in each County, and distributed to every Constable, in Proportion to the Number of Tithables in his Precinct, respectively, as a Reward for his Service required by this Act, to be paid by the Collector of the County Levy.

For every Hundred Tobacco Stalks, cut up by a Constable, in Execution of this Act, he shall receive of the Owner, or Overseer, of the Plantation, where such Stalks shall be by him cut up and destroyed, 20*lb.* Tobacco; recoverable, with Costs, before any Justice of Peace of the same County.

Upon Information made by a Constable to the County Court, against any Person for Breach of this Act, such Court shall direct the King's Attorney there, to bring Suit against the Offender. 3 & 4 Geo. 2. cap. 1. Laws of Virginia, pag. 419.

Every Constable, or other sworn Officer, must, upon Request, assist all Persons appointed by the King, or Governor and Council, to collect and manage the Customs; and also, such Persons, who have a Warrant from the Treasurer of *Virginia*, or a Justice of Peace, to search for Goods privately landed, without Paiment of the Duties: The Officer may, for that Purpose, in the Day Time, demand Entrance into any House; and if resisted, or the Doors not open'd, Customs. pag. 468.

open'd, he may break the House; and upon finding such Goods, must assist the Party having such Warrant, in making a Seizure. If sued, he may plead the General Issue; and if the Plaintiff is Nonsuit, or Judgment pass against him, the Defendant shall have Double Costs. 5 & 6 Geo. 2. cap. 2.

Penalties, on Constable's Breach of Duty.

By the Common Law, if a Constable shall refuse or neglect to execute his Office, he may be indicted, and punished by Fine and Imprisonment:

For refusing to keep the Peace.

Not apprehending a Felon, or not raising Hue and Cry to pursue him; suffering him to escape; or to destroy himself.

Refusing to execute the Justice's lawful Warrant, or Command; or shewing any Contempt of his Authority.

Negligence in his Office.

Besides other Penalties, in Special Cases, to which he is liable by particular Laws and Statutes.

His Privileges.

But as a Constable is punishable for Breach or Neglect of his Duty, so the Law has annexed to his Office, several Privileges and Exemptions, as an Encouragement and Reward of his Service.

No Action must be brought against a Constable, for any Thing by him done as Constable, except only in the proper County where the Fact was committed; and in Default thereof, the Plaintiff shall be Nonsuit: And if the Defendant be found to be a Constable, and in Execution of his Office, the Clerk shall thereupon tax Double Costs: Also, a Constable has Liberty of pleading Not Guilty, for any Thing done in his Office by himself; and for all Persons in his Assistance, he may plead Not Guilty, for what they have done by his Command. *Style 164.*

Laws of Virginia, pag. 386.

Constables shall be exempted from Paiment of Public, County, and Parish Levies, for their own Persons, so long as they continue in that Office.

Ferry Keepers shall give immediate Passage to Constables and their Assistants, charged with conducting Runaways, without charging such Constables, or Assistants, with any Ferriage, going, or returning. 12 Geo. 1. cap. 4.

Fees.

A Constable may demand, receive, and take, for Business by him done, the Fees here under-mentioned, and no other, viz.

lb. Tobacco.

For serving a Warrant,
Summoning a Witness,

10

5

For

lb. Tobacco.

For summoning a Coroner's Jury,
and Witnesses, necessary, to be
paid out of the dead Person's
Estate, if any to be found; if
none, then by the County. } 50
Putting in the Stocks, } 10
Whipping, } 20
Serving an Execution, or Attatch-
ment, returnable before a Justice. } 10

To be paid by the Party, at whose Instance the Business is perform'd.

Constable demanding and taking more or greater Fees, forfeits 2000 lb. Tobacco, to the Party injured. Prosecution in Twelve Months. 5 & 6 Geo. 2. cap. 10.

The Office of a Constable is not determined by the Death of the King: For their Authority is by the Common Law, and not by Commission. Cook 8. Rep.

CORONER.

IS an ancient Officer of Trust and great Authority, ordained to be a principal Conservator, or Keeper of the Peace, to bear Record of the Pleas of the Crown, and to enquire of the Death of a Man, slain or killed violently, maliciously, wilfully, accidentally, or by any Means whatsoever, other than the Course of Nature, or in the Execution of Public Justice. Cook 2 Inst. cap. 17.

The Statute of *Westm. cap. 10.* requires every Coroner to be a Knight; that is, a Free-holder of Lands, within the same County, sufficient to qualify him for this Office: His Qualifications.
He was to be elected by the Freeholders, by Virtue of a Writ directed to the Sheriff; and if he have not Estate sufficient to answer the Fines, and other Duties, imposed on the Coroner, in Matters relating to his Office, the County shall be answerable for such Fines. *F. H. N. B. 186.*

The Common Law requires him to be a Person having Knowledge, Experience, and Ability of Body, as well as Estate, sufficient to support the Duty and Dignity of his Office. 2 Inst. 174.

The Number of Coroners in each County is not limited: With us, one or more of the *Senior* Justices in every County, are usually nominated and appointed by Commission from the Governor; and thereupon admitted and sworn in their respective County Courts.

The Oath of a Coroner.

Oath. **Y**OU shall swear, *That you shall truly serve the King, and his People, in the Office of a Coroner, and as one of his Majesty's Coroners in this County of* and therein yett 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.

His Office and Authority, is Two-fold,

1. Ministerial.
2. Judicial.

Duty. 1. As a Minister of Justice, he is to execute and return all Procefs to him directed; and therefore, where an Exception is to the Sheriff, viz. That he is a Party in the Suit, or of Kin, or Tenant to either Party; or if any Default is in him by Partiality, or otherwise; in these or like Cases, the Procefs shall be directed to the Coroner, and by him executed and return'd: But then, if the Original Procefs is directed to him, all other Procefs in the same Suit must be so likewise, tho' another, and more indifferent Sheriff be appointed, whilst that Suit is depending. *Nels.* 201.

If such Procefs is directed to the Coroners, Two may return it, tho' there are more in the County, but One cannot; because, 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 *Lev.* 399.

When any Civil Procefs shall be directed to the Coroner, he is to execute and return the same, in like Manner, as the Sheriff should have done; he shall have the like Fees as are due to the Sheriff for like Services; and he is, by Law, invested with the same Power and Authority, and equally liable to answer for any Neglect, false Return, or Escape.

2. He is a Judicial Officer, and therefore cannot make a Deputy: By the Statute 3 *Edw.* 1. he is enjoined to see the dead Body; and an Inquisition otherwise taken, is void. *Stam. P. C.* 51.

When he hath Notice given him to view the Body, he must issue his Precept, directed to the Constable, or any sworn Officer of the Precinct wherein the Body lies, to summon a Jury to appear before him at a certain Day and Place, to execute such Things, as shall be given to them in Charge. *Nels.* 200. If

If he doth not come, upon Notice given him of the Casual Death of any Person; or if he omit or neglect to take an Inquisition; or if he do not bind over the Witnesses to appear and give Evidence; or do not certify the Recognizances, Depositions, and Inquisition taken before him; or if there is any Practice with him to suppress the Evidence for the King: For any of these Causes, he may be discharged of his Office. and fined. *1 Vent. 182.*

By the Statute 3 *Eliz. cap. 9.* If any Sheriff, Coroner, or other Officer, for Prayer, Fear, or Affinity, shall conceal, or consent, or procure to conceal, any Felony, and will not do his Office, and shall be thereof attainted, he shall have One Year's Imprisonment, and pay a grievous Fine to the King; and, if he hath not whereof to pay, shall have Three Year's Imprisonment.

Precept to summon a Jury.

To *A. B.* a Constable of *Caroline County.*

Caroline sc. **T**H E S E are, in His Majesty's Name, to command you to summon Twenty Four Freeholders, of the Parish of _____ in this County, to appear before me, C. D. Gent. one of His Majesty's Coroners of the said County, To-morrow Morning, by Ten of the Clock, at the House of E. F. [or at such Place where the dead Body lies,] in the Parish and County aforesaid, to execute such Things as shall be given to them in Charge, on the Behalf of Our Sovereign Lord the King; and that you also be then there, to shew how you have executed this Precept. Given under my Hand, this Ninth Day of October, 1733. Summons.

Upon Appearance of the Jury, at the Time and Place appointed, the dead Body then being in View before them, the Officer is to make Return of his Warrant, and call the Jury to answer to their Names, to the Number of Twelve; one of whom, is by the Coroner, to be appointed Foreman, and sworn.

Jury.

The Foreman's Oath.

YO U shall diligently enquire, and true Presentment make, of such Things as shall be given to you in Charge, according to your Evidence.

So help you God.

The Rest of the Jury.

THE same Oath which H. I. 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.

Their Charge.

After the Jury is sworn, the Coroner is to give them a Charge, to enquire who, and whence the Deceased was, how, and in what Manner he came by his Death, and whether the Homicide were occasioned by Felony, or Mischance; if Feloniously, whether by his own, or another's Act; if by his own, whether he were of sound Sense and Memory at the Time of committing the Fact; and if it be found, that he then was of sound Sense and Memory, what Goods and Chattels he was possess'd of, or the Value of them, to the Knowledge of the Jury, at the Time of his Death: But if he was kill'd by another, who was the Principal, and who Accessory, how, when, and where he died; by what Weapon or Means his Death was occasioned; whether the Killing was Malicious and Voluntary; or by Necessity, or Accident, or Chance-medley; and if the Offenders are fled; and whether they have been pursued by Hue and Cry, or not: If the Homicide happen'd by Mischance, or Misfortune, and was Involuntary, whether by the Act of God, or of Man; or by what immediate Cause, whether by Hurt or Fall, or any other Means; that it may appear, whether any Deodand is by Law forfeited, or not.

Then the Witnesses are to be called, and sworn.

Oath of a Witness.

Evidence.

THE Evidence which you shall give to this Inquest, concerning the Death of K. L. here lying dead, shall be the Truth, the whole Truth, and nothing but the Truth.
So help you God.

Verdict.

After all the Witnesses have been examined, the Jury are to consider the Evidence, and find the Fact; which being by them agreed upon, the Foreman delivers the Verdict to the Coroner, who thereupon records the Inquisition, by an Instrument in Writing, indented, under his own Hand and Seal, and the respective Hands and Seals of the Jury, according to the Form hereafter specified.

Inquisition.

Every Inquisition taken by a Coroner, and Jury, must be upon View of the Body; and if that he is buried before

fore he comes, he may cause it to be taken up again ; But if the Body cannot be found, then he has no Authority ; and in this Case, the Matter may be presented to the Justices, in Court, and there found by the Jury ; and this will entitle the King to a Forfeiture of the Goods. 2 Lev. 141. 1 Roll. Rep. 217.

The Depositions of the Witnesses must be taken in Writing, attested under their Hands ; and if the Case requires it, they are to be bound over, to appear before the Justices, at a Court to be held for Examination of the Persons charged with the Homicide, there to give Evidence. The Coroner is to take and record their Examinations, severally ; which may be in this Form.

Caroline sc. *THE Examination of N. O. of, &c. P. Q. of, &c. taken upon Oath, before me, C. D. Gent. one of His Majesty's Coroners for the said County, this Tenth Day of October, 1733, at the House of E. F. in the Parish of G. and County aforesaid, upon View of the Body of R. S. then and there lying dead, viz.*

The said N. O. maketh Oath, That, &c. and in like Manner, of the other Witnesses, respectively.

Sworn before me,
C. D.

Recognizance, for Witnesses to appear and give Evidence.

Caroline sc. *Memorand. That on this Tenth Day of October, Anno Dom. 1733. N. O. of, &c. and P. Q. of, &c. personally came before me, C. D. Gent. one of His Majesty's Coroners for the said County of Caroline, and severally acknowledged themselves indebted to Our Sovereign Lord King George the Second, in the Sum of Twenty Pounds a Piece, of good and lawful Money of Virginia : To be levied of each of their Goods and Chattels, Lands and Tenements, respectively, to the Use of our said Lord the King, His Heirs and Successors, upon Condition, That if they the said N. O. and P. Q. shall personally appear before His Majesty's Justices of the Peace, at a Court to be held at the Court-house of this County, on Monday the Seventeenth Day of this Instant October ; and do also then and there give such Evidence as they, and each of them, respectively, know against T. V. of, &c. for the Murder of R. S. where- with he is charged by an Inquest before me taken upon*

Coroner.

View of the dead Body of the said R. S ; and that they do not depart without Leave of the said Court : Then this Recognizance to be void ; or else to remain in Force,

Acknowledged before me,

C. D.

This Recognizance, the Examination of the Witnesses, and the Inquisition taken by the Coroner, must be by him certified to the Court to be held, for further Examination of the Prisoners.

Out-
lawry.

But if the Offenders are fled, and escaped, this also must be found by the Jury, and recorded upon the Coroner's Inquest ; and such Inquisition is to be certified to the Secretary's Office, that thereupon Process of Outlawry may issue against the Party fled.

Adjourn-
ment.

If the Jury impannell'd by the Coroner is sworn, and the Witnesses not ready, he may bind the Jury, by Recognizance, to appear at another Day, and issue his Precept to cause the Witnesses then to appear.

To A. B. Constable, &c.

Sum-
mons.

Caroline, *sc.* **Y**OU are hereby commanded forthwith to summon N. O. of, &c. and P. Q. of, &c. personally to appear before me, C. D. Gent. one of His Majesty's Coroners of this County, To-morrow Morning by Ten a Clock, at the House of E. F. in the same County, to testify their Knowledge concerning a certain Homicide suspected to be done upon the Body of R. S. there lying dead, [or as the Case appears to be, by the Circumstances ;] and to be examined on the Behalf of Our Sovereign Lord the King : And that you also be then there to shew how you have executed this Warrant. Given under my Hand, &c.

The Day and Place of Appearance of the Jury is at the Discretion of the Coroner, as the Circumstances of the Case may require : After the Jury, upon View of the Body, have been once sworn to try the Fact, it's not necessary to meet again at the same Place, or to suffer the Corps to lie unburied, to the Annoyance of the People ; but the Jury may meet, and hear the Evidence, at such Time and Place, as the Coroner shall think fit to direct.

Nuisance.

The Coroner may find any Nuisance which occasioned the Death of a Man ; as if a Bridge is in Decay, and by Reason of a Breach the Person fell, and was drown'd, or otherwise kill'd ; or that the Death was occasion'd by the Breach of a Mill-dam, or by Trees, or by other Nuisance lying in the Highway,

Highway, &c. But it must also be found who is bound, by Law, to repair such Bridge, or to remove such Nuisance, that the County, or Party, by whose Neglect the Nuisance was suffered to continue, may be amerced. *Allen* 51, 52.

If by Neglect, or Partiality, in the Coroner, the Inquisition is not taken according to Law; or if Oath be made of Misdemeanor in the Coroner, or Jury, as that they did not find according to their Evidence, &c. the Party grieved may have a Writ of Inquiry issued from the Secretary's Office, and directed to the Sheriff, to make better Inquiry of the Death, and all Matters relating thereto: But this Writ will not be granted without Special Cause shewn, and appearing upon Oath.

Writ of
Inquiry.

Inquisition of Murder.

Caroline, *sc.* *Inquisition indented, taken at*
in the County aforesaid, the
of in the Year of Our Lord

Day Inqui-
before sition.

me, C. D. Gent. one of the Coroners of the said County, upon View of the Body of R. S. late of, &c. then and there lying dead; and upon the Oath of A, B, C, D, &c. good and lawful Men of the Parish of G. in the said County of Caroline, who being charged and sworn to enquire how, and in what Manner, the said R. S. by his Death came; upon their Oaths, do say, That on the Day of in the Year, and at the Place aforesaid, T. V. late of the Parish of in the County of Gent. by Force and Arms did assault the said R. S. being then there in the Peace of God, and of Our Lord the King; and that the said T. V. with a certain Sword, of the Value of which the said T. V. in his Right Hand then and there held, feloniously, and of his Malice forethought, did give the aforesaid R. S. one mortal Wound in the left Part of his Breast, of the Breadth of One Inch, and the Depth of Five Inches, of which Wound the said R. S. instantly died; and so the aforesaid T. V. him the said R. S. then and there feloniously killed, and wilfully murdered, contrary to the Peace of Our Sovereign Lord the King, his Crown and Dignity: And further, the said Jurors upon their Oaths, do say, That the aforesaid T. V. at the Time of committing the Felony, and Murder aforesaid, had no Goods, or Chattels, Lands or Tenements, in the County aforesaid, to the Knowledge of the Jurors aforesaid. In Testimony whereof, as well I the said Coroner, as the Jurors aforesaid, to this Inquisition have severally put our Seals, the Day, Year, and Place, first above-mentioned.

Coroner. Corporation.

All Inquisitions of Homicide, by Murder, Manslaughter, Self-Defence, Misfortune, or Casualty, are to be returned in like Form, as to the Beginning and Conclusion of the Inquisition; but varying in the Matter of Fact, and Circumstances, as these appear upon Evidence to the Jury, who are to enquire, and return in their Verdict.

Sub-
stance of
Inquisi-
tions.

1. The Name of the Deceased.
2. The Time and Place of the Death.
3. The Name and Place of Abode of the Party, or Parties, by whom the Death was occasioned; who was Principal, and who Accessory.
4. The Manner.
5. Whether the Act was Wilful, or Accidental.

And if the Deceased was killed by his own Act, Whether at the Time of committing the Fact, he was of sound Sense and Memory; or whether he was Mad, or Lunatic.

These Matters are to be plainly expressed by the Jury, in their Verdict.

In all Cases of Homicide, where any Forfeiture accrues to the King, the Jury must enquire, and return, to the best of their Knowledge, the Value of the Goods and Chattels, Lands and Tenements, within the County, of the Party liable to such Forfeiture: But where nothing is, by Law forfeited, this Clause may be omitted.

Coro-
ner's
Commis-
sion not
deter-
min'd
by the
King's
Death.

Laws of
Virginia,
pag. 176.

Coroners remain Conservators of the Peace, within the County where they are Coroners, notwithstanding the King's Death: But the Commission of Justices of Peace is determined by the Death of the King. *Dalt.* Yet the Justices may exercise lawful Jurisdiction at any Time after the King's Death, and before such Death is published by Proclamation, in this Colony. 4 *Annæ*, cap. 28.

CORPORATION.

College
of Willi-
am and
Mary.

Every Body Politic, or Corporate, is either Ecclesiastical, or Lay, created by Prescription, Letters Patents, or Act of Parliament; and by the Common Law, have Succession perpetual. *Co. Lit. l. 3. s. 413.*

The College of *William and Mary*, in *Virginia*, is an Ecclesiastical Corporation, of a President, Six Masters, or Professors, and one Hundred Scholars, more or less, Graduates, or Non-graduates, founded by King *William* and Queen *Mary*, by their Royal Charter, *Feb. 8. 1691*, for educating Youth in the Liberal Arts and Sciences. This Corporation is endow'd with Lands, granted to them, and their Successors, for ever; and they have some other Revenues arising upon Surveys of Land, Duty upon Liquors imported, Skins and Furs

Furrs exported, and 1 d. per lb. upon Tobacco exported to the *British* Plantations in *America*, appropriated to them by their Charter, and several Acts of Assembly : But these Duties upon Exportation having hitherto proved deficient, and raised very inconsiderable Sums, it's not to be doubted, but the Wisdom of our Legislature will find Means to establish a Fund sufficient for yielding an honourable Support to this Foundation of Religion and Learning among us, from Time to Time : The Education of Youth, and Encouragement of Nurseries of Learning, having been, in all Ages, the peculiar Care of the best of Princes, and the most wise and famous Senates.

The City of *Williamsburg*, is a Lay Corporation, created by Act of Assembly, and the Governor's Letters Patents, *Williamsburg.* July 28, 1722. Consisting of a Maior, Recorder, Six *Laws of Virginia,* Aldermen, and Twelve Common-Council-Men, of the In- *pag. 349.* habitants of the said City, who shall hold a Monthly Court of Hustings, and have Jurisdiction of all Matters, Personal, or Mixt, not exceeding 20 l. Current Money, or 4000 lb. Tobacco, arising within the City : May hold Courts for Examination and Commitment of Criminals ; grant Licences to Keepers of Public Houses ; determine Complaints of Masters, Servants, and Apprentices ; and regulate all Matters, for the better Government of the said City. The Inhabitants are not to be listed in any County Militia ; nor to serve, but only under their own Officers, within their City ; nor march thence, without express Order from the Governor, or of the Maior, Recorder, and Aldermen ; or the major Part of them.

They have Two Fairs, Annually, in *April*, and *December*.

The College of *William and Mary*, City of *Williamsburg*, and *James-Town*, have, each of them respectively, the Privilege of sending one Burgess to serve in General Assembly.

Every Corporation is to answer for all General Misdemeanors, committed within their Jurisdiction : If it should be otherwise, the Intent of their Charter, which is for the good Government of the Corporation, would prove pernicious and destructive to the Public. *Style 137.*

C O U N T E R F E I T S.

Getting Money, or Goods, falsely and deceitfully, by counterfeit Letters, Notes, Tokens, &c. is an Offence at Common Law, and likewise prohibited by Statute ; and the Party convicted thereof, upon Indictment, shall suffer any

Counterfeit Letters, &c.

Punishment. any Corporal Punishment, by Judgment of the Court before whom such Conviction shall be, except Death. *Co. 3. Inst. 133.*

Two Justices (One being of the *Quorum*) may bind any suspected Person to appear at the next County Court, or bail him 'til that Time, or may commit him, at their Discretion. *Nels. 208.*

C O U N T I E S.

Number of Counties. *VIRGINIA* is at present divided into Thirty Three Counties; each of which sends Two Burgesses to the General Assembly.

Laws of Virginia, *pag. 250, &c.* The Justices of Peace of every County, on a certain Day by Law appointed for such County, are to meet Monthly at the Court-house, then and there to hold a Session, or Court, for Trial of all Matters, Civil or Criminal, within their Jurisdiction.

pag. 192, & 328. Where a River, or Creek, divides Two Counties, both shall contribute towards clearing such River, or Creek, erecting and repairing Bridges, &c. at an equal Charge, in Proportion to the Number of Tithables in each County.

pag. 145. A Court-house, Prison, Pillory, Whipping-post, Stocks, and Ducking-stool, shall be erected and kept in Repair, in every County, at the County Charge, on Penalty of 500*lb.* Tobacco on every Justice of the County failing; and the Court of such County shall be liable to the Sheriff for all Costs and Damages sustained by him, upon any Escape, for want of a sufficient Prison.

pag. 154. No Frontier County shall be divided, unless 800 Tithables are left in the Upper County; and the Charge of building a Church, Court-house, Prison, &c. shall be born by the whole County, as it stood before Division: But if the Upper Inhabitants pray for a Division, they shall not be entitled to any of these Privileges.

C O U R T S.

General Court. *T*HE Supreme Court of Record in this Dominion, is the General Court, held at the Capitol, in the City of *Williamsburg*, *April 15*, and *October 15*, Annually, before the Governor and Council, for the Time being, or any

Laws of Virginia, *pag. 155, &c.* Five of them, and continuing to be held 18 Days, *Sundays* exclusive. This Court hath Jurisdiction, and holds Plea of all Matters whatsoever, arising within this Colony, Criminal, Ecclesiastical, or Civil, at Common Law; or in Chancery, Real, Personal, or Mixt, where the Original Process

Process is not of less Value than 10*l. Sterling*, or 2000*lb. Tobacco*, unless such Process be against the Justices of any County, or Vestrymen of any Parish, for Breach of Penal Laws; such Action will lie, altho' the Forfeiture be of less Value. It also receives and determines Appeals, and Superseas, obtained from the Judgment of any Inferior Court of Record: Grants Certificates of Probat of Wills, and determines the Right of Administration, where the Estate exceeds 50*l. Value*, in divers Counties: Is a Court of Oyer and Terminer, and Goal Delivery of all Prisoners committed to the Public Goal; and, upon Conviction, gives Judgment, and awards Execution. The Judgment of this Court is Final, without Appeal, except in Cases Civil, of the Value of 300*l. Sterling*, or more; where an Appeal lies to the King in Council.

Other Courts of Oyer and Terminer are also held at *Williamsburg*, in *June*, and *December*, Annually, for more speedy Goal Delivery of Criminal Offenders.

The Governor may issue Commissions of Oyer and Terminer to such Persons as he shall think fit, for Arraignment and Trial of Slaves committing Capital Crimes: The Persons, to whom such Commission shall be directed, shall cause such Offenders to be tried before them, without any Jury; and, upon Conviction, shall pass Judgment, and award Execution. If such Slave shall be convicted, the Commissioners are to value him, or her, in Money; and return such Valuation to the next General Assembly, for a suitable Allowance to the Owner.

Courts of Vice-Admiralty for Trial of Piracy, or any Matters within the Admirals Jurisdiction, may be held, by Commission from the Governor, when such Matters happen.

A Court shall be held every Month, at the Court-house of each respective County of this Dominion, on the Day by Law appointed for such County, before the Justices of the Peace, or any Four of them, whereof One to be of the *Quorum*: They have Jurisdiction of all Matters within their respective Counties, at Common Law, or in Chancery, except Criminal Causes, touching Life, or Member, Prosecution to Outlawry, and Matters of less Value than 20*s. Sterling*, or 200*lb. Tobacco*: May take Probat of Wills, and grant Certificate thereof; determine their Right, and commit Administration; and appoint Guardians for Orphans, and their Estates: May award Execution against Hog-stealers: May build Work-houses for the Children of the Poor, and place them in those Houses: May punish Vagrants, and bind poor Children Apprentices: Receive and determine Complaints of Masters, Servants, Sailors, and Apprentices:

Courts of
Oyer and
Terminer
Laws of
Virginia,
pag. 339.

Courts of
Vice-Ad-
miralty.

County
Courts.
pag. 250,
&c.

prentices: Order Roads, Bridges, Public Houses of Entertainment, and Rates of Liquors, Lodging, &c. in them; Mills, Ferry-keepers, Rolling-houses, Public Landings, Proceffioning Bounds of Lands, &c. Whatever Matters arise within the County, or relate to the Peace and good Government thereof, are properly cognizable before this Court; except such Matters, as by any particular Law, are specially determinable before One, or Two Justices, out of Sessions.

Court of Hustings. A Monthly Court of Hustings is held in the City of *Williamsburg*, before the Maior, Recorder, and Aldermen, or any Four of them, for Trial of Matters, not exceeding 20*l.* Current Money, or 4000*lb.* Tobacco, arising within the Jurisdiction of that City; and for the better Government of that Corporation. *pag. 348.*

Courts of Claims &c. At every Election of Burgeses, the Sheriff of every County shall, by Proclamation, appoint a Day for a Court to be held for his County, for receiving Propositions and Grievances, and Public Claims; which shall be certified to the General Assembly, and delivered to the Burgeses, before every Session. *p g. 132.*

Orphan's Court, &c. An Orphan's Court shall be held by the Justices of every County, once every Year, to compel Guardians to exhibit Accounts of Orphans Estates, committed to their Management; and to make such Rules, Orders, and Decrees, as to them shall seem necessary, for the better Preservation and Management of such Estates, and Education of the Orphans. *pag. 447.*

Appeal, & Superfedeas. All Judgments, Orders, and Decrees of any Inferior Court of Record, where the Matter recovered, exclusive of Costs, exceeds 5*l.* Current Money, or 1000*lb.* Tobacco; or where the Title or Bounds of Lands shall be drawn in Question, are reverfible by the General Court, upon Appeal, or Superfedeas, and Error assign'd. *pag. 381, &c.*

Certiorari. When a Writ of Certiorari for removing any Cause, or Matter, depending in an Inferior Court, is delivered to the Justices, the Inferior Court ought not to proceed, but the Justices must return the whole Record, as by the Writ is to them commanded. *Nelf. 130.*

Jurisdiction. No Inferior Court can take Cognizance of any Act done out of their Jurisdiction; if they should do so, and the Matter appear upon Record, the Proceedings will be erroneous. *Style 128.*

If a Court, which hath no Jurisdiction of the Cause, depending in that Court, do proceed to Judgment in it, the Judgment is void, and an Action lies against the Judges who give the Judgment; and any Officer, who executes their Process under them: But where they have Authority,

thority, and give an ill Judgment; there the Party who executes the Process upon that Judgment, shall be excused. *Ibid.* 130.

The Secretary of *Virginia*, by his Commission, appoints such Persons, as he thinks fit, to execute the Office of Clerk, in every Court of Record, within this Dominion. Clerks.

CRIMINALS.

WHEN any Person shall be taken for any Criminal Offence, and brought before a Justice of Peace, he is to examine the Prisoner, and Witnesses; and if the Fact appear to be Felony, or any Matter touching Life, or Member, and therefore triable in the General Court only, or before Justices of Oyer and Terminer, the Prisoner is to be committed to the County Goal, and the Witnesses are to enter into Recognizance, for their Appearance before the Court to be held for Examination of the Prisoner; and the Justice is to issue his Warrant to the Sheriff, requiring him to summon a Court, to meet on the Day in such Warrant appointed; which must not be less than Five, nor above Ten Days, after Date of the Warrant. Criminal Proceedings. Laws of Virginia, pag. 190.

Mittimus of a Criminal.

To the Sheriff, or Keeper of the Goal of the County of Prince George.

Prince George sc. *I* Send you herewith the Body of A. B. late of the Parish of C, in the County of D, Labourer, taken and brought before me, for his felonious Breaking and Entering the Store-house of E. F. and Stealing thereout sundry Pieces and Parcels of Linen and Woollen Goods, of the Value of Twenty Pounds, wherewith he stands charged: Therefore I command you, the said Goaler, to receive the said A. B. into your Goal and Custody; and him there safely to keep, until he shall be thence discharged, by due Course of Law. Given under my Hand and Seal, this Third Day of June, 1735. Commitment.

Recognizance, to be enter'd into by Witnesses.

Prince George sc. *M*Emorand. That on this Third Day of June, 1735. G. H. of, &c. I. K. of, &c. and L. M. of, &c. came before me, W. M. Gent. one of His Majesty's Justices of the Peace for the aforesaid County of Prince George; and each of them, in his proper Person, acknowledged himself indebted to our Sovereign Lord King George the Second, in the Sum of Ten Pounds lawful Recognizance.

lawful Money of Virginia: To be levied severally, of each of their Goods and Chattels, Lands and Tenements, respectively, to the Use of our said Lord the King, his Heirs and Successors, upon Condition, That if each of them do personally appear before His Majesty's Justices of the Peace for the said County of Prince George, at a Court by them to be held for Examination of A. B. on Tuesday next, the Tenth Day of this present Month; and do then and there give such Evidence as he knoweth against the said A. B. concerning the Matters wherewith he is charged on Behalf of the King; and that he do not depart without Leave of the said Court: Then this Recognizance to be void.

If a Witness refuses to answer upon Oath, or to enter into Recognizance, he may be committed, or bound to Good-behaviour. *Nels. 250.*

Warrant for summoning a Court.

To the Sheriff of the County of Prince George.

Warrant for a Court. Prince George sc. *W*Hereas A. B. late of, &c. was this Day committed to the Goal of this County, by my Warrant, it appearing to me, That the felonious Offence, wherewith he stands charged, is triable in the General Court only: Therefore, on His Majesty's Behalf, I require you, that you summon the Justices of your said County, to meet at the Court-house, on Tuesday next, the Tenth Day of this present Month, by Ten of the Clock in the Forenoon; then and there to hold a Court for Examination of the said A. B. and for such other Purposes, concerning the Premisses, as is by Law required and directed: And that you have then there this Warrant. Given under my Hand, this Third Day of June, 1735.

The Examinations, and Recognizance, taken before the Justice, must be by him returned to such Court.

If it appears to the Court, that the Prisoner ought to be tried before the General Court, or Court of Oyer and Terminer, this is to be entred upon Record, and the Prisoner remanded to the County Goal: And if the Offence is notailable, Two Justices (One being of the *Quorum*) are forthwith to issue their Precept to the Sheriff, commanding him to remove the Prisoner, and convey him to the Public Goal.

To the Sheriff of the County of Prince George; and to the Keeper of the Public Goal in the City of Williamsburg.

Prince George *sc.* *W*Hereas, at a Court held by His Majesty's Justices of the said County, on the Tenth Day of this present Month, for Examination of A. B. late of, &c. then a Prisoner in the Goal of the said County, charged with the felonious Breaking and Entering the Store House of E. F. of, &c. and Stealing thereout divers Pieces of Linen and Woolen Goods, of the Value of Twenty Pounds; it was the Opinion of the said Court, That the said A. B. for the said Felony, ought to be tried before the General Court; and thereupon he was remanded to the Goal aforesaid, as appears to us of Record: We M. W. and N. O. Gent. Two of His Majesty's Justices of the Peace for the said County of Prince George, hereby command and require You, the said Sheriff, on Behalf of our Sovereign Lord the King, that you forthwith remove the Body of the said A. B. from your Goal aforesaid, and him safely convey to the Public Goal, in the City of Williamsburg, and there deliver to the Keeper of the said Public Goal, together with this Precept: And we authorise and empower You, the said Sheriff, as well within your County, as in all other Counties thro' which you shall pass with your said Prisoner, legally to impress Men, Horses, Boats, or Sloops, necessary for the safe conveying your said Prisoner to the Goal aforesaid. And we charge and command You, the Keeper of the said Public Goal, to receive the said A. B. into your Goal and Custody, and him there safely to keep, until he shall be thence discharged, by due Course of Law. Given under our Hands and Seals, this Eleventh Day of June, 1735.

Mittimus
to Public
Goal, 2
Justices,
(1 Quor.)

Upon Delivery of the Prisoner, and Warrant, to the Keeper of the Public Goal, he ought to discharge the Sheriff, by giving him a Receipt for his Prisoner.

Williamsburg, June 1735.

*R*Eceived into the Public Goal, the Body of A. B. late of, &c. committed for Felony, by Warrant of M. W. and N. O. Gent. Justices of the County of Prince George, and delivered into my Custody, by the Sheriff of the same County.
S. T. Public Goal-keeper.

Goaler's
Receipt.

But if the Offence is bailable, the Prisoner must not be removed in less than 20 Days, after his being remanded to the County Goal: Upon his Petition, and Tender of sufficient Sureties, he ought to be admitted to Bail. See Tit. Bail.

Bail

Recogni-

Recognizance, to be enter'd into by the Sureties, and Prisoner, upon his being bail'd.

Prince George *sc.* **M**emorand. *That on this Day*
of 1735, before us, M. W.
and N. O. Gent. Two of His Majesty's Justices of the
County aforesaid, personally came I. K. of, &c. and L. M.
of, &c. and took into their Bail, until the Fourth Day
(1 Quo.) of the next General Court, (or until the First Day of the
next Court of Oyer and Terminer,) A. B. of, &c. taken
and imprisoned for the felonious Breaking and Entering
the Store-house of E. F. and Stealing thereout Goods, to
the Value of Twenty Pounds, wherewith the said A. B.
stands charged, before a Court held by His Majesty's Jus-
tices for the aforesaid County of Prince George: And the
said I. K. and L. M. severally, assumed upon themselves,
each, under the Penalty of Fifty Pounds lawful Money
of Virginia; and the aforesaid A. B. likewise assumed
upon himself, on Penalty of One Hundred Pounds of like
Money: To be levied of their, and either of their Goods and
Chattels, Lands and Tenements, to the Use of King George
the Second, His Heirs and Successors, if the said A. B.
shall not personally appear before His Majesty's Judges, on
the Fourth Day of the next General Court, (or First Day
of the next Court of Oyer and Terminer, held in the City
of Williamsburg;) then and there to answer Our said
Sovereign Lord the King, concerning the Felony aforesaid,
and to do and receive what shall be enjoined him by the
said Court; and not to depart thence without Licence for
the same. Given under our Seals, the Day and Year,
first above-mentioned, then taken, and acknowledged before
Us,
M. W.
N. O.

This being taken, must be by the Justices returned to the Clerk of the Secretary's Office.

Prisoner's Witnesses. Witnesses for the Prisoner are to be summoned, at his Request, by the Sheriff, before the Prisoner's Examination in the County; and afterwards, by *Subpœna* from the Secretary's Office.

Notice of Commitment. Sheriff, or Officer, bringing a Criminal to the Public Goal, for any Capital Offence, shall give immediate Notice of such Commitment, to the Clerk of the General Court, who shall issue a Writ, for summoning Twelve Freeholders, of the County where the Offence was committed, to be of the Petit Jury.

Laws of Virginia, Charges of Prosecution shall be paid by the Criminal, and levied upon his Estate: But where no Estate can be found,
pag. 42.

found, such Charges shall be paid by the County where the Criminal was imprisoned, and repaid by the Public.

Sheriffs Fees, for Criminals, *viz.*

For Keeping, and Dieting a Prisoner, in }
Goal, *per* Day. - - - - - } 5 *lb.* Tob.
For Removal to the Public Goal, for }
every Twenty Miles Distance. - - - - - } 100

Fees
Laws of
Virginia,
pag. 191.

Besides other Fees, due by Law, for serving Process, or Summons, Commitment, and Release.

Trials for Treason, or Felony, shall be, by Petit Juries, before the General Court, or Court of Oyer and Terminer: The Clerk of the General Court, upon Notice of Commitment for any Capital Crime, issues Writs of *Venire Facias*, for Twelve Freeholders, of the County whence the Criminal is removed, to be Jurors upon his Trial: The Pannel, if any are challenged, or fail to appear, is made up of By-standers, being Freeholders within this Colony. But all other Pleas of the Crown, for Offences of inferior Degree, are triable upon Indictment, or Presentment of a Grand Jury, or Churchwardens, and determinable before any Court of Record, within the County, where such Offence shall be committed.

Trials:
Petit Ju-
ries.
pag. 183,
& 420.

Offences of Blasphemy and Irreligion, punishable by Incapacity of Office, or Imprisonment, are determinable in the General Court only: Upon Information, or Presentment, for these Offences, the County Court shall cause the Offender to enter into Recognizance, with Surety, for his Appearance at the next General Court: The Record of such Recognizance, and Presentment, or Information, and the Names of the Informers, must be certified to the Secretary's Office. 3 & 4 *Geo.* 2. *cap.* 2. *pag.* 420.

Marriages within the Levitical Degrees, only triable before the General Court: The Attorney-General receives Informations, and exhibits Bill against the Parties. *Ibid.* *f.* 5.

Incestuous Copulations, without Marriage, upon Information, or Presentment, may be tried in any Court of Record: Upon Conviction, the Parties shall be fined, at the Discretion of the Court. On Refusal of Paiment, or Security, shall receive 39 Lashes, and committed to the County Goal, 'til they give Bond and Security for their future Separation. *Ibid.* *f.* 6.

Accessories in Felony, and Buyers, or Receivers, of stolen Goods, knowing the same to be stolen, may be prosecuted, altho' the principal Felon be not attainted. 3 & 4 *Geo.* 2. *cap.* 4. *pag.* 430.

Chal-
lenge.

8 Geo.
2. cap. 7.

In Trials of Treason, Felony, or other Criminal Offence, before Justices of Oyer and Terminer, every Jurymen shall be a Freeholder, possessed of 100 l. Estate, Real and Personal, or he may be challenged; but not after he is sworn of the Jury.

Counsel. In all Trials for Capital Offences, Prisoners may have Counsel.

Trials,
in the
County.

Where any Offence is triable before the County Court, the Justice of Peace, by whom the Offender shall be committed, or bail'd, is to bind the Witnesses for the King, to appear at the next Court; and the whole Record of his Proceeding, together with the Recognizances and Examinations by him taken, must be by him return'd to the Clerk of such Court, sometime before the Court Day.

Method,
for Trial
of Criminal
Slaves.

Laws of
Virginia,
pag. 339.

Slaves, guilty of Capital Crimes, shall be committed to the County Goal. The Sheriff shall forthwith certify such Commitment, and the Cause, to the Governor, who thereupon, by his Commission, appoints Justices of Oyer and Terminer, before whom the Offender shall be arraign'd, and tried, without any Jury; and upon Conviction, they shall pass Judgment, and award Execution. 9 Geo. 1. cap. 4.

Clergy.
pag. 474.

The Owner may appear, in Defence of his Slave, at the Trial.

Negros, Mulattos, or Indians, convict of any Offence, within the Benefit of Clergy, shall not have Judgment of Death, but be burnt in the Hand, in open Court, by the Jailor, and suffer such other Corporal Punishment, as the Court thinks fit; except upon Conviction of Manslaughter, or Burglary, or House-breaking, and stealing Goods to the Value of Five Shillings *Sterling*; or where Clergy hath been once allow'd: In any of these Cases, the Offender shall be hang'd. 5 & 6 Geo. 2. cap. 7.

pag. 339,
&c.

Justices of Oyer and Terminer, commissioned by the Governor, for Trial of any Criminal Slave, shall forthwith cause such Slave to be publicly arraign'd, and tried, at the Court House, and to take for Evidence, the Confession of the Offender, Oath of One or more credible Witnesses, or Testimony of Negros, Mulattos, or Indians, Bond or Free, with pregnant convincing Circumstances; and thereupon, without Solemnity of a Jury, to acquit, or condemn the Prisoner.

Evi-
dence.

Wit-
nesses.

If any Negro, Mulatto, or Indian Witness, who is not a Christian, shall give a false Testimony, at such Trial; upon Conviction thereof, by Proof, or pregnant Circumstances, in the County Court, he shall, without further Trial,

Trial, have one Ear nail'd to the Pillory, one Hour, then cut off, and the other Ear nail'd another Hour, then likewise cut off and shall also receive 39 Lashes.

At every such Trial, before Examination of any Negro, Mulatto, or Indian Witness, who is not a Christian, the Person first named in the Commission, shall give this Charge, viz.

YOU are brought hither as a Witness; and, by the Direction of the Law, I am to tell you, before you give your Evidence, That you must tell the Truth, the whole Truth, and nothing but the Truth. And that, if it be found hereafter, that you tell a Lie, and give false Testimony in this Matter, you must, for so doing, have both your Ears nail'd to the Pillory, and cut off, and receive Thirty Nine Lashes on your bare Back, well laid on, at the Common Whipping-post.

Charge,

Pleas of Defence are to be admitted in such Trials; but no Exception to the Formality of the Proceedings, is to be allowed.

Pleas.

Upon Conviction, and Judgment of Death pass'd upon the Offender, the Commissioners are to value such Slave, in Money; and such Valuation shall be recorded, and certified to the next Assembly, for Allowance thereof to the Owner.

Valua-
tion,

C U S T O M S.

Duties. Naval Officers. Collectors.

THIS Word bears a large Signification : Custom is one of the main Triangles of the Laws of *England*; which are divided into,

1. Common Law.
2. Statute Law.
3. Custom. *Co. Lit. l. 2. cap. 10.*

Of every Custom, there are Three essential Parts; Reasonableness, Time out of Mind, and continual peaceable Usage, without Interruption : By these it obtains the Force of a Law. *Davis. Rep.*

Custom also signifies Duties, Subsidies, or Impositions, upon Wares and Merchandises, granted by common Consent; that is, by Authority of the Legislature, to the King, for Public Uses : These be the antient and right Customs. *Co. 2 Inst. cap. 30.*

Of these Duties, or Customs, payable in this Colony, there are hitherto only these, *viz.*

Upon Importation.

Customs
inwards.
Laws of
Virginia,
pp. 351,
& 464.

Liquors.

Rum, Brandy, Spirits, and Wine,
imported from any Place, except
Great-Britain, per Gallon. 12
Geo. 1. cap. 1. & 5 & 6 Geo. 2.
cap. 2.

Twenty *per Cent.* allow'd for Leakage, and 15 *per Cent.* Discount, if Duty paid, in imported Money.

pag. 243. Persons.

For every Passenger, Servant, or Slave, in any Ship or Vessel, entered here, except Mariners in actual Pay, *per Poll.* 9 *Annæ. cap.* 5. 0 6

Ibid.

Ships,

Or other Vessels, entring in this
Colony, to unlade or take on
Board Merchandise, *per* Ton,
Sterling.

Vessels belonging to *Virginia* Owners, exempted.

pag. 469 Slaves,

Imported for Sale, 5 *per Cent.* on
the Purchase-Money, to be paid
by the Buyer, within Forty Days
after Purchase; on Penalty of 5
l. for every Slave concealed, 5 &
6 *Geo. 2. cap. 3.* *ad Valorem.*

If the Purchase is made for *Sterling*, 20 *per Cent.* to be added, for Difference of Exchange: If for Tobacco, the Seller to value such Slaves, in Current Money.

15 *per Cent.* Discount upon Paiment of Duty in im-
ported Money.

No Duty for Slaves, dying within Forty Days after Purchase : Nor for any Slave born in this Colony, or imported here before *July* 1, 1752 ; or where the Duty has been once paid.

Duties on Exportation.

Out-
wards.
pag. 177.

Skins, and Furrs.

{	Hides, <i>per</i> Piece, raw	- - - - -	0	3	0
	drest	- - - - -	0	6	0
	Buckskins, <i>per</i> Piece, drest	- - - - -	0	1	3
	undrest	- - - - -	0	1	0
	Doe, - - - - - drest	- - - - -	0	1	2
	undrest	- - - - -	0	0	3
	Otter, <i>per</i> Skin	- - - - -	0	2	0
	Wild Cat, - - - - -	- - - - -	0	1	2
	Mink, - - - - -	- - - - -	0	1	0

FOX,

	s.	d.	q.
Fox, - - - - -	0	1	2
Elk, - - - - -	0	4	2
Bever, <i>per</i> Pound, }	0	3	0
Racoon, <i>per</i> Dozen. }			
Muskrat, <i>per</i> Ditto, to be paid by the }	0	2	0
Exporter, before ship'd. }			
Deer-skins to be accounted, one Third Buck,			
two Thirds Doe. 8 Geo. 2. cap. 15.			
Tobacco, { <i>per</i> Hogsh. head, Box, Chest, Case, }	2	0	0
{ or Barrel, <i>Sterl.</i> }			
For every 500 lb. exported in Bulk, }	2	0	0
to the <i>British</i> Plantations; and so }			
<i>pro Rato.</i> }			
And for Tobacco, exported to <i>North-</i>			
<i>Carolina</i> , or any other <i>British</i> Plan-	0	1	0
tations, in <i>America</i> , <i>per</i> Pound. }			

9 Anne.
cap. 5.
Laws of
Virginia,
pag. 242.

8 Geo. 2.
cap. 15.

Every Person exporting Merchandise to the Plantations, before the Goods are ship'd, or within Five Days after, shall make Oath, before a Justice of Peace, of the County where he lives, to the Package, and Contents of the Goods by him exported, and that no Tobacco is contained therein; or if any, to the true Quantity: Justice of Peace to grant Certificate of such Oath made before him: The Exporter to deliver such Certificate to the Master of the Ship, or Vessel, to be by him produced to the Naval Officer, before Clearing.

Exportation to the Plantations.
Ibid.

Hides, Skins, or Furrs, are to be exported in like Manner, upon Oath, before a Justice of Peace; and a Certificate obtained, before the Goods are ship'd, or exported.

Skins and Furrs.
Ibid.

Skins, or Furrs, in the Possession of any Person, traveling upon the Frontiers, may be seized by any Justice of Peace, Sheriff, or Constable; unless the Party produce a Certificate from some Justice, that the Bearer is an Inhabitant of this Colony: And he must also make Oath, 'That he will not carry the said Skins, or Furrs, or cause the same to be carried into any other Colony, or Province, without paying the Duties.'

Persons convicted of making a false Oath, shall suffer as for Perjury in a Court of Record.

Punishment of Perjury.
Duties,

Duties shall be paid to the Naval Officer, before the Ship is cleared,

Goods exported, contrary to this Act, or the Value of such Goods, shall be forfeited; One Moiety to the King, to the Use of William and Mary College; the other Moiety to the Informer, recoverable in any Court of Record.

to be paid before Clearing.
Forfeitures.

Certificate of Goods exported, &c.

Certifi-
cates.

Nansemond, sc. **A.** B. Merchant, residing in this County, this Day personally appeared before me, C. D. Gent. a Justice of Peace of the said County, and made Oath, That he (a) has ship'd on Board the Sloop E. F. G. Master, for Barbadoes, (b) Fifty Barrels to export. Pork, mark'd and number'd as in the Margin; and Five (b) Here Hundred Bushels Corn, in Bulk; and that no Tobacco is contained therein. Sworn before me, and certified under my Hand, this Day of

If Tobacco is exported, mention the Cask, Case, Package, or Bulk, with the Mark, Number, and Quantity, contained therein.

Certificate for Hides, Skins, or Furs.

as before, unto----- That he intends to ship on Board, (c) The &c. (c) One Hogshead, mark'd and number'd, as in the Package, Margin, containing Four Hundred Deer Skins, and Twenty and Contents. Pounds of Beaver, and no more. Sworn, &c.

Privi- Virginia Owners exempted from the Duties of 2 s. per lege of Hogshead, and 1 s. 3 d. per Ton. 9 Anne, cap. 5. Virginia Liquors, landed before Entry, may be seized by any Owners. Collector, who may enter any House, or Ware-house, in Liquors. the Day Time; or, by Warrant from a Justice of Peace, Laws of accompanied by a Constable, may break open any House, Virginia, to search for, seize, and carry away Liquors, not entred. pag. 464, Collectors may seize, on Board, Liquors not entred w thin &c. Ten Days after the Entry of the Ship, or Vessel, wherein they are imported: May stay on Board 'til all Liquors, liable to a Duty, are delivered. Collector, or Constable, sued for any Thing done, in Execution of this Act, may plead the General Issue; and, upon Nonsuit, or Judgment for the Defendant, have double Costs. 5 & 6 Geo. 2. cap. 2.

Oath, and Cer- Importer may make Oath, before a Justice of Peace, to tificate. the Number of Gallons by him imported: Upon such Oath made, and certified upon the Invoice, Collector to grant Permit for Landing.

Trans- Value of Liquors, transported from one District to ano- portation. ther, within this Colony, without Permit from a Collector, shall be forfeited by the Master of any Vessel transporting such Liquors.

Forfei- Forfeitures, arising by this Act, shall be, one Third to tures. the King, one Third to the Governor, and the other Third to the Informer; recoverable in any Court of Record.

Warrant

Warrant, to search for Uncustomed Liquors.

To *A. B.* or any Constable of the County of Nansemond.

Nansemond sc. *Whereas, Complaint hath been made to me, by C. D. of, &c. Gent. a Collector of His Majesty's Customs, that certain Liquors, liable to a Duty, have been clandestinely landed, without lawful Entry, Payment of the Duties, or Security given for the same: Therefore, in His Majesty's Name, I hereby authorise and require you, and every of you, to be aiding and assisting to the said C. D. in the Execution of his Office of Collector; and, if Occasion be, to break open, in the Day Time, any House, Ware-house, or Store-house, to search for, seise, and carry away, any Liquors, by Law, liable to a Duty; and for which such Duty shall not have been paid, or secured, according to an Act of Assembly, in that Case made and provided. And for so doing, this shall be your Warrant. Given under my Hand and Seal, this Day of, &c.*

Search-
Warrant.

Certificate for importing Liquors,

Nansemond sc. *Before me, A. B. Gent. a Justice of Peace of the said County, personally came, C. D. Merchant, and made Oath, That Twenty Casks of Rum, mark'd, and number'd, as in this Invoice specified, by him imported in the Ship from Jamaica, contain Two Thousand Gallons, and no more, to his Knowledge, as in this Invoice is particularly contained. Sworn before me, and certified, &c.*

Certifi-
cate for
Importa-
tion.

This is to be certified upon the Importer's Invoice of such Liquors.

Duty on Slaves shall be paid by the Buyer, to a Collector, and his Receipt obtained within Forty Days after Purchase; on Penalty of 5 *l.* per Slave, concealed. The Seller shall, at the End of Three Months, transmit to the Collector, a List of Slaves sold, to whom, the Price, and Time of Sale, and what then remains unsold. Collectors may, Forty Days after Purchase, require the Buyers to produce Receipts for the Duty; and a Failure so to do, for Slaves then living, shall be a Conviction; and the Party liable for the Penalty. One Moiety to the Governor, the other to the Informer. 5 & 6 Geo. 2. cap. 3.

Slaves.
Laws of
Virginia,
pag. 469,
&c.

Exporters of Slaves within Twelve Months, or Liquors, within Six Months, shall be allowed a Draw-back of the whole Duties paid. But no Draw-back for Slaves, exported to North-Carolina.

Draw-
back.

D E B T.

Laws of
Virginia,
2 Anna,
cap. 11.
pag. 250.

UNDER this Head, I comprehend all Personal Matters whatsoever, in Difference between Party and Party, where the Demand is under 20 s. Sterling, or 200 lb. Tobacco : All such Matters being cognizable, and finally determinable, before One Justice of Peace, (without Appeal, or *Superfedeas*,) who may enter up Judgment, and issue Execution thereupon, returnable before himself, and directed to the Sheriff, or Constable.

1 Geo.
2. cap. 3.
pag. 385.
Value
of 20 s.
Sterling,
in Cur-
rent Mo-
ney.
pag. 425.

Disputes have sometimes arisen, as to the Value of 20 s. Sterling, in Current Money : But the Laws in Force for settling the Rates of Coin in this Dominion, will, from Time to Time, give a plain Determination ; at present 'tis 25 s.

If an Action is brought for Debt, in the County Court, and, upon Trial, it appears, that 20 s. is not due to the Plaintiff, he shall be Nonsuit, and pay Costs ; unless the Court enters upon Record, that the Defendant refused, or delayed, to settle Accounts : In such Case, Plaintiff recovers his Ballance, and Costs. 5 & 6 Geo. 2. cap. 13.

This summary Method for easy and speedy Recovery of small Debts, is beneficial, and well adapted to the Constitution of this Colony : It prevents vexatious Suits, and eases the Poor from the Trouble, Costs, and Expences, inseparably attending Process at Common Law, or in Chancery.

Method
of pro-
ceeding
upon
Warrant.

Upon Complaint made to a Justice of Peace, for any Matter cognizable before him, he issues his Warrant, directed to a Constable, to summon the Defendant : Upon Appearance of the Parties, the Justice instantly proceeds to hear and determine the Cause, upon the Evidence produced ; and thereupon, enters up Judgment, according as the Right of the Cause, and Matter in Law, appear to him.

When a Warrant is granted, the Justice, upon the Request of the Plaintiff, requires the Constable to summon Witnesses : If the Defendant, upon Service of the Warrant, or before the Day of Appearance, desires his Witnesses to be summoned, the Officer ought to summon them, upon Request, without other Warrant.

Every Warrant may be General, or Special, at the Discretion of the Justice : General, to appear before him,
or

or any other Justice ; Special, before himself, at a Day and Place certain, limited in such Warrant. Appearance.

The Officer serving a General Warrant, is to appoint the Defendant his Day of Appearance, and before whom ; and thereupon, he must make Return of the Warrant, executed, to the Justice, and at the Day so appointed : But a special Warrant, served, must be return'd executed, to the same Justice who issued such Warrant, at the Day and Place therein commanded.

If the Officer cannot serve his Warrant upon the Person of the Defendant, he ought to leave a Copy thereof, attested under his Hand, together with the Day and Place of Appearance, at the Defendant's Place of Abode ; and thereupon, return the Truth of the Case.

If the Defendant will not appear, upon Summons executed, or left at his Dwelling, and so return'd by the Officer, or proved, upon Oath, of any other indifferent Person, to whom the Warrant might be directed ; the Justice, if he see Cause, may admit the Plaintiff to prove his Debt, and grant Judgment for what shall appear due.

But if the Parties, or either of them, are hindered from Appearance, by Sicknes, or other Cause seeming reasonable to the Justice, he may appoint another Day of Hearing ; Notice whereof being given to the Party absent. If the Plaintiff then fails, without shewing sufficient Cause, the Warrant is to be dismiss'd, and the Defendant ought to have Judgment for his Costs : If the Defendant fails, Plaintiff may prove his Demand, and shall be entitled to Judgment, and Execution thereupon.

Upon every Judgment, the Party, for whom the Judgment is given, must have his Costs by him expended, tax'd by the Justice who enters up the Judgment. Costs.

Sheriffs, or Constables Fees, upon Warrants, chargeable by the Officer, and leviable by Distress, upon the Party at whose Suit the Business is done, *viz.* Fees.
8 *Geo.* 2.
cap. 8.

Serving a Warrant - - - - - 10 *lb.* Tobacco.

Summoning a Witness - - - - - 5

Serving an Execution, or Attachment, returnable before a Justice - - - - - 10

And to be repaid by the Party against whom Judgment shall be given.

Officer exacting and taking more, or greater Fees, forfeits 20 *lb.* Tobacco, for every Offence, to the Party injured, besides the Fee over-charged ; recoverable by Action, in any Court of Record.

Warrant

Debt.

Warrant for Debt.

To A. B. Constable.

Warrants. *Ille Wight sc.* **C.** D. complains, That E. F. of, &c. is indebted to him, Twenty Four Shillings Eleven Pence Current Money, and refuseth Payment : Therefore I command you to summon the said E. F. to appear before me, or some other Justice of this County, to answer this Complaint : And that you return how you have executed this Warrant. Given under my Hand, &c.

Summon G. H. and I. K. Witnesses for the Plaintiff.

If it be a Special Warrant ; say,

as before, unto----- before me, at my House, in this County, on Thursday, the Seventeenth Day of this present Month, by Ten a Clock in the Forenoon, to answer this Complaint : And that you have there then this Warrant. Given, &c.

Judgment, for the Plaintiff, upon Trial.

Judgments.

Ille Wight sc.

C. D.

against

E. F.

in Debt.

June 17, 1735.

THE said Plaintiff, and the said Defendant, this Day personally appeared before me, and were heard, and their Witnesses examined : It is thereupon considered, That the said C. D. recover against the said E. F. and Judgment is granted to the said Plaintiff, against the said Defendant, for Twenty Four Shillings Eleven Pence Current Money, and Costs.

Serving a Warrant.

10 lb. Tobacco.

Summoning Two Witnesses }
for the Plaintiff.

10

20

By Confession.

THE Defendant appeared before me, and confessed Judgment ; which is granted unto the said Plaintiff, against the said Defendant, for Twenty Four Shillings, &c.

Serving the Warrant,

10 lb. Tobacco.

Upon Non-appearance of the Defendant.

THE Defendant failing to appear, the said Plaintiff proved his Debt, and Judgment is granted him against the said E. F. for, &c. For

For the Defendant, upon Trial.

as in the first Judgment, unto----- considered, *That the said Complaint be dismiss'd: And the said Plaintiff is ordered to pay unto the said Defendant his Costs by him in this Behalf, expended.*

Summoning Three Witnesses for the Defendant. $\{ 15 lb. Tobacco.$

If the Plaintiff fails to appear.

THE Plaintiff not appearing to prosecute his Suit, it is considered, That his Complaint be dismiss'd, &c. as in the last.

Execution, against the Body, for the Plaintiff.

G E O R G E the Second, by the Grace of God, of Great-Britain, France, and Ireland, King, Defender of the Faith, &c. To the Sheriff of Isle Wight County, Greeting. We command you that you take E. F. late of, &c. if he be found within your Balliwick, and him safely keep, so that you have his Body before G. W. Gent. one of our Justices of the County aforesaid, the Day of to satisfy C. D. the Sum of Twenty Four Shillings Eleven Pence Current Money, which the said C. D. lately, before our said Justice, hath recovered against him for Debt; also the Sum of Twenty Pounds Tobacco, which to the said C. D. before the same Justice, were adjudged for his Costs in that Suit expended; whereof he is convicted, as appears to us of Record: And that you have there then this Writ. Witness the said G. W. the Twentieth Day of July, 1735, in the Ninth Year of Our Reign.

Execu-
tions, and
Returns.

For the Defendant

as before, unto----- *To satisfy E. F. Fifteen Pounds Tobacco, which to the said E. F. before our said Justice were adjudged for his Costs, about his Defence, in a certain Complaint made by the said C. D. expended; whereof he is convicted, &c. as before.*

These Writs may be directed to the Sheriff, or Constable.

In every Writ of Execution, there must be Fifteen Days, at least, between the Day of issuing such Writ, and the Day therein limited for Return.

If the Writ is executed, the Debtor must be committed to the County Goal, there to remain, without Bail or Mainprize,

Mainprife, 'til Satisfaction made for the Debt; or until discharged by the Creditor, or by Law. If the Officer suffers him to go at Large, tho' he return afterwards, it is an Escape; and such Officer shall be liable to answer all Debts with which the Prisoner stood charged in Execution.

Return of the Writ executed.

BY Virtue of this Writ, to me directed, I have taken the within named E. F. whose Body, before the Justice within named, at the Day and Place within contained, I have, ready to satisfy C. D. of the Debt and Costs within mentioned, as within to me is commanded.

But if the Writ is not executed; return,

THE within named E. F. is not found in my Balliwick, (or Precinct.)

It is in the Election of the Party for whom a Judgment shall be given, to take Execution against the Body, or Goods, of the Debtor; But upon any Judgment obtained for Tobacco, no Execution shall be levied, between the last Day of August, and the last Day of December, in any Year.

8 Geo. 2.
cap. 11.

Execution against the Estate, for the Plaintiff.

GEORGE, &c. To A. B. a Constable of Ille Wight County, Greeting. We command you, That of the Goods and Chattels of E. F. late in your Precinct, you cause to be made the Sum of _____ which C. D. lately, before G. W. Gent. one of our Justices of the said County, hath recovered against him for Debt; also Pounds Tobacco, which to the said C. D. before the same Justice, were adjudged for his Costs, in that Suit expended; whereof he is convicted, as appears to us of Record: And that you have the said _____ before our said Justice, the _____ Day of _____ to render to the said C. D. of the Debt and Costs aforesaid. And that you have there then this Writ. Witness, &c.

For the Defendant.

as before, unto----- The Sum of Fifteen Pounds Tobacco, which to E. F. lately, before G. W. Gent. one of our Justices of the said County, were adjudged, for his Costs about his Defence, in a certain Complaint at the Suit

Suit of the said C. D. expended; whereof he is convicted, as appears to us of Record: And that you have, &c. [as before,] to render to the said E. F. of his Costs afore-said. And that, &c.

How Goods, taken in Execution, shall be sold. See p. 27. *Tit. Attachment.* And also, Officers Return there-upon.

By a late Act, 'Where Execution shall be served, or 8 Geo. 2. Distress made, upon the Goods of any Debtor, if he, *cap. 11.* within Five Days, tenders sufficient Surety, to be approved by the Creditor, and to be bound with him to pay the Debt and Costs, with lawful Interest, at the End of Twelve Months, the Officer shall restore the Goods: If no such Security be offered, and the Goods cannot be sold for ready Money, or Tobacco, at Three Fourths of the Value, at least, in the Opinion of the Officer, he may sell them upon Credit, for Money, or for Tobacco, if the Judgment be payable in Tobacco, to be paid at the End of Twelve Months: But the Buyer shall be bound, with one or more Sureties, to pay the same, with Interest, to the Creditor.'

If the Debtor, whose Goods shall be taken in Execution, *12 Geo. 1. cap. 3.* tender sufficient Security to the Officer, to have the same Goods forthcoming, at the Time of Sale; the Officer may *Laws of Virginia,* except such Security, and suffer the Goods to remain in *pag. 362.* the Possession, and at the Risk of the Debtor, 'til that Time.

And if the Debtor, at the Time appointed for Sale, tenders to the Officer, the Debt, and Costs, the Officer shall accept it, and restore the Goods.

Return of an Execution, where only Part of the Debt is levied.

BY Virtue of this Writ to me directed, I have caused to be made of the Goods and Chattels of the within named E. F. the Sum of *which I have, ready* to render to the within named C. D. in Part of the Debt and Costs within-mentioned: And I do further certify, That the said E. F. hath no more Goods and Chattels, within my Precinct, whereof at present, I can make the Residue of the said Debt and Costs, as by the said Writ is required.

Where no Estate is found.

THE within-named E. F. hath no Goods or Chattels in *pag. 362.* my Precinct, whereof I can make the Sum within-mentioned. IF

If Two, or more, Writs of Execution, shall be deliver'd to the Officer, against the same Person; that which was first delivered, shall be satisfied first.

DEER.

Penal-
ties, for
killing
Deer, at
unseaso-
nable
Times.
8 Geo. 2.
cap. 12.

NO Deer, wild in the Woods, or unfenced Grounds, shall be killed between the First Day of *January*, and the last Day of *August*, in any Year; on Penalty of 15 s. to the Informer, for every Deer so killed; recoverable before any Justice of the County where such Offence shall be committed: Conviction by Oath of One Witness, or Confession, leviable by Distress and Sale of the Offender's Goods; and in Default of Distress, Commitment, without Bail, 'til Paiment of the Forfeiture.

Buying, or receiving Deer, so killed, of an Indian, or any other Person, like Penalty.

If a Servant, or Slave, by his Owner's, or Overseer's Command, so kills, or buys, or receives Deer so killed; the Party giving such Command, shall be liable for the Penalty: But if the Offender cannot prove such Command, or does not give Security for Paiment of the Fine, within Six Months after Conviction, he or she shall receive, by Order of the Justice, Fifteen Lashes, on his or her bare Back well laid on.

Warrant, for killing Deer.

To J. O. Constable.

War-
rants.

Amelia sc. **W** Hereas A. B. of, &c. has made Information before me, That C. D. of, &c. did lately unlawfully kill Deer: I therefore charge you, in His Majesty's Name, forthwith to apprehend the said C. D. and to bring him before me, or some other Justice of Peace of this County, to answer the Premisses. Given under my Hand, &c.

Against a Servant, or Slave.

W Hereas, &c. That a Negro Man Slave, named _____ belonging to E. F. of, &c, did lately, &c, as before.

Or,

THAT G. H. a Man (or Woman) Servant, belonging to E. F. of, &c. did, lately, buy or receive Deer unlawfully killed, &c.

To

To levy the Penalty.

Amelia sc. **W** Hereas C. D. of, &c. hath been duly convicted, before me, That he did, unlawfully, kill Two Deer, running wild in the Woods, within this County, on the Tenth Day of May last, contrary to an Act of Assembly in that Case made and provided, whereby he hath forfeited the Sum of Thirty Shillings: These are, therefore, to command you forthwith to levy the said Thirty Shillings, so forfeited as aforesaid, by Distress and Sale of the Goods and Chattels of the said C. D.; and that you pay the same to A. B. who inform'd me of the said Offences: And if the said C. D. shall not have Goods, or Chattels, in your Precinct, sufficient to satisfy the said Forfeiture, that then you certify me thereof, and make Return of your Proceedings in the Premises. Given under my Hand and Seal, this, &c.

Distress

Goods distrained must be sold, in like Manner, as Goods taken in Execution. See *Tit. Debt.*

Return where the Penalty is levied.

BY Virtue of this Precept, to me directed, I have levied of the Goods and Chattels of the within-named C. D. the Sum of Thirty Shillings, which I have rendered to A. B. as within is to me commanded.

Returns

Where there is no Distress.

TH E within-named C. D. hath no Goods, or Chattels, in my Precinct, whereof I can levy the Forfeiture within-mentioned.

Mittimus, for Want of Distress.

To J. O. Constable, and to the Keeper of the Goal of the County of Amelia.

Amelia sc. **W** Hereas you, the said Constable, were by my Warrant commanded to levy Thirty Shillings, on the Goods and Chattels of C. D. of, &c. by Distress and Sale thereof, and to pay the same to A. B. the said Sum being to him forfeited by the said C. D. for unlawfully killing Two Deer, on the Tenth of May last: And whereas you have returned unto me, that the said C. D. hath no Goods or Chattels, whereof you can levy the Forfeiture and Sum aforesaid: These, are therefore, to command you to apprehend the said C. D. and him convey

Commitment

Deer. Deodand. Divine Service.

vey to the Goal of this County, and safely deliver to the Keeper thereof, together with this Precept: And I charge and require you the said Keeper, to receive the Body of the said C. D. into your Goal and Custody, and him there safely to keep, without Bail or Mainprise, until he shall pay the said Forfeiture of Thirty Shillings, unto the said A. B. or until he be discharged by due Course of Law. Given under my Hand and Seal, this Day of

D E O D A N D.

Defini-
tion.

THIS is when any moveable Thing inanimate, as a Cart, Boat, &c. Or a Beast animate, as a Horse, Ox, &c. cause the untimely Death of any Person, without the Will, Offence, or Fault of the Person killed; but it must be on the Land, and not on the Sea. *Co. 3. Inst. 57.*

Forfei-
ture.

This being found by Inquisition, before the Coroner, is forfeited to the King, as being the Price of Blood, to be distributed in Alms.

Origin.

It is founded upon antient Custom, and seems to owe its Original to the Notion of Purgatory: For, when a Person came to a sudden and untimely Death, without having Time to confess his Sins to a Priest, and to receive Absolution; the Thing which occasioned the Death, became a *Deodand*, viz. was given to the Church, to be distributed in Alms to poor Churchmen, to pray the Soul of such deceased Person out of Purgatory.

D I V I N E S E R V I C E.

Sabbath.

Dissenters. Quakers. Recusant Convict.

Penal-
ties on
Distur-
bers of
Divine
Service.
Laws of
Virginia,
pag. 83.

WHOMSOEVER shall disturb the Minister, exercising his Function, in Church, or Chapel, or shall appear there in any unseemly or indecent Gesture, shall be put under Restraint, during the Time of Service, by any Justice of Peace, Sheriff, or other Officer then present; and shall forfeit, for the first Offence, 200 *lb.* Tobacco, and Cask: And for every such Offence afterwards, 500 *lb.* Tobacco, and Cask, to the Use of the Parish, leviable by Distress, upon Warrant from a Justice of Peace, directed to the Sheriff. *32 Car. 2. cap. 13.*

Justices refusing, or neglecting, to put this Law in Execution, shall be fined 500 *lb.* Tobacco, and Cask, for every Neglect, to the Use of the Parish.

Every

Every Person of the Age of One and Twenty Years, or more, (not being a Protestant Dissenter,) wilfully absent from Divine Service at his or her Parish Church, or Chapel, the Space of One Month; or who, when there, shall not decently continue 'til Service is ended; or whoever, on a Sunday, shall be present at any disorderly Meeting, Gaming, or Tipling, or shall travel, except to and from Church, or upon Matters of Necessity; or shall work in Corn, or Tobacco, or do any other Labour, except for necessary Sustenance: The Party offending in any of the Premises, convicted by Confession, or legal Proof, before One or more Justices, forfeits for every Offence Five Shillings, or 50 lb. Tobacco, to the Churchwardens, for the Use of the Poor; on Refusal of Paiment, or Caution for the same, at the laying the next Parish Levy, the Offender shall receive, by Order of the Justice, or Justices, before whom such Conviction shall be, Ten Lashes on his or her bare Back, well laid on. Prosecution in Two Months after Offence committed. 4 *Annæ cap. 30.*

On Persons absent from Church, or prophaning the Sabbath. Laws of Virginia, pag. 180.

Grand Juries, and Churchwardens, may make Presentments to the County Court, for any of these Offences. 3 & 4 *Geo. 2. cap. 2.*

Warrant, to levy the Fine, for Misbehaviour in Church.

To the Sheriff of the County of *Norfolk.*

Norfolk *sc.* **W** Hereas, A. B. of, &c. did, on Sunday last, at the Parish Church of C. in this County, disturb the Minister in the Exercise of his Ministerial Function, by certain unseemly Words and Gestures, then there by the said A. B. uttered and used; (d) whereof he is convicted, upon my own View and Record. And whereas the said A. B. for the said Offence, hath forfeited Two Hundred Pounds Tobacco, and Cask, to the Use of the said Parish of C: Therefore, in His Majesty's Name, I command you to levy the said Two Hundred Pounds of Tobacco, and Cask, by Distress and Sale of the Goods and Chattels of the said A. B. within your Bailiwick; and that you render the same to the Churchwardens of the Parish of C. aforesaid, for the Use of the said Parish, and make due Return how you have executed this Precept. Given under my Hand, &c.

Warrants. (d) Or, as hath been duly proved before me.

Upon any such Conviction, after the first Offence; say, as before, unto----- And whereas the said A. B. hath been before convicted for the like Offence, as appears to
K me

me of Record; and has therefore forfeited Five Hundred Pounds Tobacco, and Cask, to the Use of the said Parish of C. I command you, in His Majesty's Name, to levy the said Five Hundred, &c.

For not coming to Church.

To J. O. Constable.

Norfolk sc. *W* Hereas I have been informed, upon Oath, That A. B. of, &c. hath absented himself from Divine Service, at his Parish Church, the Space of One Month, contrary to an Act of Assembly, in that Case made and provided: I therefore command you to bring the said A. B. before me, or some other Justice of the Peace of this County, to answer the Premises. Hereof fail not. Given, &c.

The like Warrant for any of the other Offences.

If the Party pleads, that he is a Protestant Dissenter, he must make it appear, that he is a Member of some Dissenting Congregation, and has been duly present at some Religious Assembly, by Law tolerated, and allowed: And he may be required, if the Justice see Cause, to take the Oaths, or make and subscribe the Declarations, and Profession of Belief, hereafter-mentioned.

Con-
viction.

Conviction for any of these Offences, specified under this Title, must be, either by Confession, or View of a Justice, or Testimony of Two, or more, credible Witnesses.

The Offender being apprehended, and convicted, for not coming to Church, or prophaning the Sabbath; on Refusal of present Payment of the Fine, or failing to give sufficient Caution for Payment, at the laying the next Parish Levy, is to receive, by Order of the Justice before whom such Conviction shall be, Ten Lashes, on his or her bare Back, well laid on.

Dissen-
ters.

Protestant Dissenters took their Rise with the Reformation of the Church of *England*, and first discover'd themselves, *Anno* 1568, in the 11th Year of Q. *Elizabeth*: Some Ceremonies which had been used in Times of *Poperie*, were thought fit to be continued, as useful to beget Reverence in Holy Exercises, and in Hopes to bring those of the *Roman* Communion more easily to comply with that Reformation.

But some Divines complain'd of This, as a Compliance with *Poperie*; and alleged, that since we had reformed from the Errors of that Church, we ought to have none of their Ceremonies continued in ours: These Differences were small in the Beginning, as not touching any Matters

Matters of Faith, or Belief, and founded only on the Opinions of particular Men, relating to certain Ceremonies in the Exercise of Divine Worship. But being patroniz'd by some Men in Power, and encouraged by many of the People, became fix'd, and settled into Factions, and Parties: And Lectures were set up, in most Cities and Market-Towns of *England*, wherein zealous and able Men were maintained, by voluntary Contribution of the richer Sort of People, to preach, in Opposition to the Rites and Ceremonies of the Church of *England*.

It seemed reasonable to Queen *Elizabeth*, in whose Reign the Reformation was establish'd, to maintain the antient Government in the Church, and to continue their Ceremonies: To this Effect, several Acts of Parliament were made, requiring Uniformity in Divine Worship, on Pain of divers Penalties and Disabilities; and the like Statutes have been since made, enlarged, and amended, in succeeding Reigns, with Intent to reconcile Men to one uniform Method of Religious Service. But this being found impracticable, by Reason of the great Variety of Opinions, settled, in Many, by Education; in Others, upon conscientious Scruples, it appeared reasonable to the Legislature, after the Revolution, to remit some Severities laid upon Protestant Dissenters, by former Acts, and to tolerate them in the Exercise of Christian Worship, without being compellable to use the Book of *Common-Prayer*, or *Liturgy* of the Church of *England*, by Teachers, or Ministers, of their own Election, tho' not Canonically ordained, and in Places of Assembly, a-part from their Parish Churches; but by themselves to be procured and appointed for that Purpose: Hence these Places were vulgarly termed Meeting-houses, or Conventicles.

These Exemptions, and Privileges, were first granted them by Act of Parliament, *Anno* 1688, in the First Year of King *William* and Queen *Mary*, confirm'd since, by other Acts, and are by them enjoined at this Day.

The Dissenters, themselves, are again sub-divided into Sects, and Parties, under several Denominations; as, Presbyterians, Independants, Anabaptists, Quakers, Muggletonians, and many Others: All differing in certain Tenets, by them respectively embraced, and held, yet seeming to agree in the Fundamental Points of Christian Faith.

Among these, the Quakers are a considerable Body, increased from a small Beginning, but now settled in most Parts of the *British* Dominions, especially in *Pennsylvania*, and other Parts of the *American* Continent: And, because they scruple to take any Oath, therefore Provision is made,

by the said Act, to exempt them, if they make and subscribe a Declaration of Fidelity, and likewise a Profession of their Belief. 1 *Will. & M. cap. 18.*

The Declaration of Fidelity.

Decla-
tion 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 the Second: 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.

Profes-
sion of
Belief.

I A. B. 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 do acknowledge the Holy Scriptures of the Old and New Testament to be given by Divine Inspiration.

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

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.

To be
taken
and sub-
scribed
by Dis-
senters.

These Declarations, and Profession of Belief, are to be taken upon Oath, and subscribed, by all other Protestant Dissenters, when thereto required: May be tendred, and administred before the Justices, in open Court, to Persons who shall offer themselves; which must be recorded, and Certificate thereof, granted to the Party.

Any Justice of Peace may, at any Time, require a Dissenter, above the Age of 18 Years, to take the Oaths, or make and subscribe the said Declarations, and Profession of Belief: Upon their Refusal, he ought to certify the Name of the Party, to the Court of that County where such Dissenter inhabits, that he may be summoned to appear

appear before such Court : And, if upon a second Tender before them, he shall refuse it; such Refusal shall be recorded, and the Party may be thereupon convicted, and liable to be prosecuted as a Popish Recusant Convict. *Stat. 1 Will. & Mar. cap. 18.*

Popish Recusants Convict, are liable to Grievous Fines, Penalties, and Disabilities, laid upon them, by divers Statutes ; among which, these are some, viz.

Papists.

They must not practise Physic, or Law, nor bear any Office, Civil or Military, on Penalty of 100*l.*

3 *Jac. cap. 5.*

They shall not bear Arms, nor keep Weapons, or Ammunition, without Allowance of the Justices, in Open Court. Arms, &c. otherwise kept, may be seized, by Warrant from Two Justices, &c.

1 *W. & M. cap. 26.*

May not be Administrator, Executor, or Guardian ; and shall be incapable to inherit, or take Lands, by Devise, Descent, or Limitation. 11 & 12. *W. 3.*

And after 10 *April*, 1700, incapable of purchasing Lands.

Besides many others, purposely omitted by me, because this Government has hitherto enjoined the singular Happiness, that all the Subjects here agree in Uniformity of Worship, according to the Doctrine of the Church of *England*, which is here by Law established : And we have among us no Conventicles, or Meetings, of profess'd Dissenters, except Quakers : All other Persons agree in a decent and uniform Exercise of the Protestant Religion, in their Parish Churches.

13 *Car. 2.*

cap. 4.

&c.

Laws of *Virginia,*

pag. 3.

No Quaker shall be permitted to give Evidence in any Criminal Cause, or serve in Juries, or bear any Office, or Place of Profit, in the Government. *Stat. 7 & 8 W. 3. & 10 Anne, cap. 2.*

Disabilities on Quakers.

But he may be appointed Constable, or chosen to any Parish Office, which he may execute by Deputy. 1 *W. & M. cap. 18.*

Their solemn Affirmation is to go for an Oath, and to be administred to them, where their Evidence is taken in Cases Civil.

I A. B. do declare, in the Presence of God, the Witness of the Truth of what I say.

Their Affirmation.

And if what he affirms, is false, he shall be punished, as in Cases of Perjury.

All Dissenters are liable, equally with other Subjects, to the Paiment of Levies, and Maintenance of the establish'd Minister, within their respective Parishes.

D R U N K E N N E S S.

Swearing. Cursing.

THIS Vice seems to be of antient Date, by the Laws made against it in the Reign of King *Edger*, about *An. Dom.* 970, almost 800 Years since: This King permitting the *Danes* to inhabit in *England*, they are said to have first introduced the Use of Ale, and excessive Drinking.

Punish- By the Act, 4 *Annæ*, cap. 30. 'Whoever shall be drunk, ment of 'or prophanely swear, or curse, being convicted by Con- Drunken- fession, View, or Hearing, of a Justice, or Court of Re- ness, &c. 'cord, or by Oath of One Witness, before a Justice of Laws of 'Peace, or upon Presentment in the County Court, shall Virginia, 'shall forfeit 5 s. or 50 lb. Tobacco, for every Offence, to pag. 172. 'the Use of the Poor; on Refusal of Paiment, or Caution 'for Paiment at laying the next Parish Levy, to be raised 'by Distress, upon Warrant from a Justice, directed to the 'Sheriff, or Constable; and if no Distress, the Offender to 'receive 10 Lashes, for each Offence.'

Prosecution, or Presentment, in Two Months.

Warrant, upon Conviction.

To *A. B.* Constable.

War-
rant,

Princess Anne *sc.* **W**Hereas *C. D.* of the Parish of *E*, in this County, *Mariner*, was this Day duly convicted, before me, for being drunk on the Tenth Day of July last, in the said Parish: I therefore require you to demand of the said *C. D.* Five Shillings, or Fifty Pounds Tobacco, for the Use of the Poor of the same Parish; and on Refusal of present Paiment, or sufficient Caution for Paiment, at laying the next Parish Levy, that then you levy the same by Distress and Sale of the Goods and Chattels of the said *C. D.* within your Precinct, rendering him the Overplus: And that you pay the Money, or Tobacco, by you so received, or levied, to the Churchwarders of the said Parish of *E.* for the Use of the Poor thereof. And if the said *C. D.* shall not be able to pay, or shall refuse to give sufficient Caution for the same; and if no Distress can be found in your Precinct, that then you give the said *C. D.* Ten Lashes upon his bare Back, well laid on. Given under my Hand and Seal, &c.

The like for profane Swearing, or Cursing.

Drunkeness is sufficient Cause to remove a Magistrate.

EVIDENCE,

EVIDENCE.

Witnesses. *Dedimus.*

Evidence in the Law is used, generally, for any Proof, Defini-
 be it Testimony of Men, or Instruments under Seal, tion.
Et c. Sir *T. Smith. l. 2 cap. 17. 23.*

This Word, in legal Understanding, not only contains Matters of Record, and Writings under Seal, and other Writings without Seal, Accounts, and the like, but also the Testimony of Witnesses, given to a Jury: And it is called Evidence, because thereby the Point in Issue is to be made evident to the Jury. *Co. Lit. l. 3. s. 485.*

A Man convicted of Felony, and after pardoned, or burnt in the Hand, may be a good Witness. *Raym. 330, 369.* Rules, for Wit-

The Wife cannot be admitted to give Evidence against her Husband, nor the Husband against his Wife, in any Case, except it be for Treason. *Co. Lit. 6. Raym. 1.*

But yet, a Wife, who is an Heiress, taken away, and by Threats, prevailed upon to marry the Man, shall be good Evidence against him; and, if convicted upon her Evidence, he shall be hang'd. *1 Vent. 243.*

One attainted of Perjury, tho' pardon'd, 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. *Nels. 251. Dalt. 408.*

Children may give Evidence against their Parents: In Cases of Witchcraft, the Testimony of Infants has been taken against their Mother, and allowed good Evidence. *Dalt. 408.*

A Person duly set in the Pillory, is not by the Common Law allowed to be a Witness. *H. P. C. 263.*

If a Felon confesses the Fact, he may accuse others of the same Felony; and such Accusation may be taken by a Justice, and the Felon admitted to give Evidence to the Jury. *Nels. 251.*

The Party 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.

And by the Statute, 1 *Annæ*, any Person produced as a Witness, on Behalf of a Prisoner for Treason, or Felony, must be upon Oath, to speak the Truth, the whole Truth, and nothing but the Truth. If convicted of wil-

ful Perjury, shall suffer the Punishment by Law inflicted on such Offenders.

Any Person above the Age of 14 Years, and not disabled by Law, may be a Witness.

An Accuser, or Witness, must be a Person of good Fame, not a Criminal, nor attainted, or convicted of any Criminal Offence, nor a Person outlaw'd: Yet, in Case of Felony, any Person, tho' of no worth, may be allowed for a Witness, or Proof. *Dalt.* 408.

One Witness shall not be sufficient to convict an Offender, for any Crime: Yet, in divers Cases, expressly provided for by some particular Statute, or Law, the Oath of One credible Witness, is a sufficient Conviction.

When any Prisoner shall be brought before a Justice of Peace, for Felony, or Suspicion thereof, but those that bring him, or first complained of him, will not, or cannot inform any material Thing against the Prisoner; if the Felony is actually done, the Justice of Peace, after Examinations taken, ought to commit, or bail the Party suspected, and to cause those that accused or brought in the Prisoner, to enter into Recognizance for their Appearance, at a Court to be called and held for further Examination of the Prisoner, then and there to give Evidence; and if he afterwards shall hear of any other Persons who can prove the Felony, he is to issue his Warrant, to bring them before him, and to take their Examination, and bind them to give Evidence for the King. *Dalt.* 409.

Where an Accusation, or Information, is made by the Party robb'd, or grieved, he is to be bound to give Evidence, and to prefer a Bill of Indictment: The Witnesses are to be bound, only to give Evidence.

Cantion
to Wit-
nesses.

Mr. *Dalton* admonisheth Witnesses, that they be well advised what they testify upon their Oaths: For, if they speak not the Truth, or conceal any Part, they offend,

1. Against God, by taking his Name in vain.
2. The Magistrate, in deceiving him, and causing him to do Injustice.
3. The Innocent, in spoiling him of his Name, Goods, or Life.
4. The King, if the Party is guilty, and clear'd by false Witness.
5. His own Soul, for it is Perjury in him, before God, and good Men.

Summons for a Witness against a Felon.

To *A. B.* Constable.

Elizabeth-City } *W* Hereas I have been informed, Sum-
County *sc.* } That the Store-house of C. D. of, mons.
&c. was lately broke open, and divers Goods, and Mer-
chandises, of the Value of Twenty Pounds, stolen out of
the same; and that E. F. of, &c. is a material Witness,
to prove by whom the said Robbery was committed: There-
fore, in His Majesty's Name, I command you, That you
forthwith cause the said E. F. to come before me, at my
House in this County, to give such Evidence as he know-
eth concerning the said Offence, and to be examined touch-
ing the Premises: And that you be there also, to shew
how you have executed this Precept. Given under my
Hand, &c.

If a Witness, before a Justice of Peace, refuses to answer upon Oath, or to enter into Recognizance, being by the Justice required so to do, he ought to be committed to Goal, or bound to Good-behaviour. *Nels.* 250. 1 & 2 *Phil. & Mar. cap.* 13.

But if a Witness is Sick, or unable to travel, the Justice may excuse his Personal Appearance, and certify his Examination to the Court.

Depositions taken before the Coroner, may be admitted for Evidence, if the Witness be dead. 1 *Lev.* 180.

A married Woman, or Infant, under the Age of 21 Years, being Witnesses, are not to enter into Recognizance, to appear and give Evidence; and if she is bound with her Husband, 'tis void as to her: But they must be bound by Sureties; and, if she cannot find Sureties, she shall be committed. *Nels.* 254.

Popish Recusant Convict, shall not be a Witness in any Cause whatsoever. 4 *Annæ, cap.* 19.

Nor any Nergro, Mulatto, or Indian, Slave, or Free, except in Trials of Slaves. 5 & 6 *Geo.* 2. *cap.* 7.

Quakers may give Evidence, in Civil Causes, upon their solemn Affirmation and Declaration. 4 *Annæ, cap.* 19.

Witnesses summoned to the General Court, shall be privileged from Civil Process, during their Attendance, coming to, and returning from Court, allowing One Day for every Twenty Miles Distance; shall be paid by the Party for whom summoned, 1½ *lb.* Tobacco, *per* Mile, for coming and returning, and 60 *lb.* Tobacco, for Attendance: Refusing to answer upon Oath, or Affirmation, shall be committed

Feme
Covert.
Infant,

Witnesses.
Laws of
Virginia,
pag. 162,
475,
pag. 162.

committed to Goal : Failing to appear, or attend, unless sufficient Cause be shewn to the next Court, forfeit 1000 *lb.* Tobacco, to the Party grieved. 4 *Annæ, cap. 15.*

Laws of Virginia, pag. 253, & 384. If summoned to any County Court, out of their own County, the like Pay as in the General Court ; but within the County where they live, only 30 *lb.* Tobacco, *per* Day, for Attendance : Failing to appear, without Cause, &c. forfeit 350 *lb.* Tobacco, and liable to further Damages. 9 *Annæ, cap. 11.* 1 *Geo. 2. cap. 3.*

pag. 384. Witnesses may be summoned to attend Surveys of Lands, ordered by the County Court. 1 *Geo. 2. cap. 3.*

pag. 492. And also, to attend the Governor and Council, in Controversies before them depending : These shall be paid as Witnesses at the General Court, but may be discharged in Tobacco, or Money, at the Rate of 10 *s.* *per Cent.* for the Tobacco due, at the Election of the Party chargeable with the Paiment. 5 & 6 *Geo. 2. cap. 10.*

What shall be good Evidence in Trials of Criminal Slaves. See *Tit. Criminals.*

Dedimus. *Dedimus Potestatem*, is a Writ, whereby Commission is given to a private Man, or Men, for the speeding of some Act, appertaining to a Judge. It is granted most commonly upon Suggestion, that the Party who is to give Evidence, before a Judge, or in Court, is so feeble that he cannot travel. *Fitz. Herb. Nat. Brev.*

pag. 161. If a Witness, summoned to the General Court, is disabled from Attendance, by Age, Sickness, &c. he must procure a Certificate of such Disability under the Hand of One Justice of the *Quorum*, of the County where he lives : The Court, or Two of the Judges, may thereupon grant Commission, to such Persons as they think fit, to take the Evidence of the Party disabled : But the Party obtaining such Commission, shall give Ten Days Notice to the other Party, of the Time and Place of taking such Examination : Depositions otherwise made, or taken, void. 4 *Annæ, cap. 19.*

pag. 254. And in Matters depending before any County Court, the like Writ is grantable by such Court, or Two Justices, whereof One shall be of the *Quorum*, and to be executed in like Manner. 9 *Annæ, cap. 11.*

E X A M I N A T I O N.

BEFORE a Justice of Peace commits any Person for Treason, or Felony, or Suspicion thereof, he is to take, in Writing, the Examination of the Prisoner, and Witnesses. See *Tit. Criminals.*

Examination

Examination of a Felon.

Warwick *sc.* **T**HE Examination of A. B. of, &c. taken before me W. R. Gent. one of His Majesty's Justices of the Peace of the said County, this Day of 1735. Examination of a Felon.

THIS Examinant saith, *That*
and farther saith not.
Taken before me,
W. R.

This must not be upon Oath: But, if a Felon confess the Fact, he ought to subscribe his Name, or Mark, to his Confession, before the Justice.

Upon such Confession: say,
Warwick *sc.* ----- as before, unto ----- 1735.

THE said A. B. being charged, before me, by R. S. of, &c. (e) *That the said A. B. did lately feloniously Steal out of the Store-house of the said R. S. in the Parish of certain Woollen, and other Goods, of the said R. S. of the Value of Twenty Pounds: He the said A. B. did, upon his Examination by me, confess, that he stole the said Goods, and sold them to C. D. of, &c. for Five Pounds. And farther saith not.* (e) Or, as the Case is.

W. R.

A. B.

Such Confession may be given in Evidence, at the Trial, upon Oath of the Justice by whom it was taken: Yet it's not sufficient to convict, unless the Accused confess at the Trial. H. P. C. 264.

Then the Witnesses must be sworn, and their Examination taken, severally, by them subscribed, viz.

Warwick *sc.* **T**HE Examination of E. F. of, &c. G. H. of, &c. and I. K. of, &c. taken upon Oath, before me, &c. as before. Witnesses Examination.

THE said E. F. being sworn, saith, *That*
and farther saith not.

E. F.

Sworn before me,
W. R.

And in like Manner of the other Witnesses.

These

To be certified. Com-
mitment. These Examinations being taken, and the Witnesses bound by Recognizance, to appear before the Court to be held for further Examination of the Prisoner, he is to be committed, and the Justice must certify the Examinations, and Recognizance, by him taken, to the same Court, or he may be fined. 1 & 2 *Phil. & Mar. cap.* 13.

Bail. But if the Offence is bailable, and the Prisoner tenders sufficient Sureties for his Appearance, he may be bail'd by Two Justices, One being of the *Quorum*; and this must be by them also certified to the same Court. *Ibid.*

Escape. If the Offender confess the Felony, before a Justice, and he suffers him to go, without Commitment, or Bail; this seems to be a voluntary Escape and so Felony in the Justice. *Crompt.* 39, 44.

And if any Person shall be brought before a Justice of Peace, and charged with Felony, or Suspicion thereof, tho' it appear to the Justice, upon Examination, that the Prisoner is not Guilty; yet he ought to be committed, or bail'd: For it is not fit, that a Man, arrested, and charged with Felony, or Suspicion thereof, should be delivered upon any Man's Discretion, without farther Trial. *Crompt.* 34. *Lamb.* 229.

If Witnesses examined before the Coroner, are dead, or unable to travel, and Oath made thereof; such Examinations may be read at the Trial, the Coroner making Oath, that they are the same, and not altered. *Lord Morley's Case.*

So, if a Traitor is examined before a Justice of Peace, or Councillor, 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, in such Case, there needs not Two Witnesses to prove the Criminal guilty of Treason. *Tony Philips, & Stubb's Case.*

Where Part of any Witness's Deposition, upon his Examination, is proved to be false, he is not to be credited in the Residue, but his Testimony is to be utterly rejected. *Dalt.* 408.

Examinations taken in one County, may be certified into another. *Nels.* 255.

EXECUTION.

Distress.

Signifi-
cation. **E**Xecution, in the Common Law, signifieth the last Performance of a Fine, or Judgment; and the Execution of

of a Fine, is, by obtaining actual Possession of the Things contained therein, by Virtue thereof; which is, by Entry into the Lands, or by Writ. *Fitz. H. Nat. Brev.*

Execution for Debt, is Four-fold;

1. Of Goods only, by *Fieri Facias*.
2. Of the Moiety of Lands, by *Elegit*.
3. Upon the Reconuſance of a Statute.
4. Of the Body, by *Capias ad Satisfaciendum*.

Leigh. Phil. Com. 95.

Where Execution againſt the Goods, or Body of the Debtor, may be iſſued by a Juſtice of Peace, and how ſuch Writs ſhall be executed, and returned. *See Tit. Debt.*

In Criminal Caſes, the Judge may reſpite Execution, from one Goal-Delivery to another, if he ſee Cauſe. *Dyer* 205. Reſpite
of Exe-
cution.

Diſtreſs ſignifieth, moſt commonly, a Compulſion in certain Real Actions, whereby to bring a Man to Appearance in Court, or to pay Debt or Duty denied: The Effect thereof is, to drive the Party diſtrained, to replevy the Diſtreſs, by Action of Treſpaſs againſt the Diſtrainer, or by Payment of the Debt, or Duty, for which Diſtreſs is made: And it muſt be of Goods, or Chattels, wherein the Party diſtrained has a valuable Property. *Co. Lit. l. 1. ſ. 58, &c.* Diſtreſs.

But by the Common Law, ſome Things are privileged from Diſtreſs:

Beaſts of the Plough, and the Tools or Instruments of a Man's Trade, or Profeſſion, ſhall not be diſtrained where other Goods can be found. What
may not
be diſ-
trained.

Doors, Windows, Locks, or any Thing fix'd to the Freehold, cannot be diſtrained.

Materials for Cloth, in a Weaver's Shop, a Horſe at the Smiths, or in an Inn; Cloth, or Garments, at the Tailors; Sacks of Corn, or Meal, in a Mill, or at Market, and the like, are privileged in thoſe Places.

A Horſe, when a Man, or Woman is riding on him; an Ax in a Man's Hand, cutting Wood, &c. are alſo privileged for that Time.

And by our Militia Law, the Horſe, and Furniture, Arms and Ammunition of a Trooper, or Soldier, ſhall not be liable to Seizure, or Diſtreſs. *9 Geo.*

1, cap. 3. pag. 335.

If Cattle, Horſes, Hogs, or other living Things, are diſtrained, the Diſtrainer muſt impound them, in ſome lawful Pound, or Cloſe, within Three Miles, in the ſame County: If it is an open Pound, or Cloſe, the Owner of Im-
pound-
ing.

the

the Beasts shall find them Meat, and Drink, at his Peril: But if it be in a Pound, or close Covert, or House, so that the Owner cannot come at them without Trespass to another, then the Distress is to be maintained at the Peril of the Distrainer, and he shall not have any Satisfaction therefore.

Goods, and dead Things, distrained, must also be lodged within Three Miles, in the same County, and safe kept, at the Risk of the Distrainer: But if the Party distrained, renders to the Officer sufficient Security, to have the same Goods forthcoming, at the Day of Sale, the Officer may accept such Security, and suffer the Goods to remain in Possession, and at the Risk of the Debtor.

Rescous. If Distress be made without Cause, or legal Warrant, the Owner may rescue and retake his Goods, before they are impounded, but not after; for they are then in Custody of the Law, and the Owner may have Remedy against the Distrainer, for his unlawful Seizure. *Co. 1 Inst. 47.*

How Rent Arrear may be levied by Distress. *See Tit. Rents.*

What Debts, or Duties, are leviable by Distress. If the King's Quit-Rents, or any Public, County, or Parish Levies, shall be unpaid at the Day by Law limited for Payment, the Sheriff, or Collector, may, distrain the Negros, Goods, and Chattels, of the Debtor. *3 & 4 Geo. 2. cap. 3.*

So likewise for Secretary's Clerk's, or Surveyor's Fees. *8 Geo. 2. cap. 10.*

And for Breach of certain Penal Laws, cognizable before a Justice of Peace, he may issue his Warrant, to the Sheriff or Constable, to levy the Forfeitures by Distress and Sale of the Offender's Goods and Chattels.

No Distress for Tobacco, within limited Times. Sale. But where the Judgment, Debt, or Rent, is payable in Tobacco, no Distress shall be made, nor Execution levied, between 31 *August*, and 31 *December*, in any Year. *8 Geo. 2. cap. 11.*

Negros, Goods, and Chattels distrained, and not replevied in Five Days, shall be sold in like Manner as Goods taken in Execution. *See Debt.*

E X T O R T I O N.

Nature of the Offence. **I**S an unlawful Taking by any Officer, by Colour of his Office, Money, or other valuable Thing, not due, or more than is due, or before it be due: In a larger Sense, it is, where any Person is oppressed by Power, under Pretence of Right. *Co. Lit. 1. 3. f. 701.*

By

By the Common Law, no Officer of the King is to take any Reward for doing his Office, but only what the King allows him, on Penalty of Fine and Imprisonment: This was confirm'd by the Statute *West. 1.* upon Pain of double Damages to the Party grieved, and further Punishment, at the King's Pleasure. But later Statutes having given and settled reatonable Allowances to Officers, Clerks, and Ministers of Justice, as a Reward for their Labour and Attendance, they may now lawfully demand and take their Fees.

Any Officer, who shall charge, demand, and take, by Colour of his Office, Fee or Reward, not due by Law, or more than is due, or before it be due, is guilty of this Offence. What makes the Offence.

An Indictment will lie against the Offender, besides the Special Penalty provided by Law; which is to be recovered, in the Method by such Law directed. *Dalt. 71.*

But this Offence is not cognizable before a Justice of Peace.

F E E S.

TH E Fees of the Secretary, County Court Clerks, Sheriffs, Coroners, Surveiors, and Constables, within this Colony, for Business by them done, are settled by Act of Assembly, from Time to Time: The Act now in Force for Paiment of these Fees, was made 8 *Geo. 2. cap. 10.* to continue Two Years; and expires *October 4, 1736.*

If any of these Officers shall demand, or take, more or greater Fees, than by this Act allow'd; or shall demand and take any Fee for Business not actually done, to be proved by such Officer's Book, upon Oath; such Officer forfeits 200*lb.* Tobacco, for every Offence, besides the Fee overcharged, to the Party injured; recoverable, with Costs, in any Court of Record. Prosecution in 12 Months. Penalty, for taking unlawful Fees.

Table of Secretary's Fees to be set up, and kept by the Clerk, in the Secretary's Office, on Penalty of 2000*lb.* Tobacco, for every General Court-Day missing.

And of Clerk's Fees, in the County Court, by the Clerk, on Penalty of 1000*lb.* Tobacco, for every Court-Day missing.

Secretary's Clerks, and Surveior's Fees, shall be collected by the Sheriff of every County, Annually, by *April 10*; if then unpaid, he shall distrain the Negros, Goods, and shall be Chattels of the Debtor, and no Action shall be maintain- How certain Fees paid.
able.

able for any of these Fees, unless the Sheriff returns, that the Party hath not sufficient, within his Bailiwick, whereon to make Distress.

Sheriff shall account for these Fees, by 31 *May*; Annually; if he does not then pay, upon Motion made in the General Court, or County Court, and 10 Days Notice given of such Motion to be made, the Party to whom such Fees are due, may have immediate Judgment and Execution against the Sheriff.

Lawyers Fees.

Lawyers Fee, in the General Court, 50s. or 500*lb.* Tob.
in County Courts, 15s. or 150
to be tax'd by the Clerk, in every Bill of Costs, except against Executors, or Administrators, or where Plaintiff may not recover more Cost than Damage, or upon Petitions.

Marriage Fees.

Marriage Fees, *viz.* For a Licence,

To the Governor, - - 20s. or 200*lb.* Tob.

Minister, - - - 20 - - 200

Clerk of Court, - 5 - - 50

By Banns,

Minister, - - - 5 - - 50

And for Publication, } 1s. 6d. 15
and Certificate, }

Minister exacting greater Fees, forfeits 4000*lb.* Tobacco, if the Marriage be by Licence; 500, if by Banns: Refusing to publish, or certify the Banns; or exacting more for that, 150*lb.* Tobacco.

There are other Fees due to, and demandable by Public Officers, which need not be inserted here; but may be seen under those Titles whereto they belong.

F E L O N I E S.

THIS Word includes Petty Treason, Murder, Homicide, Burglary, Robbery, Theft, Burning of Houses, Rape, Rescous, Escape, &c. *Co. Lit.* 391.

In antient Times, the Punishment for any Crime was Pecuniary, and the Criminal might discharge himself, by Paiment of a certain Sum of Money: But this was abolish'd in the Reign of King *Henry* 1. who appointed Hanging for Felony, *A. D.* 1114, when the first Parliament of *England* was held. Before this Time, the *English* Kings order'd National Affairs by their own Edicts, and by their Officers and Governors of Counties; and had seldom any General Assemblies of the People, unless at a Coronation, or in Times of War. Their Parliaments were only Meetings of the Nobility, and Clergy usually. *Kennet's Hist. Engl. Vol. 1. pag. 123.*

Felony,

Felony, is created by Common Law, or by Statute.

Felonies.

Felonies at Common Law, are,

- | | | |
|-------------------------------------|---|---|
| | { | Chance-Medley, or
Casual Death.
Deodand. |
| 1. Against the Life of a Man, by | { | Manslaughter.
Murder.
Self-Murder.
Self-Defence. |
| 2. Against the Goods, by | { | Larceny.
Robbery.
Piracy. |
| 3. Against the Habitation, by | { | Burglary.
Burning. |
| 4. Against Public Justice, by - - - | | Breach of Prison. |

Felonies by Statute are particularised under their proper Titles, to which, for avoiding Repetition, I refer.

If Felony is committed in one County, and the Offender taken in another, he may be imprisoned where taken, and examined before a Court, for that Purpose to be summoned.

Rules.

But if he carry Stolen Goods with him, 'tis Felony in every County, where they are carried. *Nels.* 273.

Officers may break open any House, to take a Felon, or One suspected of Felony: And if the Officer hath a Warrant to take a Felon, who is killed, making Resistance, 'tis not Felony in the Officer; but if the Officer is killed, 'tis otherwise.

And if a Felon escape from an Officer, by Force, and he cannot otherwise retake him, the Felon may be killed, for the Officer will be justified by his Authority. *Dalt. Nels.*

A Felon brought before a Justice, upon Suspicion, tho' it appear he is not guilty, yet he is not to be discharged without further Trial.

A Man ought not to be arrested upon Suspicion of Felony, except good Cause be shewn for the Ground of this Suspicion: For every foolish Fancy, or Conceit, is no Ground of Suspicion to arrest One for so great a Crime; but there must be probable Cause for the Suspicion. *Style* 317.

A Felony must be actually committed, or done, before any Person is legally chargeable upon Suspicion: And then, the Fame and Character of the Party suspected, as well as all Circumstances relating to the Fact, ought to be well considered.

Where the Death of any Person ensues upon the doing an unlawful Act, tho' such Death was not intended by

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the Party who did the Act, yet this is Felony: For the Law will judge, that he who would do one unlawful Act, might intend to do any other unlawful Act which might be occasioned upon the Doing thereof. *Style 316.*

The receiving only, of stol'n Goods, not knowing them to be stole, is not Felony; but receiving them, and comforting the Felon, is Felony: For the comforting the Felon doth prove, that he consented to the Felony, and approved the Fact.

If a Man be assaulted by a Robber, and he cast away his Goods, with Intent to save them from the Robber; but he takes them up, and carries them away, this is Robbery and Felony, altho' he took nothing from the Person: For the Party is rob'd of his Goods, and the Thief knew them to be the Party's Goods, and intended to take them from him, had he not thrown them away, and was the Cause that he cast them away. *Style 317.*

If one Servant delivers Goods to another Servant, and he runs away with them, this is Felony; because the Delivery of the Servant is the Delivery of the Master. But if I deliver a Bond to my Servant, to receive Money, which he receives, and goes away with the Money; this is not Felony, within the Statute of 21 *H. 8. cap. 7.* because a Bond is not properly Goods, but a Choise in Action. So if I deliver Goods to my Servant to sell, which he doeth, and runs away with the Money; this is not Felony, because he had not the Money by my Delivery. *Dyer 6.*

If Goods are delivered to a Carrier, to carry to *York*, and he carries them to another Place, and there converts them to his own Use, this is Felony; for tho' it cannot strictly be said, that he feloniously took those Goods, yet the carrying them to another Place, and there disposing of them to his own Use, shews that he always intended to steal them, and not to take and deliver them upon the Contract or Agreement of the Owner.

So if One pretends to buy a Horse, and the Owner gives Leave to ride the Horse, to try his Paces, and he rides away, without returning the Horse, this is Felony: So if I deliver Goods to a Porter, or Waterman, to carry to a certain Place, and he carries them to another Place, and there opens and disposes of them, this is Felony.

The Law is the same if the Goods were carried to the Place appointed, and there imbezzled; because when they are brought to that Place, the Contract is determined, and the Possession reposed in the Owner, and being taken away afterwards, 'tis Felony. *Keel 82, 83.*

If

If a Felon steals Goods, or a Horse, &c, and another afterwards steals the same from him, the Owner may charge the first or second Felon : And if a Man delivers Cloth to a Tailor, and the Cloth be stolen from him, the Offender may be prosecuted and charged, either at the Owner's Suit, or at the Tailor's. *Dalt.* 401.

If a Robbery is committed, and the Party rob'd will not prosecute the Felon, any other Person may give Information against the Offender, and charge him with the Felony, before a Justice of Peace, who is to receive the Information, and examine the Informer, upon Oath, and may thereupon issue his Warrant to apprehend the Felon, or Party suspected of the Felony ; as likewise, to cause the Party rob'd and all others who can give Information or Evidence of the Felony, to come before him to be examined : And then, upon such Examinations taken, the Offender is to be committed, or bail'd, ifailable, and the Informer and Witnesses bound, to appear and give Evidence, before the Court to be summoned and held for further Examination of the Prisoner.

Upon any Felony committed, if the Offender flies, he shall be pursued by Hue and Cry, from Town to Town, and from one County to another, until he be taken : All Persons, by Command of the Sheriff, or Officer, and Cry of the Country, shall readily assist in the Pursuit, or they may be grievously fined by the Justices of Goal-Delivery.

Any Man may apprehend the Party pursued by Hue and Cry ; if he be taken with the Goods supposed to be stolen, tho' he be not a Person of evil Fame, nor a Stranger, yet he shall be brought before a Justice of Peace, of the Town or County where such Taking shall be, together with the Goods taken upon him ; and the Justice is to examine the Prisoner, and the Bringers, then to commit him to the County Goal, and bind the Witnesses to appear and give Evidence. *Dalt.* 403.

The Punishment of a Person attainted of Felony, is Four-fold,

1. Loss of Life.
2. Corruption of Blood ; so as he hath neither Ancestor, Heir, nor Posterity.
3. Forfeiture of Fee-simple Lands, from the Time of the Offence committed ; to the Intent, that his Wife and Children shall be cast out, his Houses razed, Trees cut down, Meadows plough'd up, and all his Lands wasted and destroyed.

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4. Forfeiture

Punishment of Felony.

Hue & Cry.

Information.

4. Forfeiture of Goods and Chattels, from the Time of his Attainder. *Co. Lit.* 745, &c.

After a Felon is attainted, the King shall have all his Goods, moveable and immoveable, Corn growing, Profits of Fee-simple Lands a Year and a Day, Issues and Profits of other Lands for Life, and all Debts out-standing due to the Felon; and the King, or Party, to whom the same shall be given by the King, may bring Suit in his own Name: Yet the King, or Party, cannot be sued for Debt due from the Felon. *Dyer* 30.

But in case of Manslaughter, Self-Murder, and Petty-Larceny, Homicide by Chance-Medley, or Self-Defence, no Lands are forfeited, but Goods only: *Co. Lit.* 391. In the two latter Cases, the Offender may have Pardon of Course. *Nels.* 303.

Clergy. After a Felon shall be convicted by Verdict, or Confession, and before he is attainted by Conviction, he may pray his Clergy; which shall be allowed, without Reading, in all Cases where Clergy is not expressly taken away, or where the Offender has not once before had Clergy allow'd: And thereupon he shall be burnt in the Hand, by the Jailor, in open Court, and discharged from the Forfeitures of Attainder.

Women may have the Benefit of Clergy, in all Cases where it is allowable to Men. 5 & 6 *Geo.* 2. *cap.* 7.

Counsel. In all Trials for Capital Offences, Prisoner may have Counsel. 8 *Geo.* 2. *cap.* 7.

Restitution. If a Felon is apprehended, with the Goods, the Owner shall have them. *See Tit. Restitution.*

If upon Hue and Cry, a Man do arrest a Thief who hath stolen another Man's Goods, and then takes the Goods from the Felon, and lets him go: This shall make him Accessory to the Felony, after the Fact, if not a Principal Felon. *Dalt.* 400.

Rescous. Rescuing a Felon, by taking him away from an Officer, is Felony, as well in the Rescuer, as in him that is rescued.

Escape. And if any Man has arrested another for Felony, and afterwards lets him go at Liberty, this is a wilful Escape, and Felony in him that suffered the Escape. *Dalt.* 377.

Killing a Felon. To kill a Person attainted, is Felony: For such are to be put to Death by an Officer of Justice only, and by lawful Warrant. *Co. Lit.* 130.

And if the Officer shall put him to Death, otherwise than by his Warrant commanded, 'tis Felony in the Officer.

Warrant, to search for a Felon, and to raise Hue and Cry.
To the Sheriff, Constables, and all other Officers of the
County of *Essex*.

War-
rants.

Essex sc. **W** Hereas A. B. of &c. has this Day made
Complaint before me W. B. Gent. one of
His Majesty's Justices of the Peace of the County afore-
said, That he was last Night rob'd of (f) and
other Things, and that he has great Cause to suspect
C. D. late of &c. an idle Person, (g) : These
are therefore, in His Majesty's Name, to command you,
and each of you, to search diligently within your respec-
tive Bailiwicks, or Precincts, for the said C. D. and
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 the Peace where he shall be taken. Hereof fail not.
Given under my Hand and Seal, this Day of

(f) Par-
ticularise
the
Goods.
(g) De-
scribe
the Per-
son, his
Cloaths,
Age, &c.

Search Warrant.

To all Constables of the County of *Essex*.

W Hereas &c. as before unto----- That
other Goods were lately feloniously taken from him,
and that he hath just Reason to suspect several idle and
disorderly Persons, within your Precincts, to have ta-
ken the same: I therefore command you, That forthwith
upon Receipt hereof you search every suspected House
within your Precincts, 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 suspected Per-
son or Persons, or if you shall have just Cause to suspect
any Person, that then you bring him, her, or them, be-
fore me or some other Justice of this County, to be ex-
amined concerning the Premises. Given, &c.

To apprehend a Felon.

To the Sheriff, or any Constable of *Essex* County.

Essex sc. **W** Hereas A. B. of &c. hath this Day made
Oath, before me W. B. Gent. a Justice of
Peace of the County aforesaid, and thereby charged
C. D. of &c. (h) with the felonious Breaking and
Entring the Ware-house of the said A. B. in this
County, on the Twentieth of July last, in the Night
Time, and stealing thence Two Pieces of Brown Linen, the Case

(h) Re-
cite the
Fact, as
One is.

Felonies.

One Piece White Linen, Two Pieces Kersey, One Piece Cotton, Ten Pair Mens Shoes, and other Goods, of the Value of Twenty Pounds, the Goods of the said A. B: Therefore, in His Majesty's Name, I command you to apprehend the said C. D. and to bring him before me, or some other Justice of Peace of this County, to be examined concerning the Premisses, with which he is charged. Hereof fail not, &c.

Summons, for Witnesses to appear and give Evidence.

To J. O. Constable.

Summons Essex sc. YOU are hereby required forthwith to summon E. F. of &c. and G. H. of &c. to come before me, at my House in this County, on Monday next, the Day of by Ten a Clock in the Forenoon, to testify their Knowledge concerning a certain Felony, suspected to be done by C. D. of &c. and that you be then there to shew how you have executed this Precept. Given under my Hand, &c.

Or, to appear and give Evidence at Court.

Essex sc. Whereas I am inform'd that E. F. of &c. is a material Witness to be examined on His Majesty's Behalf, concerning a certain Felony, suspected to be lately done by C. D. of &c. in Breaking and Entering the Warehouse of A. B. and Stealing thence divers Goods, of the Value of Twenty Pounds, wherewith the said C. D. stands charged: Therefore I command you to summon the said E. F. personally to appear before His Majesty's Justices of the Peace of this County, at a Court by them to be held at the Court-House, the Day of then and there to give Evidence of such Matters as he shall be examined; and that you be then &c.

Upon Examination of the Witnesses summoned by the first Warrant, their Evidence appears material, they are to enter into Recognizance to appear before the Court to be held for further Examination of the Criminal.

Mittimus of a Felon.

To the Sheriff, or Keeper of the Goal of Essex County.

Mittimus. Essex sc. I Charge and command you to receive the Body of C. D. late of &c. taken by J. O. a Constable of this County, and brought before me for Suspicion of Felony; and that you safely keep him in your Goal and Custody

rod, until he shall be thence discharged by due Course of Law. Given under my Hand and Seal, this Day of

Or,

as before unto, ----- for Felony, in Breaking and Entering the Warehouse of A. B. and Stealing Goods to the Value of Twenty Pounds, wherewith he stands charged; and that, &c.

Or,

as before, unto ----- Pounds, which the said C. D. has confessed before me; and that, &c.

Condition of a Recognizance, for Witnesses to appear, &c.

THE Condition of this Recognizance is, That if the said E. F. and G. H. shall personally appear before His Majesty's Justices of the Peace of the said County of Essex, at a Court to be by them held at the Court-house, the Day of then and there to give such Evidence as they and each of them knoweth against C. D. of, &c. concerning his felonious Breaking and Entering the Warehouse of A. B. on the Twentieth of July last, in the Night Time, and Stealing thence divers Goods of the Value of Twenty Pounds, the Goods of the said A. B.; and that they do not depart thence without Leave of that Court, then this Recognizance to be void.

If there be no direct Charge against the Party suspected of Felony, nor any strong Presumption, or Circumstance, he may be bailed. See *Tit. Bail.*

Condition for a suspected Person to appear, &c.

THE Condition, &c. That if the above-bound C. D. shall personally appear before His Majesty's Justices (&c. as before,) and do then and there answer all such Matters and Things which shall be objected against him, being suspected of Felony, in Breaking and Entering the Warehouse of A. B. (&c. as before,) and that he do not depart thence, without Leave of the said Court, then, &c.

In Bail,
for a suspected

F E M E C O V E R T.

IS an Appellation by the Common Law properly applied to the Estate and Condition of a married Woman, who is under Covert Baron, that is, under her Husband's Power, and therefore disabled to make any Bargain, or Contract,

In what
Cases she
is liable
to Prose-
cution.

without his Consent, Privy, Allowance, or Confirmation; she can neither sue, nor be sued, without her Husband: If the Husband alienate his Wife's Land, she cannot gainsay during his Life, except in Case of Divorce. *Broke, Bracton.*

The Peace may be granted against her, or against an Infant, tho' under Fourteen Years of Age; but she is not to be bound, tho' with her Husband, the Recognizance will be void, as to her; She must find Sureties, or be committed. *9 Rep. 72.*

If she commit a Riot, or Trespass, without her Husband, she may be indicted, and fined; the Fine shall not be levied on her Husband, but on her, after his Death, and she shall be committed 'til 'tis paid. *11 Rep. 128.*

If she steal Goods by the Compulsion of her Husband, 'tis not Felony in her, because of the Necessity of Obedience; but if it was at his Persuasion, without Constraint, she is then guilty of Felony, and her Husband is Accessory.

But this Privilege shall not prevail in Cases of Treason, or Murder, because of the Greatness of those Offences. *Nels. 279.*

If Husband and Wife steal together, both are principal Felons. *Dalt.*

Where
not.

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 likewise if she deliver her Husband's Goods to an Adulterer, this is Felony in him. *Nels. 279.*

In an Indictment, or Suit, for selling Liquors without Licence, the Husband must be join'd, because he is to pay the Fine.

If she be summon'd, as a Witness, and does not appear, her Husband shall be sued for her not appearing. *Style 99.*

Regularly, she cannot be a Witness for or against her Husband, in any Case, Civil, or Criminal.

Husband
answerable for
Goods delivered to
his Wife.

An Action doth lie against the Husband, for Goods delivered to his Wife, if it may be intended, or can be proved, that those Goods did any Way come to the Use of the Husband: For then he hath the Benefit of them, and in Honesty and Justice he ought to pay for them. *Style 99.*

F E R R I E S.

Public Expresses.

Laws of **P**laces appointed for keeping Public Ferries, and the Rates of Ferriage. See 4 *Annæ*, cap. 53. 12 *Annæ*, cap. 6. 7 *Geo.* 1. cap. 8. 12 *Geo.* 1. cap. 8. 5 & 6 *Geo.* 2. cap. 14. & 8 *Geo.* 2. cap. 18.

County

County Courts may appoint Ferries at Landings opposite to those settled by Act of Assembly; May licence Ferry-Keepers, and direct the Boats and Hands to be kept at each Ferry; upon Complaint of Neglect, &c. may discharge any Ferry-keeper, and appoint another: Shall take Bond and Security in 20*l.* *Sterling*, of every Person appointed to keep Ferry, for due keeping such Ferry, and giving Passage to Public Expresses.

Laws of
Virginia,
pag. 236,
&c.
Regu-
lations &
Privileges
of Fer-
ries.

The Men attending such Ferry-Boats, free from Public and County Levies, Musters, Constable's Office, Clearing Highways or Rivers, Impressment, &c. and Ferry Licences shall be granted without Fee.

County Courts may licence Ordinaries to be kept at Ferries, altho' there be other Ordinaries sufficient within the same County: No other shall be kept or allow'd within 5 Miles, except at the County Court-House, or in a Town: Ferry-keeper shall pay only Half the Governor's Fee for his Ordinary Licence, but shall give Bond, and be subject to the Regulations required of other Ordinary-keepers.

If any other Person takes Fee or Reward for Ferriage over any River, whereon a lawful Ferry is kept, he forfeits 5*l.* for every Offence, to be divided between the nearest Ferryman, and the Informer; if the Ferry-keeper informs, he shall have the whole Penalty.

County Courts may appoint a Ferry within the County, where necessary for Transportation of the Militia, on Muster Days, and may raise an Allowance to such Ferry-keeper, in the County-Levy: But this must be within the same County, and not to another.

Expresses sent by the Governor, Secretary, a Councillor, Sheriff, Colonel, Lieutenant-Colonel, or Major of the Militia, or Clerk of the Council, directed to any Person; or sent by Officers of Militia to give Notice of Enemies Approach; or coming from beyond Sea, directed to the Governor, or Commander in Chief; shall be accounted Public Expresses, and Ferry free: But must be directed for His Majesty's Service, and upon the Supercription sign'd by the Person by whom they are sent.

Public
Expres-
ses.

Public Messengers shall be paid by the Receiver-General, Four Pence *per* Mile, for Man and Horse, carrying such Express, and Five Shillings *per* Day for Attendance, upon producing from the Supercriber of the Express, a Certificate of the Name of the Messenger, and the Distance of Miles; and from the Governor, or Clerk of the Council, how many Days he hath attended. For Expresses sent by Water, Fifteen Pence *per* Day, for Boat-hire, and Two Shillings *per* Day, for each Man, 4 *Annae*, cap. 53.

Their
Allow-
ance.

County

Boats for County Courts may order Boats to be kept for Transportation of Wheel-Carriages. 7 *Geo. 1. cap. 8.*
 Wheel Carriages Rates of Ferriage for Wheel-Carriages, *viz.*
 and Rates Coach, Chariot, or Waggon, and Driver, } 6 Horses.
 of Ferri- the same as - - - - -
 age. Cart, or 4 Wheel Chaise, and Driver, 4
 8 *Geo. 2.* Two Wheel Chaise, or Chair, - - - 2
cap. 18. Ferry-keepers shall give immediate Passage to Constables, and their Assistants, conducting Runaways, without
 Runa- charging the Constable, or Assistants, with any Ferriage,
 ways. going or returning; such Ferriage shall be levied and paid
pag. 368. by the County, repaid by the Public, and there levied upon the Owner of the Runaway. 12 *Geo. 1. cap. 4.*

FORCIBLE ENTRY, and FORCIBLE DETAINER.

Explanation. **T**HIS is to be understood, generally, where any private Person, without lawful Warrant, by Force enters into, or holds any Messuage, Plantation, Wood, Meadow, Pasture, &c. whereof another is seised.

Disseisin. But the Force must be apparent: For if the Entry and Holding is peaceable, then 'tis Disseisin, not Force, and the Party grieved must seek Remedy by proper Action.

Force prohibited by Statutes. The Statute 5 *R. 2. cap. 7.* prohibits Force; so that the Party who has Right, or Title, shall not enter by Force, altho' the Party in Possession has no Title. Nor shall the Landlord by Force distrain for Rent.

By another Statute, 15 *R. 2. cap. 2.* Authority is given to one or more Justices to take with them sufficient Power, and to view the Place, where Entry or Detainer is by Force, and to commit the Offenders 'til they have made Fine and Ransom to the King: The Sheriff and all others are to be assistant to the Justices, upon Pain of Fine and Imprisonment.

And by the Statute, 8 *H. 6. cap. 9.* Power is given to one or more Justices, by Warrant to command the Sheriff to summon a Jury, to inquire of the Force, which being found, the Justices may seise the Tenements, and award Restitution, as well in the Absence as Presence of the Offender, at the Costs of the Party grieved.

It likewise appoints the Statute of 15 *R. 2.* to be put in Execution, altho' the Detainer, by Force, was after peaceable Entry.

Sheriff neglecting his Duty, forfeits 20 *l.* to the King and Prosecutor.

By the Statute 31 *Eliz. cap. 14*, no Inquiry shall be made or Restitution awarded by Justices, after peaceable Possession of Three Years,

And by the Statute, 21 *Jac. 1. cap. 15*, Restitution is extended to Tenant for Years, or by Elegit, &c. Copy-holders, &c. as well as to Free-holders.

By these Statutes, Remedy is provided,

1. Against those who enter with Force, and continue the Possession peaceably,
2. Those who enter peaceably, and hold out with Force.
3. Those who both enter and hold out with Force.

And the Party grieved has a Treble Remedy, *viz.* by Action upon the Statute of *H. 8.* wherein he shall recover treble Costs; or by Indictment, before the General Court, or County Court; or by Complaint, before a Justice or Justices of Peace, who, upon Inquiry and Force found by a Jury, may grant immediate Restitution.

If one enter into the House of another, without his Consent, tho' the Door was open when he entred, yet this is a Forcible Entry if he detains the Possession: Because it is against the Will of the Possessor of the House. *Style 289.*

Entring with Force to commit Trespass, tho' the Party doth not quit Possession; Coming with Weapons threatening Life, or Loss of Limbs; Breaking open Doors; Entring with unusual Armour or Weapons, the Doors being open; Coming attended with many People, or unusual Company, threatening, or using terrifying Menaces; Ejecting, or distraining for Rent, with Force: These, and such like shall be taken to be a Forcible Entry. *Co. Lit. l. 3. s. 431.*

If Several come with Intention to enter, and One commit Force, All are guilty, tho' the Other are peaceable: If more than Three, 'tis a Riot also, for which they may be indicted, fined, and imprisoned. *2 Cro. 151.*

Forcible Detainer is, where the Entry was peaceable, but the Possession is held by Force; as, by denying Entrance to the Justice coming to View; Keeping Cattle, &c. in another Man's Ground, by Force; Menacing to keep Possession, tho' no Force is used; Resisting, Threatning, or Rescuing, in Case of lawful Distress, tho' by one Person only. *Dalt.*

Those who both enter and hold out with Force, may be prosecuted for Forcible Entry and Detainer. Both.

An Infant above 14, or a Feme Covert, may be committed, and fined, for Forcible Entry, or Detainer; tho' 'tis Prudence not to commit the Infant, and the Husband shall

shall not be chargeable with the Fine of his Wife, but she shall be committed 'til 'tis paid. *Nelf.* 292.

Neither.

But Words alone, tho' they be violent and threatning, cannot make an actual Entry and Ouster, but there must be Force used by the Party, to make it so: For the Word, Ouster, doth imply an Act or Acts to be done, *viz.* a violent putting out, and not Words spoken only. *Style.* 290.

Force
lawful.

Force may be lawful in divers Cases, as

1. By an Officer, having legal Warrant, to apprehend any Person for Treason, Felony, or Suspicion thereof.
2. To take any Person who has dangerously wounded another; or where there is an Affray in the House, and Doors shut.
3. By a Justice, or Justices, upon Forcible Entry, or Detainer, found by Inquisition, or View of the Justice.
4. By the Sheriff, upon a Judgment and Restitution awarded in Ejectment; but he must first signify the Cause of his Coming, and require the Doors to be opened. *5 Rep.* 91.
5. Upon Out-lawry in a Personal Action; or upon a Fine to be levied.
6. In all Cases where the King is Party.
7. Every Man may with Force defend his House, Person, Goods, or Family, against Thieves, Robbers, or any other Person attempting to break his House, without lawful Authority, and may assemble his Friends and Neighbours to defend himself and his Possession, by Force: If he, or any of his Company, shall kill a Thief, or One attempting to enter with a felonious Intent, this is no Felony, nor liable to any Forfeiture.
8. A Man in peaceable Possession may defend his House against another attempting to enter upon him, tho' under a better Title: But if he kill the Party attempting to enter, it's Felony. *Dalt.* 308. *Nelf.* 292.
9. In Defence of my Goods, I may beat another, and if he has taken them away, I may retake them from him by Force: But a Man cannot justify wounding another, in Defence of his Goods; Yet, every one may take and detain his own Goods, with Force, and therefore, in an Action of Trespass for this Matter, the Issue shall be, the Interest or Title to the Goods in Question, not the Force used in getting them again: But Force, tho' for such Cause, used in Entry into Lands, or Tenements, is punishable, altho' the Entry might be claimed under a good Title. *Dalt.* 309.

10. If

10. If an Attempt be made to disseise me of my Land, or Highway, or to turn an antient Water-Course from my Mill, I may lawfully use Force to resist any private Person. *Ibid.*

Upon Complaint of Forcible Entry, or Detainer, made before a Justice of Peace, he may command the Assistance of the Sheriff, and such other Persons as he thinks fit, and repair to the Place, to inquire of the Force: He may break open the Doors, if resisted, and may arrest and commit every Person holding with Force, or making Resistance.

If he sees the Force, he may record it; for his View is a Conviction: And he may commit the Offenders, or bind them to Good-behaviour, and his Record being certified to the County Court, or General Court, they may award Restitution, and assess a Fine.

Where no Resistance is made when the Justice comes, he is not remove or commit any Person, until Inquisition made, and Force found by a Jury.

If the Entry was upon good Title, tho' with Force, the Party grieved must procede by Indictment, or Action of Trespais.

But if the Justice, or Justices, see Cause to remove a Force, and to restore the Party grieved; tho' the Offenders are gone before the Justice comes, yet he may immediately issue his Precept to the Sheriff, commanding him to impanel a Jury, to inquire of the Force; which being found, by Verdict, the Justice himself may forthwith restore the Party to his Possession, or may make a Precept to the Sheriff for that Purpose.

Jury

Where the Justices find a Force, and make a Record of it upon their own View, they may commit the Offenders, but cannot award Restitution. 1 *Vent.* 308.

But if the Force is found by Inquisition of Twelve Men, no other Justice, or Justices (except the General Court) but he, or they, before whom the Force was found, can grant Restitution: They may break open the House, and restore the Party himself, for none but he who is actually put out of Possession can be restored. 8 *H.* 6. *cap.* 9.

Restitution.

If a Precept is directed to the Sheriff, to make Restitution, and he returns, That he cannot make Restitution, because he was resisted; he shall be fined, for he may raise the Power of his County. *Dyer* 187.

A Man cannot justify the Breaking open a House, by Warrant of a Secretary of State; and no House shall be broke open but in Presence of a Civil Officer: But if a Man has a Warrant to apprehend another, and he breaks open

Trespais.

open

Forcible Entry.

open the Door to execute it, and so mistakes the Law, he is not guilty of Felony ; for that was not his Design, and there must be a felonious Intent to make a Man guilty of Felony, and where no such Intention appears, the Party is only a Trespasser. *Ibid.*

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 assented. *Nels.* 296.

*Super-
sedeas.*

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 they see Cause. *Dyer* 122.

Reasons to be assign'd for Stay of Restitution, are principally these,

1. A Writ of *Certiorari*. See *Tit. Certiorari*.

2. Three Years peaceable Possession.

But these must be tendred, before Restitution is executed.

Force,
by one
Person.

One Person alone may make forcible Entry, and Detainer, if he be armed with offensive Weapons, not usually born, or use turbulent Behaviour, Violence, Threats, and the like ; or if he denies Entrance to the Justice. *Dalt.* 302.

Or, by
an Infant.

An Infant, of the Age of 18 Years, may be a Disseisor, with Force, and may be imprisoned for the same. 22 *Ed.* 4. *O. N. B.* 128.

But if an Infant commands another to enter, or hold with Force, to his Use, he shall not be punish'd, because it's a void Command.

Antient
Possession
recoverable
by
Force,
against
Force.

If one do interrupt, by unlawful Means, a long continued Possession of Lands, and the Person interrupted regains his Possession, by unlawful Means also ; yet an Indictment of forcible Entry doth not lie against him, for so doing : For the Law favours long Possessions, and doth not countenance the Disturbers of them, and this is but Repelling Force with Force, which is not punishable in many Cases. *Style* 266.

Two
Justices.

Altho' by the Statutes, Authority is given to one Justice of Peace, to make a Record of forcible Entry and Detainer, to commit the Offenders, and to award Restitution ; Yet, as this often proves a Matter of Weight, both in its Nature and Consequences, it may not be amiss to follow Mr. *Dalton's* Advice, ' That where it can conveniently be done, Two or more Justices join in the Execution of these Statutes. '

Record of Forcible Entry, upon View of a Justice.

James-City sc. *I* L. B. Gent. one of His Majesty's Jus- Record.
tices of the Peace of the said County,

certify, That on the Sixth Day of June, in the Ninth Year of the Reign of Our Sovereign Lord King George the Second, Complaint was made to me, by A. B. of &c. That C. D. of &c. and other Persons unknown, Disturbers of the Peace of Our said Lord the King, on the said Sixth Day of June, in the Year aforesaid, peaceably entred the Mansion House and Plantation of the said A. B. situate in the Parish of E. and in the County of James-City aforesaid, and being the Freehold of the said A. B. whereof he then stood peaceably seised; and afterwards, to wit, the same Day and Year, the said C. D. with Force and Arms, that is to say, with Swords, Clubs, and Pistols, him the said A. B. of his House and Plantation aforesaid ejected and disseised, and the same Messuage and Appurtenances with like Force and Arms continued to hold, and detain, and thereupon the said A. B. prayed of me Relief and Remedy in this Behalf: I the said L. B. therefore immediately went, in my proper Person, to the House and Plantation aforesaid, and then there I found the said C. D. unlawfully with Force holding and detaining the Premises aforesaid, contrary to the Form of the Statute in that Case made and provided, and thereupon I, the said L. B. caused the said C. D. to be taken, and arrested, and have committed him to the Goal of the aforesaid County of James-City, there to remain in safe Custody, until he shall give sufficient Security, before me, or some other Justice of Peace of this County, for his personal Appearance at the next Court to be held for the said County, to answer the said forcible Detainer, whereof he is convicted by my own View and Record, and in the mean Time to be of Good-behaviour; or until he shall be discharged by due Course of Law. Certified under my Seal this Seventh Day of June, 1735.

Mittimus.

To the Sheriff, or Keeper of the Goal of James-City County.

James-City sc. *I* Send you herewith the Body of C. D. Mittimus.
of &c. convicted by my own View and Record of Forcibly Holding the Lands and Tenements of A. B. in the Parish of E. within this County, against
the

Forcible Entry.

the Form of the Statute in that Case made and provided : And I command you, in His Majesty's Name, to receive the said C. D. into your Goal and Custody, and him there safely to keep, until he shall be thence discharged by due Course of Law. Given under my Hand and Seal, &c,

But the Defendant, upon his Prayer, and Tender of sufficient Sureties, as mentioned in the Record, ought to be admitted to Bail.

Precept to summon a Jury.

Precept
for a Ju-
ry.

James-City sc. **L.** B. Gent. one of His Majesty's Jus-
tices of the Peace of the said County,
to the Sheriff thereof, Greeting. On Behalf of Our So-
vereign Lord the King, I command you, That you cause
to come before me, at _____ in the Parish of E,
and County aforesaid, the _____ Day of
next, Twenty Four good and lawful Men of the same Pa-
rish, within your Bailiwick, to inquire upon their Oaths
of such Things as shall be then there enjoined them, on
His Majesty's Behalf; And see that upon each Juror by
you in this Behalf impanell'd, you return Twenty Shil-
lings in Issues, on the Day aforesaid; And this you shall
in no wise omit, on Penalty of Twenty Pounds: And
have then there this Precept. Witness the said L. B. this
Day of _____

Upon Appearance of Twelve, at the Day and Place ap-
pointed, the Justice swears the Jury,

Oaths. **Y**O U shall well and truly try this Issue of Forcible En-
try, betwen Our Sovereign Lord the King, and C. D.
of &c. and a true Verdict give according to your Evidence.
So help you God.

Traverse. On the Defendants Tender of a Traverse, which is a Plea,
in Writing, whereby he takes Issue upon the Matter,
or denies the Force, the Justice may try the Traverse, or
certify it, and the whole Record, to the Secretary's Office,
which is the best Way; he that tendreth the Traverse must
bear all Charges of Prosecution, both before the Justice,
and in the General Court.

If the Justice will try the Traverse, it must not be by
the Jury who found the Force, but by a new Jury, who
must be summoned by the Sheriff, upon the Justices Pre-
cept, as before returnable the next Day.

Oath

Oath to a Jury on a Traverse.

YOU shall well and truly try this Issue of Traverse, between our Sovereign Lord the King, and C. D. for a Forcible Entry and Detainer, wherewith he stands charged, and a true Verdict give according to your Evidence. So help you God.

But the Traverse is no *Supersedeas*, because the Force being found by Inquisition, the Justice may restore the Party grieved, and may immediately put the Party in Possession himself, or direct his Precept to the Sheriff for that Purpose.

If the Jury shall not appear at the Day, the Justice may issue an *Alias*, after that *Pluries infinite*, 'til they come, so that at the Day of Return of the *Alias*, (or Second Precept) the Sheriff shall return 40 s. in Issues, upon every one of them; and upon the *Pluries*, (or Third Precept) Five Pounds; and upon every *Pluries* thereafter, the Issues to be doubled. *Dalt.* 312. See *Tit. Juries*.

Issues on Jurors.

Inquisition of Force.

James-City sc. **I**nquisition for our Lord the King, taken at in the Parish of E, and County aforesaid, the Day of before L. B. Gent. One of His Majesty's Justices of the Peace of the said County, and by the Oath of F. G. H. I. &c. good and lawful Men of the same Parish and County, who being charged and sworn, upon their Oaths do say, That A. B. of &c. was lawfully and peaceably seised in his Demesn, as of Fee, of and in One Messuage, with the Appurtenances, in the Parish of E, and County of James-City aforesaid, and so being thereof peaceably possessed, on the Day of last past, C. D. of &c. and other Malefactors to the Jurors aforesaid unknown, with Force and Arms, to wit, Clubs, Swords, and Pistols, into the Messuage and Appurtenances aforesaid entred, and him the said A. B. thereof with Force disseised, and thence expelled, and such Disseisin and Expulsion of the said A. B. from the said Day of until the Day of taking this Inquisition with Force held, and as yet holds, to the great Disturbance of the King's Peace, and contrary to the Form of the Statute in that Case made and provided. In Witness whereof, the said Jurors to this Inquisition have severally put their Seals, the Day, Year, and Place first above-mentioned.

Inquest.

Warrant for Restitution.

Restitu-
tion.

James-City sc. **L**. B. Gent. and Justice of Peace of the said County, To the Sheriff thereof, Greeting. Whereas by a certain Inquisition taken before me the Day of last past, at in the Parish of E, and County aforesaid, upon the Oath of F. G. H. I. &c. according to the Form of the Statute in that Case made and provided, it was found, That C. D. and others, on the Day of last past, with Force and Arms entered into the Messuage and Appurtenances of A. B. in the Parish of E, and County aforesaid, and him the said A. B. thereof with Force disseised and expelled, and such Disseisin and Expulsion of the said A. B. from the said Day of until the Day of taking the Inquisition aforesaid with Force held, and as yet holds, as by the said Inquisition of Record, doth more fully appear: These are therefore, in His Majesty's Name, to command you to go to the said Messuage and other the Premises, and cause the same with the Appurtenances to be resealed, and the aforesaid A. B. to be restored thereto, in as full and ample Manner as he was before the said Entry was made. And hereof fail not. Given under my Hand and Seal, &c.

F O R F E I T U R E.

Forfeiture.

IS occasioned by the Transgression of some Penal Law, whereby the Offender loseth his Lands and Goods, or is liable to Penalties of Fine, Corporal Punishment, or Imprisonment.

Full Forfeiture is Loss of Life and Member, and all else that a Man hath. *Manwood* 1. p. 341.

Confiscation.

Forfeiture of Goods differs from Confiscation, because Forfeiture is more general, and occasioned by some Criminal Offence: Confiscation is particular to such who forfeit only to the King, for Frauds in his Customs. *Stamf. P. C.* 186.

When
Lands or
Goods
shall be
forfeited.

Where Lands are forfeited, it shall be from the Time of the Offence committed: But where Goods are forfeited, it shall be from the Time of Attainder, for the Goods of a Felon are his own, 'til Conviction, or Attainder. *1 R. 2. cap. 3.*

If a Man is acquitted of Felony, but the Jury find that he fled, he shall loose his Goods which he had at the Time of Acquittal, and not at the Time of the Flight. *Goulds* 135.

F O R G E R Y.

F O R G E R Y.

THIS is an Offence at Common Law, where any Person fraudulently makes and publishes false Writings to the Prejudice of another's Right. *Fitz. N. Brev. 96.*

What
make the
Offence.

It is likewise punishable by the Statute 5 *Eliz. cap. 14.* where any Person shall forge and publish,

1. False Deeds, or Conveiances, of Lands or Tenements.
2. Writings sealed.
3. Court Rolls, or Records.
4. Wills; whereby the Freehold, Right, or Title of Lands may be charged.

Upon Conviction for any of these, the Offender, for the First Offence, shall be put in the Pillory, his Ears cut off there, his Nostrils slit, shall forfeit the Profits of his Lands to the King, and be imprisoned for Life.

Punish-
ment.

And for forging a Lease, Annuity, Obligation, Bill, Acquittance, Release, or other Discharge of a Personal Matter, the Offender shall be pilloried, lose One of his Ears, and be imprisoned One Year, without Bail, for the First Offence.

Other
Forgeries
& Punish-
ments.

A Second Offence in any of the Cases above-mentioned, Felony.

2d Of-
fence, Fe-
lony.

Conviction must be before Justices of Assize, or Oyer and Terminer, upon Indictment, and therefore these Offences are not cognizable before Justices of Peace.

Minister, Clerk, or Reader, granting false Certificate of publishing the Banns of Marriage, may be prosecuted for Forgery, besides other Penalties, cognizable before any Court of Record. 4 *Annæ, cap. 48.*

Forgery;
by the
Laws of
Virginia,

If a Servant, by Indenture, forges a Certificate of Freedom, or knowingly makes Use of such, Two Hours Pillory, &c. See *Tit. Runaways.* Free Person forging such Certificate, forfeits 10*l.* to the King and Informer: Refusing the Paiment, or Security for Paiment in Six Months, 39 Lashes at the Whipping-Post. 4 *Annæ, cap. 49.*

pag. 215.
pag. 223.

Any Person forging a Pass, whereby to procure Transportation out of this Colony; forfeits 10*l.* to the King and Informer: If a Servant forges, or knowingly makes Use of such Pass, 2 Hours Pillory; and 39 Lashes. 12 *Geo. 1. cap. 4.*

pag. 370.

Forging Note, Réceipt, or Stamp of any Tobacco Inspector, or knowingly tendring such Note in Paiment; exporting Tobacco under a counterfeit Stamp; demanding Tobacco upon a forged Note, knowing it to be so; putting

pag 433.

Tobacco into any Hogshead, &c. after stamp'd by Inspectors; drawing Staves, or Heading, out of any Hogshead, &c. duly stamp'd and delivered from a Warehouse, and fixing the same in any other Cask, &c. Felony. 3 & 4 Geo. 2. cap. 3.

FORESTALLERS.

Regrators. Engrossers.

Forestallers.

A Forestaller is, by my Lord Coke, called an Oppressor of the Poor, and a Public Enemy to the Common Wealth, and therefore punishable at Common Law.

The Statute 5 & 6 Edward 6. cap. 14. describes him thus, viz.

1. He who buys, contracts for, or causes to be bought, any Merchandise or Victual, in the Way, before it is brought to Market.
2. He who dissuades People from bringing Commodities to Market.
3. He who persuades them to advance the Price, after brought there.

Regrators.

A Regrator, is he who buys Victual dead or alive, brought to Market to be sold, and sells the same again in the same Market, or in another within 4 Miles. 13 Eliz. c. 25.

Engrossers.

An Engrosser, is he who buys or contracts for Corn on the Ground, without purchasing the Land; or other dead Victual, with Intent to sell again. 5 Eliz. cap. 12.

Victualers, Badgers, Drovers, Fishmongers, and Butchers, buying only Things belonging to their Trades; and Buyers of Foreign Commodities, not being Salt, or Fish, are excepted.

Prosecution & Punishment.

Offenders may be prosecuted by Information, or Indictment, before Justices of Peace, in Sessions, and upon Confession, Conviction by Two Witnesses, or Presentment of a Grand-Jury, they forfeit,

For the First Offence, the Goods so bought, and Two Months Imprisonment, without Bail.

2d Offence, double the Value of the Goods, and Six Months Imprisonment.

3d Offence, all his Goods, must stand in the Pillory, and be imprisoned, during the King's Pleasure.

One Moiety of the Forfeitures to the King, the other by the Prosecutor, who may take Execution, upon Judgment given by the Court, before whom the Offender shall be convicted.

Prosecution within Two Years.

G A M I N G.

G A M I N G.

ONE Justice of Peace may enter any common Place where unlawful Games are suspected to be used, and may commit those who keep unlawful Gaming Houses, 'til they find Sureties, by Recognizance, not to keep such Houses any more: The Party keeping such House, forfeits 40 s. *per* Day, to the King, and Prosecutor; and every Person playing there, 6 s. 8 d. for every Offence, and he may be committed, without Bail, 'til he enter into Recognizance, not to play any more. 33 H. 8. *cap.* 9.

Unlawful Games, are,

Bear-baiting.	Cock-fighting.	Foot-ball.
Bull-baiting.	Coits.	Nine-pins;
Bowling.	Dice.	Tennis.
Cards.		

Persons prohibited from Play, at any of these Games, Who may except at *Christmas* in their own Houses, or by Servants in their Masters Houses, and with their Leave, are,

Apprentices,	Husbandmen.	{ Servants of }	
Artificers.	Labourers.		{ all Kinds. }
Fishermen.	Mariners.		
	Watermen.		

on Penalty of 20 s. for every Offence, to the King and Informer.

By the Statute 39 *Eliz. cap.* 4. Fencing and Stage-Plays are unlawful, and Offenders in that Kind, are made Vagabonds.

But the King may licence the moderate Use of such Games, as it shall seem good to His Majesty. *Co.* 11, 85. *Dalt.* 91. But may be licensed.

Playing at Cards, Dice, and the like, are not prohibited at Common Law, but only that Deceit shall not be used in such Play; neither are they evil in themselves, abstractedly considered: And therefore, the Statute which prohibits them to certain Persons, and Places, yet exempts others, and tolerates them to All, at certain Times, and on certain Conditions: The Intent and Policy of the Statute appears to be, to prevent unlawful, crafty, and deceitful Gaming, and the inordinate haunting Alehouses, and Tipling Places. *Dalt.* 91. Where lawful.

And it was resolved by the Judges, 3 *Jac.* 1. That if Guests in an Inn, or Tavern, call for Dice, Tables, &c. and play, for their Recreation, and for no Gain to the

Owner of the House, this is not within the Statute of 33 H. 8. cap. 9. If the House be not kept for Gaming, for Lucre or Gain, but Play is only used for Recreation, and for no Profit to the Master of the House, neither he, nor Persons playing, are within the Penalties of that Law.

Cheat-
ing.

One Justice may commit, for cheating at Play. *Cro. Car.* 235.

Power of Justices over Ordinaries, and Ordinary-keepers permitting unlawful Gaming. *See Tit. Ordinaries.*

Securi-
ties for
Money,
won or
lent at
Play,
void.

Laws of
Virginia,
pag. 398,
&c.

Money
lost at
Play, re-
covera-
ble.

By an Act of Assembly. 1 Geo. 2. cap. 8. ' All Pro-
' mises, Securities, Conveiances, &c. for Money won by
' Gaming, or Betting, or for Money lent at Play, void:
' Lands or Tenements encumbered by any Conveiance, on
' such Consideration, shall enure to the Use, and devolve
' upon the Party who should have been intitled thereto,
' if the Grantor had been dead; Grants and Conveiances
' to hinder such Lands, &c. from devolving, shall be ad-
' judged fraudulent, and void.'

The Loser of 10 l. or more, by Play, or Betts, at one Sitting, may sue for, and recover the Money lost: But if he does not sue, within Three Months, and prosecute with Effect, any other Person may sue, and recover the Money lost and treble the Value, to be divided between the Prosecutor and Poor of the Parish.

The Party sued shall discover, upon Oath, the Money won.

But upon Discovery, and Repayment, of the Money won, the Winner shall be discharged.

Punish-
ment of
Deceit.

Upon Conviction of Fraud, or Deceit, used in Play or Betting, the Offender shall forfeit to the Prosecutor Five Times the Value of the Money so won, be deemed infamous, and suffer Corporal Punishment, as for Wilful Perjury.

And
Game-
sters.

Two or more Justices may cause Persons of no visible Estate, or Calling, whom they suspect to support themselves by Gaming, to be brought before them; and if the Party cannot make it appear, that his Expence is not maintained by Gaming, the Justices shall require him to enter into Recognizance, with Sureties, for his Good-behaviour, Twelve Months, or, on Refusal, commit him.

The Party bound, playing within that Time for more than the Value of 5 s. at one Sitting, forfeits his Recognizance.

And
Quar-
relers.

If a Man assaults, beats, or challenges another to Fight, upon Account of any Thing won by Play, or Betting, he forfeits 10 l. to the Party grieved, and liable to be sued, for the Assault, at Common Law.

Warrant,

Warrant, for apprehending a suspected Gamester.

To J. O. Constable.

Gloucester sc. *W* Hereas we have just Cause to suspect Warrant.
that A. B. of &c. is an idle Person,
having no visible Estate, Profession, or Calling, but for
the most Part supporting himself by Gaming, contrary to
the Form of an Act of Assembly in that Case made and pro-
vided: Therefore we command you, That you forthwith
cause the said A. B. to come before us, or some other Justices
of this County, to be examined concerning the Premisses.
Hereof fail not. Given under our Hands, &c.

Condition of the Recognizance for Good-behaviour.

THE Condition of this Recognizance is, Whereas the
above-bouden A. B. was this Day brought before
C. D. and F. W. Gent. Two of His Majesty's Justices of
the Peace of the said County of Gloucester, upon their War-
rant, for the Suspicion of his being an idle Person having
no visible Estate, Profession, or Calling, but for the most
Part supporting himself by Gaming; and the said A. B.
upon his Examination before the Justices aforesaid, did
not make it appear to them that the principal Part of his
Expences is not maintained by Gaming, and thereupon
he was required to give sufficient Securities for his Good-
behaviour, pursuant to an Act of Assembly in that Case
made and provided: If therefore the said A. B. shall be
of Good-behaviour to Our Sovereign Lord the King, and
to all His Majesty's Subjects within this Dominion, for
and during the Space of Twelve Months next ensuing the
Date of these Presents, then this Recognizance to be void.

Recognizance.

Mittimus.

To the Sheriff, or Keeper of the Goal of Gloucester County.

Gloucester sc. *W* E send you herewith the Body of A. B. Commit-
late of &c. taken upon our Warrant, ment.
and brought before us, upon Suspicion of his being an
idle Person, of no visible Estate, Profession, or Calling,
but for the most Part supporting himself by Gaming; and
the said A. B. upon his Examination before us, failing
to make it appear that the principal Part of his Expences
is not maintained by Gaming, and he having refused to
give sufficient Security for his Good-behaviour for the
Space of Twelve Months next ensuing, according to an

Act of Assembly in that Case made and provided: We therefore charge and command you to receive the said A. B. into your Goal and Custody, and him there safely to keep, until he shall enter into Recognizance, with sufficient Sureties, for his Good-behaviour, as aforesaid, or until he shall be discharged by due Course of Law. Given under Our Hands and Seals, &c.

G O A L.

Prison. Goaler. Prisoner. Breach of Prison. Rescous. Escape.

Goal
and Pri-
son.

G O A L and Prison are Synonymous Terms, of like Signification, equally restraining the Liberty of the Prisoner: But, in Propriety of Speech, a Criminal shall be committed to Goal, a Debtor to Prison; and with this Difference, that the Party imprisoned upon Civil Process, giving Security, may have Liberty of the Prison Bounds, but a Criminal committed to Goal, must be kept in safe and close Custody, within such Goal. *Co. 8. Rep.*

Impri-
sonment.

Imprisonment is the taking any Person from his own Liberty, into Custody of the Law, to answer what is objected against him; and therefore to break Prison, is, to fly from the Trial of the Law, and is adjudged Felony in him who is arrested for Felony, otherwise not.

Out of this one Fact arises sometimes a treble Offence, and Felony, *viz.*

1. In the Prisoner; which is properly called Breach of Prison.

2. In the Party assisting the Prisoner to escape; which is term'd Rescous.

3. In the Officer, or Party, by whose wilful Default he is suffered to go, and this is an Escape. *Lamb.*

Prisoner.

Every Person arrested for Felony, or Suspicion thereof, or taken upon any legal Process, is a Prisoner, as well without the Prison, as in it, or in the Stocks, or in Custody of the Officer, who arrested him, or of the Party who has the Keeping of him.

Goaler.

If the Goaler permits a Felon to escape, 'tis Felony; but if he kill an unruly Prisoner, 'tis not Felony; if by hard Usage, 'tis Murder: But if the Escape is by Negligence, and not Voluntary, 'tis Felony in the Prisoner, and a Misdemeanor in the Goaler, and finable.

If he refuse to receive a Felon, sent to him by lawful Warrant, he shall be fined; and the Officers of the Town, or County, must keep him 'til Goal-Delivery. *Nels. 315.*

Murderers

Murderers and Felons shall be imprisoned in the Common Goal, and not elsewhere.

Every suffering a Prisoner to escape, is a Breach of Prison in the Party escaped: And if a Man arrest a Felon, and after lets him go at large, if the Party was arrested for Felony, it is Felony in him who suffered him to escape; if for Treason, 'tis Treason; if for Trespafs, 'tis Trespafs, and the like in other Cases. *Stamf. l. 1. cap. 26.*

At Common Law, all Breach of Prison seems to be Felony: But by the Statute 1 *Ed. 2.* He who breaks Prison shall be subject to Judgment of Life, or Member, if the Cause for which he was imprisond, require the like Judgment. *H. P. C. 107.*

If the Goaler voluntarily permit him to escape, 'tis Felony in the Goaler, not in the Prisoner: So if the Prison be broke by Strangers, without his Procurement, and he go out, the Doors being open, no Felony in the Prisoner. *Ibid. 108.*

There must be actual Force used by the Prisoner, or others by his Procurement, to make it Felony in him: Going out, the Doors open, no Felony.

If the Prison be on Fire, by Casualty, and the Prisoners break out for Safety of their Lives, this is no Felony, but excusable by Necessity, and the Law of Nature. *Plowd. 13.*

Rescous is a Forcible Taking away, and setting at Liberty, against Law, a Distress taken, or Person arrested, by lawful Process. *Co. Lit. l. 2. f. 237.*

There must be a Felony really done, and the Felon lawfully arrested, otherwise 'tis not Felony: Hindring or opposing the Arrest of a Felon is a Misdemeanor, punishable by Fine and Imprisonment.

But if the Party be arrested, and then rescued out of Custody of the Officer, or those conducting him to Goal; or if he is rescued out of Prison, or Stocks, or going to Execution, or at the Gallows, the Rescuer is a Felon, if the Arrest was for Felony; if for Treason, a Traitor.

The Rescuer shall not be arraign'd 'til the Principal is attainted, and if he die before Attainder, the Rescuer shall be fined and imprisoned. *H. P. C. 116.*

Escape is, where a Person arrested gains his Liberty, without being discharged by due Course of Law: It is either,

1. Negligent or
2. Voluntary,

In

In Trespasses, or any Offence not Treason or Felony, there is no Difference whether the Escape was Voluntary, or Negligent; in both Cases the Officer is finable, *viz.*

For Escape of a Person attainted, 100 *l.*

Indicted, 5

Not indicted, Discretionary.

Stamf. 35.

The Sheriff shall answer these Fines, if the Goaler be insufficient; because it's in a Civil Action, and the Sheriff is liable for all Escapes upon Civil Process: But where the Escape of a Felon is voluntary, and so becomes Criminal, the Goaler only shall answer the Felony. *Doct. & Stud. cap.* 42.

By Neg-
ligence.

To bail a Person notailable, thro' Ignorance, by One that hath Power to take Bail; so for a Goaler to suffer a Prisoner to go Abroad, tho' with a Keeper, and he returns; or if a Man has arrested a Felon, and ignorantly delivers him to another, not being an Officer of Justice, these are negligent Escapes, punishable by Fine. *Nels.* 246.

Volun-
tary.

Voluntary or wilful Escape, is the suffering a Prisoner arrested upon legal Process, to go at large: The Party who suffers a Person arrested or committed for any Criminal Offence, to escape, shall be punishable for the same Crime for which the Party escaping stood committed; if the Party was committed for Felony, actually done at the Time of the Escape, it's Felony in him who suffers the Escape, if for Treason, it is Treason, &c. *H. P. C.* 180.

To suffer One who confesses a Felony, to go at large, without Bail or Commitment; Or, for a Justice to take a Felon out of Goal, without Bail; or, if a Goaler, or any other Person not having Power to take Bail, shall bail a Prisoner notailable by Law; these are wilful Escapes.

'Tis Felony in an Officer to suffer a Felon to destroy himself. *Nels.* 247.

But where a Man has wounded another, who dies within a Year and a Day; or where he kills another by Misfortune, or in his own Defence, if the Offender is taken, and suffered to escape, it is not Felony in the Officer, but finable.

3 Leon. 207.

These Escapes must be presented, before the Offender shall be compel'd to answer: And Justices of Peace have Power, in Sessions, to inquire of the Escapes of Felons.

1 R. 3. *cap.* 3.

If a Felon escapes, after Condemnation, and is retaken, upon Confession, or Proof, that he is the same Person, he shall be executed. *Poph.* 131.

Where

Where a Man is arrested upon Suspicion of Felony, but afterwards it appears that no Felony is committed, the Prisoner may be discharged: For there can be no Felon, where there is no Felony. *Dalt* 381.

Prisoners charged in Execution for Debt, or Damages, giving Bond and Security to the Sheriff, may have Liberty of the Prison Bounds. *12 Geo. 1. cap. 3.*

But if such Prisoner escapes, upon Oath thereof, in Writing, made by one or more credible Witnesses, before a Judge or Judges of that Court where Judgment and Execution were obtained against the Party escaped, such Judge may issue one or more Warrants, upon Request of any Person, for retaking the Party, and committing him to the Goal of the County where he shall be retaken: Such Warrant shall be in Force throughout this Dominion.

The Person retaken shall remain in Custody of such Goal, without Bail or Mainprize, 'till the Executions, wherewith he stands charged, are satisfied or discharged by Course of Law.

If such Prisoner be charged with Treason, or Felony, or any other Matter on the King's Behalf, and for such Cause removed, he shall remain in Custody of the Goal to which such Removal shall be, charged in Execution.

Officer delivering the Party retaken, and Warrant, to the Sheriff, shall take a Receipt for his Prisoner.

Sheriff shall receive the Prisoner, and give Receipt: And liable for any Escape afterwards.

Warrant, for retaking a Prisoner.

King and Queen *sc.* **G.** *C. Gent. a Justice of Peace, and One of the Judges of the Court of the said County, To all Sheriffs, Maiors, Constables, and Headboroughs, within this His Majesty's Colony and Dominion of Virginia, Greeting. Whereas A. B. late of &c. was lately a Prisoner in Custody of the Goal of the said County of King and Queen, charged in Execution, at the Suit of C. D. for the Sum of for Debt, (1) and also the Sum of for Costs, which the said C. D. lately, in the Court of this County, recovered against the said A. B. whereof he is convicted, as appears to me of Record; And forasmuch as it has been duly proved before me, that the said A. B. is escaped, and going at large: Therefore, in His Majesty's Name, I command you, and every of you, in your respective Counties, Cities, Towns, and Precincts, to seize and retake the said A. B. and him to convey to the Prison where Debtors are usually kept, in the County*

Prisoners for Debt.

Laws of Virginia, pag. 363.

Warrant. An Escape.

(1) Or, for Damages, or as the Case is.

Goal Highways.

County where he shall be retaken, and deliver to the Keeper thereof, together with this Warrant. And I charge and command you, the Sheriff, or Keeper of the said Prison, to receive into your Goal and Custody the Body of the said A. B. and him there safely to keep, until he shall have made full Satisfaction to the said C. D. for his Debt and Costs aforesaid, or until he shall be discharged by due Course of Law, pursuant to an Act of Assembly in that Case made and provided. Given under my Hand and Seal, this Tenth Day of August 1735.

Sheriff shall make Return of the Warrant, to the Court where Judgment was obtained, there to be entred upon Record.

Return. Effex sc. *BY* Virtue of this Warant, the within-named A. B. was seised and retaken in this County, by J. O. Constable, and by him delivered into my Custody: And I have the Body of the said A. B. ready to satisfy C. D. of the Debt and Costs within-mentioned, as within to me is commanded.

L. M. Sheriff.

Sheriff's Receipt.

Effex sc. Aug. *R* Ecceived in Custody of the Goal of the said County, the Body of A. B. late of &c. lately a Prisoner in Execution, and escaped from the Goal of the County of King and Queen, but retaken upon Warrant of G. C. Gent. One of the Judges of that County Court, and delivered to me by J. O. Constable.

L. M. Sheriff.

HIGHWAYS.

Roads. Bridges. Surveyors of Highways.

Roads. *P*ublic Roads, 30 Foot wide, well clear'd and grub'd, to Virginia and from Williamsburg, and every County Court-Laws, House, Parish-Church, Mill, or Ferry, and from one County to another, shall be made and kept in Repair by §ag. 191. the Surveiors thereof, in their respective Precincts: County Courts may alter old, or order new Roads, and shall Annually appoint Surveiors. 4 *Annæ*, cap. 39.

Nuisance. If any Person fells a Tree into the Highway, without removing it in 48 Hours; or if any Fence is made into a Highway, the Offender forfeits 10 s. to the Informer, recoverable before a Justice,

All

All Male Tithables shall attend the Surveior, when required to clear Highways, on Penalty of 5 s. for every Person neglecting; to be paid by the Master of a Servant, or Slave, to the Informer; but upon reasonable Cause of Absence shewn, and allowed by the Justice, he may give Judgment for the Defendant.

Surveior failing in his Duty, forfeits 15 s.

Bridges, where necessary, shall be 10 Foot broad, at least, made and repaired by the Surveior: But where he and his Assistants cannot do it, the County Court shall contract with Undertakers, for the Building, and levy the Charge in the County Levy; where such Bridge joins two or more Counties, the Court of each County shall join in the Contract, and levy the Charge in Proportion to the Number of Tithables in each County.

Every Master of a Plantation shall make and keep in Repair, a Horse Way to his Dwelling House, on Penalty of 10 s. for not making such Way, and 10 s. Half-yearly, so long as it continues unmade, or unrepaired.

Cart Roads to Rolling-Houses and Public Landings shall be made, and kept in Repair.

All Penalties laid by this Act, are given with Costs, to the Informer, recoverable before a Justice of Peace; upon any Conviction in the Premises, and Judgment by him given, he may issue Execution. *See Tit. Debt.*

Conviction must be by Two Witnesses.

Roads and Bridges from every Iron-Work to the nearest convenient Landing, shall be made and repair'd as other Public Roads, and under like Penalties; Workers in the Mines not compellable to work upon any Road, except those belonging to such Mine. 1 Geo. 2. cap. 12. *See below.*

Private Roads for carrying Wood, Coal, &c. to the Furnaces, shall be allowed to be made by the Owners of Iron-Works, so as not to pass thro' inclosed or tended Grounds belonging to other Persons.

All Roads from or to any Iron-Work shall be made and kept by the Owners of such Work, and all other Persons exempted therefrom.

Adventurers in Iron-Works may take Wood and Timber for making Bridges; but shall pay for what exceeds 15 Inches Diameter at the But-end of the Tree, and if the Price cannot be agreed upon by the Parties, a Justice may order Three disinterested Freeholders, upon Oath, to appraise it, and such Valuation to be paid to the Proprietor.

This shall not extend to Timber fit for Clap-Boards.

3 & 4 Geo. 2. cap. 13.

Hog-

Who shall clear Roads.

Surveior. Bridges.

Ways.

Cart-Roads.

Penalties.

Mines. Laws of Virginia, pag. 408.

pag. 455.

H O G - S T E A L I N G.

Penalties.
Laws of
pag. 150.

FOR every Hog, Shoat, or Pig,
1st. Offence, 25 Lashes, or 10*l.* and 400*lb.* Tobacco, *per* Hog, &c.
2d. Offence, 2 Hours Pillory, Loss of Ears, and 400*lb.* Tobacco.

If the Offender be a Negro, Mulatto, or Indian, Thirty Nine Lashes, and 400*lb.* Tobacco: If a Servant, the Master shall pay the Tobacco, and be repaid in Service, at 150*lb.* Tobacco *per* Month: If a Slave, his Owner shall pay 200*lb.* Tobacco, to the Owner of the Hog. 4 *Annæ, cap. 14.*

Penalties of 10*l.* and 400*lb.* Tobacco, to be divided between the Owner of the Hog, &c. and the Informer.

If several Offenders, tho' but one Hog stol'n, each Person may be prosecuted, and liable for the whole Fine.

But Owners of Slaves shall pay only 200*lb.* Tobacco, for One Hog; and if Slaves of several Masters offend, each Master shall pay only a proportionable Part.

Prosecution may be in the County Court; but Defendant has Liberty of Appeal to the General Court, if he gives Bond and Security in 20*l.* *Sterk.*

3d. Offence, Felony.

Hog un-
mark'd.

Persons bringing Home, or receiving any Hog, &c. without Ears, and not giving immediate Notice to a Justice, shall be adjudged Hog-stealers, unless they prove their Property in such Hog.

Hogs belonging to Indians shall have the common Mark of their Town: Buying or receiving Pork of an Indian, without Proof that it was so mark'd, 1000*lb.* Tobacco Penalty to the King and Informer.

No Person shall hunt, shoot, or kill any Hog, Shoat, or Pig unmark'd, upon another Man's Land, on Forfeiture of 1000*lb.* Tobacco, to the Informer.

But any Person may, upon his own, or King's Land, kill Hogs unmark'd, but must give Account, upon Oath before a Justice of Peace within 3 Months, of all Hogs so kill'd, and obtain his Certificate, otherwise may be prosecuted for Hog-stealing.

Prosecution for these Offences must be by Action, or Information, in the General Court, or County Court:

Certificate of killing unmark'd Hogs.

Middlesex sc. **A.** B. of &c. this Day made Oath before me, That on the Day of last past, he killed upon his own Land Two Hogs, and that the same were not marked. Certified under my Hand, this Day of

Certificate.

H O M I C I D E.

IN its proper Signification extends to all Acts whatsoever whereby the untimely Death of a Man ensues; but in a legal Sense it is applicable only to, Signification.

1. Manlaughter; the killing a Man upon sudden Provocation, in Heat of Blood, without any Malice.
2. Chance-Medley; where a Man is by Misfortune casually kill'd by another, who is doing any Thing lawful, and without any Intent to hurt.
3. Necessity; where a Felon is executed by a lawful Officer, or kill'd in resisting such Officer; or where a Man kills another, in Defence of his Person, House, or Goods.
4. Casual Death; when a Man is slain otherwise than by his own Act, or the Hands of another; as by the Fall of a Horse, Cart, &c.

1. Manlaughter: This must be no deliberate Act, but the Provocation must be great and apparent, and the Falling out sudden and unexpected, and it must be without Intention of any personal Wrong, or to revenge any former Quarrel; for if the Intent is ill, or personal Malice appear, it's Murder. Manlaughter.

The Act, occasioning the Death, must be unlawful; for if lawful, 'tis Chance-Medley.

A sudden Provocation, and Death ensuing, so far extenuates the Crime, as to make it Manlaughter. 2 Cro. 296.

The Husband kills another, committing Adultery with his Wife, Manlaughter. Raymond. 212.

A Prisoner in Execution for Debt, escaping, and the Keeper coming to the Place where he is, kills him in Pursuit, or Resisting, 'tis Manlaughter. 1 Roll. Rep. 189.

Officer coming to serve an Execution, and the Debtor shuts his Door, which the Officer breaks open, and one is kill'd, 'tis Manlaughter, because the breaking of the Door was unlawful. Nels. 345.

Entering an House with Force; those turn'd out of Possession comes to set it on Fire, and one within shoots, and kills another without Doors, Manlaughter; because the Entry was unlawful. H. P. C. 56. To

To fight, and part presently, meet again, and One is killed; this is a continued Affray, and therefore Manslaughter.

But if an Ideot, or Madman, or Person born deaf and dumb, killeth another, this is no Felony, because such cannot know Evil, neither can they have a felonious Intent; and no Felony can be committed without a felonious Purpose. *Dalt.* 350.

Non Compos Mentis

A Person in Law accounted *Non Compos Mentis*, is,

1. A Natural Fool, who is so from his Birth.
2. He who by Sicknes, or other Accident, loses his Memory.
3. A Lunatic, sometimes of good Understanding and Memory, sometimes again *Non Compos Mentis*. *Co.* 124.

But if another procure a Madman to kill any Person, tho' the Madman is excused, yet the Procurer shall be punish'd as a principal Felon, *Ba.* 57.

Infant.

An Infant under 14 Years shall not be arraign'd for Felony. *Co. Lit.* 147.

But yet, an Infant, above 8 Years of Age, may commit Homicide, and shall be hang'd for it; if it appear that he had Knowledge of Good and Evil, and of the Peril and Danger of that Offence. 3 *H. 7. cap.* 1. & 12. *Stamf.* 27.

If a drunken Man kills another, this is Felony of Death: Sir *Ed. Coke* calls a Drunkard, a voluntary Devil; and saith, 'That what Hurt soever he doeth, his Drunkenness 'aggravates it.' *Co. Lit.* 247.

Forfeiture.

The Offender, in Manslaughter, has the Benefit of Clergy, the first Time, but forfeits his Goods and Chattels.

Chance-Medley.

2. Chance-Medley; killing another, by Misfortune or Accident, as a Man correcting his Child, or Servant, and Death ensuing; or felling a Tree, building a House, raising a Frame, shooting at a lawful Mark, or doing any Thing lawful, and another is kill'd, without the Will or Intent of the Party.

Forfeiture.

There is no express Judgment in Chance-Medley, but the Offender forfeits his Goods, and has a Pardon of Course.

Necessity.

3. Necessity; and this may be distinguish'd into,
 1. Public, or
 2. Private.

Public Necessity is by a lawful Officer, executing a Criminal condemn'd before a Judge having proper Jurisdiction, and pursuant to such Judgment, by legal Warrant.

But if 'tis by a Stranger, and not by the Sheriff, or some Person by him deputed, 'tis Felony.

If a Justice of Peace give Judgment in Treason, or Felony, the Execution is Murder, both in him and in the Officer, because it's for a Matter where a Justice hath no Jurisdiction of Trial, or Conviction; but if in Trespass he give Judgment of Death, 'tis Felony in him, but not in the Officer. *Nels.* 346.

The Execution must be pursuant to the Judgment, and in the Method prescrib'd by Law: A Criminal attainted of Felony, shall have Judgment to be hang'd; but if the Sheriff beheads, or otherwise kills him, this is Murder in the Sheriff and his Officers. *Dalt.* 348.

In Cases Criminal; a Man indicted for Felony is kill'd by an Officer, having a Warrant to apprehend him, whom he resists: Or, a Prisoner for Felony, actually done, endeavouring to escape from the Officer carrying him to Goal, and is killed: Or, a Prisoner kill'd by the Goaler, the Prisoner assaulting him: In such Cases the Officer will be justified by his Authority:

For if a Felon cannot be taken without Killing, he who kills him must be acquitted, without any Forfeiture, because every Man is warranted by Law to apprehend him, but then there must be a Felony actually done; and where a Man has a Warrant to take a Felon, who resists, or flies, and is pursued, he may be killed, if he will not yield himself. *3 Inst.* 221. *Doct. & Stud.* l. 2. cap. 41.

Private Necessity sometimes arises upon Execution of Civil Process: As resisting an Officer who has any legal Process, and kill'd by him; but here the Special Matter must be given in Evidence, and being found for the Officer, he is to be acquitted: And the Necessity must be unavoidable, without any Colour of Malice. *Dalt.* 356.

So likewise in necessary Defence of a Man's Person, Family, House, or Goods, it is justifiable against Thieves, Robbers, or other Felons, attempting to commit Felony: But if I kill a Man claiming Title to my House, or coming to commit Trespass, and endeavouring to enter, this is Manslaughter.

In the Cases before-mentioned, Necessity justifies the Fact, and therefore no Forfeiture.

Self-Defence is excusable only upon inevitable Necessity: The Party assaulted must give back as far as he can, without endangering his own Life, and the mortal Wound must not be given 'til after such Retreat, otherwise 'tis Manslaughter.

And here the Party assaulted has Pardon of Life, and Land, but forfeits his Goods and Chattels.

No Forfeiture

Self-Defence

Forfeiture

If a Woman kills a Man attempting to ravish her, it's justifiable; So it is if a Servant, in Defence of his Master's Person, or House, kills another; if it cannot be otherwise avoided. *Dalt.* 358.

The Servant may justify the killing him who rob'd and kill'd his Master, so that it be done presently. *21 Hen. 7. cap. 9.*

Casual Death. 4. Casual Death; occasioned by Means or Fall of a Horse, Cart, Ox, or other Beast or Thing moveable, animate or inanimate, which thereby becomes a Deodand, and is forfeited to the King. *3 Inst.* 57.

But this must be found by Inquisition taken before the Coroner, and the Forfeiture shall accrue from the Time of the Stroke given, so that if the Owner sell the Goods after that Time, and before Inquisition taken, the Property is not bound, but the King shall be entitled to it. *Nels.* 347.

All Homicide is to be inquired of before the Coroner, upon View of the dead Body, by Inquisition of 12 Freeholders of the Parish and County where the Party was killed: But if the Body cannot be found, Justices of Oyer and Terminer may inquire of the Felony. *Dalt.* 342.

Felo de se. See *Tit. Murder.*

Homicide committed upon the Sea, is within the Admirals Jurisdiction, and inquirable before a Court of Vice-Admiralty here.

Slaves, Laws of Virginia, par. 226, 343. Slaves under Correction, resisting their Master, or Person by him authorized, may be kill'd: So likewise outlying Slaves, not returning Home, or surrendring themselves after Proclamation publish'd. *4 Annæ, cap. 49.*

Accidental Homicide of any Slave, under Correction of his Master, or legal Punishment, and without Malice, dispensable. *9 Geo. 1. cap. 4.*

Persons indicted for Murder of a Slave, and found guilty of Manslaughter, shall be discharged without Forfeiture. *Ibid.*

H O R S E S.

par. 294. 12 Annæ, cap. 8. NO Person who is not a Freeholder of Fifty Acres or occupies Lands of 20*l.* Value, or pays 50*s.* or 500*lb.* Tobacco Annual Rent, shall keep more than One Gelding, or spaid Mare, but no stoned Horse, or Mare unspaid.

Horses, &c. kept contrary to this Act, may be seized by any Person; the Seisor to give Notice in Writing, to the Owner of such Seisure, Three Days before Court Day of the County where the Owner lives, and if he does not then appear,

appear, and prove, that he is an Inhabitant of some other Dominion, or qualified by this Act, the Property of such Horse shall be vested in the Seisor: If Notice is not given Threë Days before the Court next after Seisure, the Owner need not appear 'til the succeeding Court.

No Overseer, except he has Land of his own in the County where he lives, nor any Servant, shall keep Horse, Mare, or Colt, without the Master's License in Writing, nor more than One, tho' licensed: Horse, &c. otherwise kept, shall be forfeited to the Seisor, upon Information to a Justice of the same County, and recoverable before him.

Stoned Horses Two Years old, not $13\frac{1}{2}$ Hands high, running at Large upon any uninclosed Grounds, may be seized, and brought before a Justice of the same County, and his Certificate thereof obtained, which shall invest the Property in the Seisor; but he shall give Notice of the Seisure, containing a Description of the Horse's Colour, Marks, and Brand, set up at the Doors of the Court-House, and Church, of the same County and Parish; if within Two Months after Notice, the Owner tenders the Seisor 400*lb.* Tobacco and Cask, or Security for the Paiment next Crop, he may redeem his Horse.

The Horse must be measured, from the lowest Part of the Hoof of the Forefoot, to the highest Part of his Withers.

Each Hand is Four Inches, Standard Measure.

Proof of Seisure must be upon Oath, by the Seisor, and One other credible Witness, at least.

Horses, &c. belonging to a Slave, may be seized by the Churchwardens. *See Tit. Slaves.*

Certificate of a stoned Horse seized.

Richmond *sc.* A. B. of &c. this Day brought before me Certifi-
R. S. Gent. a Justice of Peace of the cate.
County aforesaid, One stoned Horse, above Two Years old,
(Colour,) (Marks,) branded
and duly proved before me, That he did find and take up
the said Horse, running at large, upon his own Lands,
not fenced or inclosed, in the Parish of E, within this
County: Whereupon I caused the same Horse to be measu-
red, pursuant to an Act of Assembly in that Case made
and provided, and it appeared to me, That the said Horse
then was not of the Height of Thirteen Handful and a
Half. Certified under my Hand, this &c.

Notice of Seizure.

Notice. Richmond *sc.* **O**NE stoned Horse, above Two Years old,
 (Colour,) (Marks,) branded,
 was lately seized by me the Subscriber, running at
 Large upon my own Lands, not fenced nor inclosed, in the
 Parish of E, in this County, and brought before R. S. Gent.
 a Justice of Peace, and measured, and before the same
 Justice found to be under the Height of Thirteen Handful
 and a Half; whereof Certificate is granted me by the Jus-
 tice aforesaid, August 20, 1735.

A. B.

Horse-stealing is Felony, in the Principal and all Ac-
 cessories before or after the Fact; no Clergy. 31 Eliz.
cap. 12.

H O U S E S.

Privile-
ged.

Mansion Houses are privileged by the Law.

1. As Castles for Defence of the Inhabitants; they may be defended by Force against Thieves, or Robbers, or Persons intending to commit Murder, or Felony; if such are kill'd, it's not Felony.
2. To protect the Persons of Men from Arrests at the Suit of any Subject.

Where
not.

But in the Cases following they may be broke open, if Entrance is denied to an Officer, who signifies the Cause of his coming, and requires the Doors to be open'd.

1. In Treason, Felony, or Suspicion thereof.
2. To apprehend any Person upon fresh Pursuit, who has dangerously wounded another.
3. Where an Affray is in a House, Constable may break it open, to keep the Peace.
4. Upon Forcible Entry, or Detainer, found by Inquisition, or View of a Justice.
5. Upon Recovery in a Real Action, Sheriff may break it open, to deliver Possession.
6. To apprehend any Person, upon final Process of Outlawry, or Fine, or upon Process of Excommunication.
7. Upon a Warrant of the Peace, or Good-behaviour.

And generally, in any Case where the King is Party, or has Interest; for no Man's House shall protect him against the King. *Dalt. Nels.*

HUE

H U E and C R Y.

Signifies Pursuit of a Felon, by Horn and by Voice: If the Party rob'd, or any in Company with a Person murder'd, or rob'd, come to the next Constable, and require him to raise Hue and Cry, and to pursue the Offender, describing his Person, and shewing as near as he can, which Way he is gone: The Constable must forthwith call upon the Men of his Precinct, for Aid in seeking the Felon, and if he be not found there, then to give Notice to the next Constable, and he to the next, 'til the Offender is apprehended, or pursued to the Sea Side. *Bract. l. 3. cap. 5. Crompt. 160.*

How to be raised.

'Tis to be made from Town to Town, and from County to County, by Horsemen as well as Footmen.

He that goeth not upon Hue and Cry, at the Command of the Sheriff, or Constable, shall be grievously fined and imprisoned. *Co. 2 Inst. cap. 9.*

Punishment for Neglect.

Officers and all other Persons who refuse or neglect to make Hue and Cry, or do not pursue it when made, shall be fined and imprisoned, by the Justices in Sessions. *13 Edw. 1. & 27 Eliz.*

Where a Felony is committed, or any Person dangerously wounded, and the Offenders fled, the Party grieved, or any other in his behalf, may acquaint the next Constable therewith, and require him to raise Hue and Cry.

By whom to be required.

The Party rob'd should give Notice as soon as he can. *Noy 155.*

But the usual Way is for the Party to go to a Justice of Peace, and make Information of the Felony, and thereupon he is examined, viz.

Westmoreland sc. **T**HE Examination of A. B. of &c. taken upon Oath before I. C. Gent. a Justice of Peace of the said County, this Day of

THIS Examinant saith, That Sworn before me, I. C.

A. B.

Warrant for Hue and Cry.

To all Headboroughs and Constables within this His Majesty's Colony and Dominion, to whom these Presents shall come.

Westmoreland sc. **W**hereas A. B. of &c. has this Day made Oath before me I. C. Gent. One of His Majesty's Justices of the Peace for the said County, That he was last Night robbed of

Warrant. (m) describe the (m) by Goodsh. Persens len.

Hue and Cry.

Persons unknown, who are since fled for the same, and not yet apprehended: Therefore, in His Majesty's Name, I charge and command you, and every of you, in your several Precincts, to search diligently for the said Persons, and to make Hue and Cry after them, from Town to Town, and from County to County, as well by Horsemen as Footmen, and if you shall find the Person or Persons by whom the said Robbery was committed, or whom you shall have just Cause to suspect thereof, that then you apprehend and bring him, her, or them, before a Justice of Peace of the County where he, she, or they shall be taken, to be dealt with as the Law directs. Given under my Hand and Seal, &c.

If the Offender is taken in another County, and brought before a Justice, he must examine the Prisoner, and those that bring him. See *Tit. Examination*.

Then the Prisoner is to be committed, and a Court summoned for his further Examination. See *Tit. Criminals*.

It may be necessary to give immediate Notice of the Commitment, to the Justice who issued the Warrant of Hue and Cry, that he may certify the Examinations by him taken, to the Court to be held, for further Examination of the Prisoner.

Mittimus.

To the Sheriff, or Keeper of the Goal of Orange County.

Mittimus. Orange sc. I Send you herewith the Bodies of E. F. late of &c. and G. H. late of &c. taken by Hue and Cry, upon Warrant of I. C. Gent. a Justice of Peace of the County of Westmoreland, and brought before me by J. O. Constable, the said E. F. and G. H. being suspected of a Robbery by them committed in the said County of Westmoreland, in Robbing A. B. of (n), and the same Goods, as is suspected, or Part thereof, having been found in their Custody, and taken with them when they were apprehended: And I command you in His Majesty's Name, to receive the said E. F. and G. H. into your Goal and Custody, and them there safely to keep, until they shall be thence discharged by due Course of Law. Given under my Hand and Seal, &c.

(n) The Goods described in the Warrant.

If Goods are retaken, they may remain in Custody of the Officer who apprehended the Felon, 'til Restitution is awarded by the Justices; and they ought to be produced in open Court.

Hue

Hue and Cry raised, without Cause, is a Breach of the Peace.

If it be made falsely, and the Party at whose Suit it is raised, shall enter into a House, tho' with a Constable, and bind the Master, and rob the House in the Night, 'tis Burglary. *Nels.* 256.

H U N T I N G.

NO Person shall hunt, shoot, or kill any Hog, Shoat, or Pig, unmarked, except upon his own, or unpatented Lands, on Penalty of 1000*lb.* Tobacco, to the Informer. 4 *Annæ*, cap. 14.

If any Person shall hunt, range, shoot, fish, or fowl, without Licence of the Proprietor of the Lands, upon any Lands, Creeks, or Waters belonging to another, and shall be convicted by Confession, or Oath of One Witness, he forfeits for every Offence, 500*lb.* Tobacco to the Party grieved, and liable for Damages, by Action of Trespass, at Common Law. 9 *Annæ*, cap. 14.

On a Third Conviction, the Offender, besides paying the Forfeiture, shall give Security in 10*l.* *Sterling*, for his Good-behaviour One Year, and Conviction for the like Offence, committed within that Time, a Breach of the Behaviour.

The Forfeitures recoverable, with Costs, in any Court of Record.

Penalties for employing Indians to hunt, &c. See *Tit. Indians.*

I N D I A N S.

Buyers and Receivers of Pork, from an Indian, forfeit 1000*lb.* Tobacco to the King and Informer, unless they prove it was mark'd with the proper Mark of an Indian Town. 4 *Annæ*, cap. 14.

Persons employing any Free or Tributary Indian to hunt, or kill Deer, or furnishing such with Gun or Ammunition, to hunt upon patented Lands, forfeit 1000*lb.* Tobacco, to the Party upon whose Land such Indian is found hunting. 4 *Annæ*, cap. 25.

Gun and Ammunition found upon an Indian hunting upon any Man's Land, may be seized by the Proprietor of the Land, to his own Use: If sued, Defendant may give the Special Matter in Evidence, upon his own Oath. But this Act not to extend to *Pamunkey*, *Chickahominy*, or *Eastern Shore* Indians.

Where prohibited.

Laws of Virginia, cap. 152, 268.

Buying Pork of Indians. pag. 152.

Employing Free Indian to hunt, &c. pag. 171.

Gun, &c. may be seized.

Punish-
ment of
Resis-
tance.

Laws of
Virginia,
pag. 126.

Indian
Convei-
ances,
Sec. pro-
hibited.

pag. 231.

Excep-
tion.

Bounds.

Privi-
leges

and Re-
straints

of Tribu-
taries.

Their
Duty.

Trade.

Travel-
ing
Bounds.

pag. 323.

Any Indian, Bond or Free, lifting his Hand in Opposi-
tion against any Christian, who is not a Negro, Mulatto,
or Indian, convicted by Oath of the Party, before a Jus-
tice of Peace, shall have 30 Lashes. 4 *Annae*, cap. 49.

Deeds and Conveiances of Lands, executed by any Indian,
in Fee, or for Term of Life or Years, void. The Party
accepting such Deed, or occupying Indian Lands, upon
Conviction in any Court of Record, forfeits 10 s. *per* Acre,
and for every Year's Possession, 10 s. *per* Acre more, to
the King and Informer. 4 *Annae* cap. 52.

Saving to the Claims of *George Skilling*, *Michael*
Waldrop, and the Heirs of *George Southerland*.

The Bounds of Indian Towns, seated upon a navigable
River, bounded by the River.

Tributary Indians entitled to Protection of the Law,
in their Persons and Properties, equally with *English* Sub-
jects: Shall have Liberty of Oistering, Fishing, &c. by
License from a Justice: If kill'd, or injured, the Offen-
der punishable as if the Sufferer were an *English* Man.

But they shall not carry Gun, Ammunition, or offen-
sive Weapon, but only Tools for their Use; nor fish,
hunt, &c. without License.

A Justice of Peace may grant them such License; but
shall therein limit the Time of the Indians Stay, beyond
which they are not to tarry.

They shall give Notice of the Approach of Foreign In-
dians, to the next Militia Officer, by one of their Chiefs, and
the Name, Number, Design, and Course of the Foreigners.
If they desire Aid, a Detachment of the Militia shall join
them: They shall march, and continue with the *English*,
in Pursuit of Foreign Indians, when commanded.

Free Trade with all Indians whatsoever: But Rum or
Brandy shall not be sold in any Indian Town, on Penalty
of 10 s. *per* Quart, to the King and Informer, recoverable
before a Justice.

Governor and Council may, by Charter, incorpo-
rate Discoverers of Indians, *Westward* of or between
the *Appalatian* Mountains, with sole Liberty of Trade,
for 14 Years.

No Tributary Indian shall cross *Potomack* River, nor
pass the great Ridge of Mountains, *Westward*, without
License of the Governor of this Dominion, under Seal of
the Colony, expressing the Number of Men licensed, and
upon what Occasion: On Conviction of Disobedience, such
Indian shall suffer Death, or be transported and sold for
a Slave; if he is killed, no Reparation shall be demand-
able. 8 *Geo.* 1. cap. 3.

No Indian of the Five Nations shall pass *South* of *Potomack* River, or *East* of the great Ridge of Mountains, without Licence of the Governor of *New-York*; under like Penalties as Tributaries.

Governor and Council may hold Court for Trial of Offenders against this Act; Conviction may be by One Witness, or upon Indian Testimony, or pregnant Circumstances, without any Jury.

Upon Condemnation of an Offender, the Party who took him Prisoner, shall have a Reward of 1000 *lb.* Tobacco, to be paid by the Public, or else the Benefit arising by Sale, if he be adjudged to Transportation.

But the Governor, in Council, may grant a Pardon, and restore the Offender to his Nation.

All Tributary Indians who shall agree to limited Bounds in Hunting and Traveling, liable to like Punishment, in Case of Transgression.

Penalties on Indian Witnesses giving false Testimony, upon Trials for Capital Offences. *See Tit. Criminals.*

Free Indian found in Company of Slaves, at unlawful Meetings, or harbouring a Slave without his Owner's Consent, convicted before a Justice, forfeits 15 *s.* or 150 *lb.* Tobacco, and Costs, to the Informer; On Failure of Payment, 20 Lashes; Indian Slave, convicted of such Meetings, shall be whip'd, not exceeding 39 Lashes. *9 Geo. 1. cap. 4.*

Arms and Ammunition found in Possession of any Indian, not licensed, may be seized. *See Tit. Armour.*

All Free Indians Male or Female, above the Age of 16 Years, and the Wives of all Indians, shall be accounted Tithables: But Tributary Indians are excepted.

Every Child of a Female Indian Servant, shall serve her Master, 'til it attains the same Age the Mother is by Law oblig'd to serve unto.

All Indians disabled from Voting at Public Elections. So likewise they shall not be sworn as Witnesses, or admitted to give Evidence in any Cause whatsoever, except upon Trial of a Slave, or Indian, for a Capital Offence. *5 & 6 Geo. 2. cap. 7.*

Free Indian may be admitted, without Oath, to give Evidence, in Trials for Felony committed by Free Indians; but in Case of giving false Testimony, shall stand Two Hours in the Pillory, and lose his Ears. *8 Geo. 2. cap. 8.*

INDICTMENT.

Expla-
nation. **I**S an Accusation, or Bill, exhibited to a Jury, at the Suit of the King, against any Person, for Felony, or Breach of some Penal Law.

It is an Accusation, because the Jury that inquires of the Offence doth not receive it until the Informer subscribes his Name : But yet it differs from an Accusation, in this, that the Preferrer of the Bill is not tied to the Proof thereof, except there appear Conspiracy. *Leigh. Phil. Com. 85. Stamf. P. C. l. 2. cap. 23, &c.*

It also differs from a Presentment, which is an Accusation of a Grand Jury, without any Bill brought before them.

Where
it lies. Every Indictment ought to be prefer'd against the Party for some Offence committed by him, either against the Common Law, or against some Statute : For Indictments are to punish public Offences only, and those done against the public Peace ; but not private Trespases, for which the Law gives particular Actions. *Style 269, 270.*

An Indictment lies for Conspiring to do an illegal Act, altho' the Act is not done ; and against the Procurers, altho' the Actors are acquitted. *1 Lev. 62, 125.*

Indictments are to be preferred only for Criminal, or Penal, not for Civil Matters : Otherwise the Defendant would be liable to be twice punished for one Offence ; which is against the Great Charter.

Cer-
tainty. This being in the Nature of a Declaration for the King, upon an Offence committed against the Common, or some Penal Law, must be certain, and cannot be supplied by Implication, or Intendment : For if but one Word of Substance be omitted, the whole Indictment is naught, and may be quash'd.

It must be certain, that the Party indicted may know how to plead to it, or traverse ; and it ought to be more certain than Pleadings at Common Law need to be, because it is more Penal, and must be precisely answered unto.

But if an Indictment be drawn so general and uncertain, that the Party indicted cannot make certain Answer to it, it's not good, and may be quash'd ; otherwise the Defendant would be insnared thereby. *Style 266.*

Altho' a Bill of Indictment be preferred, upon Oath, to a Grand Jury, yet they are not bound to find the Bill, if they see Cause to the contrary : And on the other Side, tho' such Bill be preferred, without Oath, yet they may find the Bill, if they see Cause.

In every Indictment Six Things are requisite,

1. The Name, Sirname, and Addition, of the Party indicted.
2. The Day and Year when the Offence was committed.
3. The Place where.
4. The Name, and Addition, of the Party grieved.
5. The particular Names and Value of the Goods or Things stol'n, or taken away : The just Value is necessary, because 'tis that which makes the Offence either Petty Larceny, or Felony ; and if the Indictment is in Trespas, then 'tis to aggravate the Fault.
6. The Nature of the Offence, and the Manner how it was committed.

Upon a Bill of Indictment preferred, there issues a Summons to the Party indicted, to appear, and answer the Bill : If he does not appear thereupon, then an Attachment, to force him to Appearance.

Process.

But if the Sheriff returns, that the Party hath no Goods, then he may be outlaw'd.

If the Party appears, he may confess the Indictment, or traverse, or plead to it, and move to have it quash'd.

All Indictments may be traversed ; that is, the Defendant may take Issue upon the Principal Matter, and deny the Chief Point in the Indictment ; and this is the most antient and solemn Way of Trying the Fact.

Traverse.

The Traverse is to be tried by a Jury, at the Bar, except in Riots and Forcible Entries.

Or, he may shew the Insufficiency of the Indictment, and plead over to the Felony.

Tho' there be Twenty of the Grand Jury, yet if One was outlaw'd, or taken at the Nomination of another, it avoids the whole Indictment. *Hales P. C. 202.*

If the first Indictment was void, for Insufficiency, yet, in some Cases, the Offender may be again indicted and prosecuted for the same Offence.

The Court will not quash an Indictment preferred for the Public Good, tho' it be not a good Indictment, but will put the Party indicted to traverse it, or plead to it : For it is by Favour of the Court that any Indictment is quashed, and be the Indictment good or bad, it is no Prejudice to the Party to traverse, or plead to it. *Style 268.*

If a Writ of Error is brought upon an Indictment, the Defendant must appear, and put in Bail, in Person. 2 *Cro. 61.*

There ought to be Two lawful Witnesses to prove every Indictment, except in such Cases where by Law Special Provision

Proof.

Provision is made, that the Oath of One Witness shall be a sufficient Conviction.

An Accuser by Hearsay is no lawful Witness. *H. P. C.* 208.

Time. Indictments upon a Penal Law where the King is to have the Forfeiture, must be brought within Two Years after the Offence; If a Common Person is to have it, then within a Year, except it be otherwise directed by the Law, which creates the Offence. *Nels.* 367.

INFANT.

Infancy. **A**T Common Law, every Person under the Age of One and Twenty Years is an Infant; but this holds only in Civil Causes, for in Criminal Matters the Law regards the Age of Discretion, which is 14 Years. *Co. Lit. l. 3. s. 405.*

And in Cases Civil there are several Exceptions, as, The Age for a Man to marry, is 14, and for a Woman 12. *Hob.* 225.

An Infant of 17, shall take Administration, or prove a Will, in his own Right; for then the Power of Administrator, or Executor, during Minority, ceaseth. *Vaugh.* 93.

And whatever Act he doth, which was his Duty to do, as giving Release upon receiving all Money due, Payment of just Debts, &c. shall bind him. *Co. 5. Rep.* 27.

Above 18, may bequeath Slaves, by Will in Writing. *1 Geo. 2. cap.* 11.

And in divers other Cases, whereby Special Law, or Custom, an Infant shall be bound, as tho' he were of full Age.

Surety of the Peace is grantable to or against an Infant, tho' under 14 Years of Age. *Dalt.* 269.

An Infant of 14 Years may commit Forcible Entry, or Detainer, for which he may be fined; and he shall find Sureties for his Good-behaviour: But he shall suffer no Imprisonment, nor Corporal Pains, for Breach of any Penal Law, wherein an Infant is not expressly named; yet, he shall forfeit the Penalty of a Penal Law, and so may lose his Goods. *Doct. & Stud. p.* 147, 148.

An Infant above 18, may be a Disseisor with Force, and may be imprisoned for the same. *22 Edw. 4. cap.* 9.

In all Cases of Treason, or Felony, Infancy is no Plea, but the Offender, tho' under 14, shall be liable to the Punishments by Law inflicted for such Offence, if it appear that he had Knowledge of Good and Evil. *Dalt.* 350.

INFOR

I N F O R M A T I O N.

EVERY Justice of Peace must receive Informations against Felons, or Persons suspected of Felony. See *Tit. Criminals, & Examination.*

So likewise for Breach of such Penal Laws as are cognizable before them.

Informers are either,

1. Honorary; as the Attorney-General, or other Attorney for the King, who are bound to inform, by Reason of their Office, tho' involuntarily.
2. Common Informers; and these are always voluntary.

The Statute 18 *Eliz. cap. 5*, and other Statutes relating to Common Informers require, That every Information for Breach of Penal Laws shall be exhibited by the Informer, in his proper Person, or by Attorney, not by Deputy.

That after Information made, or Suit brought, he shall not agree with the Offender, without Leave of the Court; if he doth, and is convicted of it, he must stand in the Pillory Two Hours, and forfeits 10 *l.* to the King and Party grieved.

And if he delay or discontinue his Suit, or is Nonsuit, or if the Verdict be for the Defendant, Informer shall pay Costs.

By the Statute 31 *Eliz. cap. 5*. No Person may be an Informer, who is disabled by any Misdemeanor.

All Informations, or Actions, brought by an Informer upon Penal Laws, must be brought in the County where the Offence was committed, and within a Year after the Fact, unless otherwise directed by the Law which creates the Offence: But the King shall have Two Year's Time. *Style 383.*

If Two Informations are exhibited against the same Person, for the same Offence, and in One Court, at the same Time, they are both void, because there is no Priority of Time to attach the Right more in one Informer than in the other. 2 *Lev. 141.*

Where any Part of the Forfeiture upon a Penal Law is given to the Informer, he must set it forth, and demand it in the Information, or 'tis void. *Hob. 245.*

If he that prefers an Information against another, for Breach of any Penal Law, is to have Half the Penalty, and the King the other Half, there if an Informer do prefer his Information, before any Information is preferr'd by the

Informers.

Rules for Informations.

Forfeitures.

the King, the Informer shall have his Proportion of the Penalty; but if the King do first prefer the Information, he may inform for the whole Penalty: For the King is not bound to stay 'til an Informer prefer the Suit, but may sue at any Time, and if no Body inform, none hath Right to the Penalty, but the King, and therefore he may pardon it, if he please, without Wrong to any. *Style 382.*

INSOLVENT DEBTORS.

Laws, of **I**F any Person committed to the General Court Prison, *Virginia,* for Debt, shall be unable to maintain himself there, the *pag. 280.* Goaler shall have 6 *d* per Day allowed him by the General Assembly, for Keeping such Prisoner; but he shall not take Fee or Security, nor detain the Prisoner for his Fees. *10 Anne, cap. 3.*

pag. 361, Any Person charged in Execution, for Debt not exceeding 10 *l.* Current Money, or 2000 *lb.* Tobacco, due to *Ec.* one Person, and having remained in Prison Twenty Days, Method may petition any Justice of Peace of the same County, of dis- City, Town, or Liberty, to be discharged, upon surrendring charging his whole Estate; but shall give Notice of such Petition, poor Pri- soners to the Creditor, or his Attorney.

under The Justice (or Justices) receiving such Petition, may *10 l. Ec.* issue this Warrant, *viz.*

To the Sheriff of the County of *King George.*

Warrant. *King George sc.* **W**Hereas A. B. of &c. now a Prisoner for Debt in the Goal of your *One or more Jus- tices.* County, and having remained there the Space of Twenty Days, by his Petition to me C. D. Gent. a Justice of Peace of the said County, hath pray'd, That he may be discharged out of the Custody of your Goal aforesaid, pursuant to an Act of Assembly in that Case made and provided: Therefore, in His Majesty's Name, I hereby require you to bring before the Justices of the Peace at the next Court to be held for your County, on the next, the Body of the said A. B. together with a List of the several Executions with which he stands charged in your said Goal, and have then there this Precept. Given under my Hand and Seal, this Tenth Day of September, 1735.

The Prisoner must, in open Court, subscribe and deliver upon Oath, a Schedule of all his Effects, Real and Personal: Which shall be vested in the Sheriff, and by him sold,

sold, and the Money arising by such Sale paid to the Creditors at whose Suit the Prisoner stood charged in Execution. 12 Geo. 1. cap. 3.

Prisoner's Oath.

I A. B. do, upon my Corporal Oath, in the Presence of Prisoner's
Almighty God, solemnly swear, profess, and declare, Oath.
That the Schedule now delivered, and by me subscribed, doth contain, to the best of my Knowledge and Remembrance, a full, just, true, and perfect Account and Discovery of all the Estate, Goods, and Effects, unto me any Ways belonging, and such Debts as are to me owing, or to any Person in Trust for me, and of all Securities and Contracts, whereby any Money may hereafter become payable, or any Benefit or Advantage accrue to me, or to my Use, or to any other Person or Persons in Trust for me: And that I, or any other Person or Persons in Trust for me, have not Land, Money, Stock, or any other Estate, Real or Personal, in Possession, Reversion, or Remainder, of the Value of the Debt or Debts with which I am charged in Execution: And that I have not, directly or indirectly, sold, lessened, or otherwise disposed of, in Trust, or concealed, all or any Part of my Lands, Money, Goods, Stock, Debts, Securities, Contracts, or Estate, whereby to secure the same to receive any Profit or Advantage thereof, or to defraud or deceive any Creditor or Creditors to whom I am indebted, in any-wise howsoever.
 So help me God.

By this Oath it appears, that the Schedule must contain an Account of all Estate, or Effects whatsoever, belonging to the Prisoner: But his necessary Apparel and Utensils of Trade are excepted.

The Schedule so subscribed, and sworn to, shall remain upon Record; and the Court, or 4 Justices, may thereupon by their Warrant command the Sheriff forthwith to set at Liberty such Prisoner.

Officer sued for any Thing done in Pursuance of this Act, may plead the General Issue, and give this Act in Evidence.

Notwithstanding such Discharge, Creditors may at any Time afterwards, by *Scire Facias*, have new Execution against any Estate thereafter acquired by the Debtor.

Prison Fees of all insolvent Debtors shall be paid by the County, for the first 20 Days, and for all such Fees afterwards becoming due, Creditor shall be liable to the Sheriff.

The Prisoner remains liable to the Creditor for Fees by him paid; and notwithstanding any Creditor consents to release

Fees.

release his Debtor out of Prison, yet he may afterwards sue forth new Execution against such Debtor's Estate.

J U D G M E N T.

IS the Sentence of the Court, pronounced by the Judge, upon any Trial in Cases Criminal or Civil.

In all Capital Cases, the Court cannot alter or mitigate the Judgment, which must be given expressly as by the Law directed for the Offence, respectively, and the Execution must be pursuant to such Judgment.

In High Treason.

In all Cases, except counterfeiting Coin, the Offender shall be drawn to the Gallows, there hang'd by the Neck, and then cut down alive, his Entrails taken out, and burnt, his Head cut off, his Body quarter'd, and his Head and Quarters hang'd up.

In counterfeiting Coin; to be drawn and hang'd, but not quarter'd.

A Woman, in both these Cases, shall be drawn and burnt.

Petty Treason.

For a Man, to be drawn and hang'd.

A Woman, drawn and burnt.

Felony.

Hang'd, 'til dead.

Petty Larceny.

Whip'd, and Forfeiture of Goods.

Death by Chance-Medley, or Self-Defence.

No express Judgment; but the Goods are forfeited.

Misprision of Treason.

Forfeiture of Goods, and the Profits of Lands during Life, and perpetual Imprisonment. *H. P. C. 268.*

If a Prisoner, indicted for Treason, or Felony, will not plead to the Indictment, or stands mute, or answers impertinently, or challenges above 20 of the Jury, Judgment shall be given against him, as if he were found Guilty. *Style 363.*

J U R I E S.

Jurors. Challenge. Trials. Verdict. Attaint. Issues.

JU R Y, in the Common Law, signifieth a Company of 24, or 12 Men, sworn to deliver the Truth, upon such Evidence as shall be to them produced, touching the Matter of Fact in Issue, to them refer'd, be the Action Civil

or Criminal, Public or Private, Real or Personal; and as they find it, so, regularly, passeth the Judgment. *F. H. N. B.* 165.

There are divers Sorts of Juries; Two of which are more especially eminent,

1. The Grand Jury, consisting ordinarily of Twenty Four grave and substantial Men, chosen indifferently by the Sheriff, to consider of all Bills of Indictment preferr'd to the Court, and to make Presentment of all Offenders against Penal Laws. Indictments are by them approved, when they write upon them these Words, *Billa vera*; or rejected, by writing, *Ignoramus*. Grand Juries.

Where *Billa vera*, or, the Bill is true, is return'd by the Grand Jury, upon any Indictment of Life and Death, a Man is said to be indicted, and the Trial of the Fact is then referr'd to a Petit Jury, because the Case is of such Importance; but for Matters less Criminal, and Presentments for Breach of Penal Laws, found by them, the Party is, without more ado, fined by the Court, except he traverse the Indictment, or challenge it for Insufficiency, or remove the Cause to a Superior Court: In the Two former Cases, it is referr'd to another Jury, and in the latter, to a Higher Court. *Lamb. Eiren. l. 4. cap. 7.* *Billa vera.*

Ignoramus, is a Word properly used by a Grand Jury, and written upon any Bill of Indictment for any Crime offer'd to their Consideration, when they find the Evidence defective, or too weak to prove the Indictment. The Effect of this Word is, that all farther Inquiry against the Party for that Fault, is thereby stop'd, and he discharged without farther Answer: An Indictment so return'd to the Court, is usually cancel'd or torn forthwith. *Ignoramus.*

2. The Petit Juries; consisting of 12 Men, which determineth the Matter of Fact in Issue before the Judges: This Jury appertains to all Courts of Common Law, and takes Cognizance of all Civil Actions, or Suits, between the King and the Subject, or between Subject and Subject; and also all Criminal Prosecutions, which are always betwixt the King and Subject, and therefore this is commonly called the Jury of Life and Death, and appertains to all Courts of Oyer and Terminer. Petit Juries.

Other Juries are occasionally summoned; as, by the Coroner, upon an Inquisition on a dead Body; by the Sheriff, upon Surveys in Real Actions, Writs of Dower, Partition, Forcible Entries, Valuation of Lands, or Improvements, &c.

Every sufficient Person impanel'd and sworn, is properly term'd a Juror, and 12 of them make a Jury. Jurors.

Verdict.

The Determination of the Jury upon the Evidence given before them, concerning the Matter of Fact in Issue, is call'd sometimes, the Judgment of 12 Men, but most commonly the Verdict, that is, the Truth of the Fact. The Office of the Jury is to find this, and the Judge thereupon declares the Truth of the Law. *Co. 4 Rep.*

Trials.
By Par-
liament.

By the Laws of *England*, there are Three Sorts of Trial,

1. By Parliament ; This is the Supreme Court of *Great-Britain*, and all the Dominions thereto belonging : It is an Assembly of the King and Three Estates of the Realm, *viz.* the Lords Spiritual, Lords Temporal, and Commons. All other Courts are subject to this, which receives and finally determines Appeals, in Matters Ecclesiastical or Civil, brought before them from any other Courts of Judicature, at Common Law, or in Chancery : But Criminal Prosecutions upon Indictments are properly determinable before Justices of Oyer and Terminer, who pass Judgment, and award Execution, from which no Appeal is grantable. *Smith Rep. Ang. l. 2. cap. 1.*

By
Battle.

2. By Battle, or Combat ; antiently used, in Cases doubtful, where manifest Proof could not be had, and not yet repealed, tho' for many Ages past rarely granted, but may be, by the Law in Use at this Day, if the Defendant will, and nothing can be counterpleaded thereto.

It is a Camp Fight, or Duel, between the Plaintiff and Defendant, or their Champions, who are to fight in single Combat, with Arms offensive and defensive, at a Day and Place appointed by the Judges, and in their Presence : It is permitted, by the Law, in Cases of Safety, Fame, or Possessions ; if the Demandant fail'd to appear at the Day and Place, or was overcome in Presence of the Judges, final Judgment immediately passed against him. *Ventag. p. 64.*

By Jury.

3. By Jury ; this excellent Method of Trial was first introduced in *England* by *William* the Conqueror, about *Anno Dom. 1066*, when all Actions Criminal, Real, or Personal, began to be wholly determined by the Verdict of 12 Men. Some indeed alledge, That this Manner of Trial was in Use long before, among the *Saxons*, founding their Opinion upon a Law of King *Ethelred*, which requires, that at the Monthly Court held in every Hundred, 12 grave Men should be sworn by the Chief Officer, to judge every Man's Cause aright : But these Men were rather Assessors, or Justices, with the Judge, and not Jurors ; had there been any such Form, we should have found it in their Laws and Practice. Before this, the Trials among the

the *English*, in Cases Criminal, upon apparent strong Suspicion, but where no direct Proof could be had, were decided by their Judgment of Ordeal, which was a Trial of Two Kinds,

1. By Fire; for the better Sort of People, who were to go, blind-fold, over Nine Plough-shares, made red hot, and laid at uneven Distances from one another: If they pass'd thro' them all unhurt, they were judged Innocent, if not, Guilty. By Ordeal.
2. By Water; for the meaner Sort: The Water was either hot, or cold; in the First, they put their naked Arms, to the Elbow, which if they endured, without Scalding, they were pronounced Innocent, otherwise, Guilty: If the Trial was by cold Water, the Party accused was thrown into a River, head-long, if he sunk, he was judged Innocent, if not, Guilty, as thrown out by the Element.

But these absurd and impious Trials had their Period, and were abolish'd soon after the Conquest of *England* by the *Normans*: The Conqueror establish'd his Crown and Government, by reforming such of the *English* Laws as he found defective, introducing in their Stead those of the *Normans*; So that the Body of the Common Law, with the whole Practice of it, came out of *Normandy*, notwithstanding all Objections that can be made to the contrary. Common Law.

But he continued such of the *Saxon* Laws as had been made for the Preservation of the Peace, and Security of the Kingdom, particularly the *Saxon* Borough Law, because he found such excellent Constitutions made by the wary Care of former Kings, that he had none so good, and better could hardly be invented by Man. By these Means the *Normans* gain'd so speedy and firm Settlement in *England*, more than the *Romans*, or *Saxons*. *Kennet's Hist. Engl. Vol. 1. p. 108.* Saxon Borough Law.

To this wise and politic King all Subjects of the *British* Crown are indebted for this invaluable Privilege of being tried by their Peers; which they enjoy at this Day, so that none of them can suffer in his Life, Liberty, or Property, until he is found Guilty, by the Verdict of 12 of his Neighbours, or Equals, upon their Oath. A happy Security! peculiar to the *British* Subject, envied perhaps, but not enjoyed by any other Nation in the World. Qualifications of Jurors.

Every Juror in the General Court, or upon Trials for Treason, Felony, Breach of Penal Laws, or other Pleas of the Crown, or where any Estate Real, or Title to Lands, Tenements, or Hereditaments, shall be in Issue in *Virginia*, any Laws of Virginia, pag. 183.

any Court of Record in this Dominion, must be a Freeholder, worth 100 *l. Sterling*, at least, or he may be challenged, but not after he is Sworn. 4 *Annæ, cap. 32.*

In County Court Causes, every Juror must have 50 *l. Sterling*, at least.

But Aliens, or Foreigners not naturalized, Apothecaries, Persons indicted, attainted, or outlaw'd, Conspirators, Clergymen, and Infants under 14 Years, may not be Jurors in any Case whatsoever. 6 & 7 *Wil. & 1 Annæ.*

Laws of
Virginia,
pag. 331.

So likewise the Keeper of the Public Goal is not to serve on any Jury. 8 *Geo. 1. cap. 9.*

If any such Persons are impanel'd by the Sheriff, they may be challenged.

Chal-
lenge.

A Challenge made to the Jurors, is, where Exception is taken, by either Party, in Cases Civil or Criminal, either to the Array, or to the Polls.

Challenge to the Array, is to the whole Pannel, as return'd partialy; and this may be,

1. For Partiality, or Kindred, in the Officer who return'd the Pannel.
2. If any Juror is return'd at the Nomination or Desire of either Party.
3. If either Party have an Action of Debt against the Sheriff.

Challenge to the Poll, is, where one or more of the Jury are excepted against, for some lawful Cause, as,

1. In Respect of Honour; as if a Peer be return'd of the Jury in the Case of a common Person, and if neither Party will challenge him, he may challenge himself: For, by *Magna Charta*, a Peer of the Realm shall not be impanel'd where any of the Commons is to have a Trial. *Co. Lit. l. 2. s. 234.*
2. For Defect; as Aliens, and Persons not qualified for Want of Estate.
3. For Partiality; where there is express Malice, or Favour, or Kindred or Affinity tho' ever so remote; nay, if the Juror be only God-father to either Party, or if he has declared his Opinion before the Trial, &c. These Challenges to the Favour are many, which must be left to the Discretion of Two Triers, who are appointed and sworn by the Court, out of the Jury return'd, to try whether there is Cause of Favour or not.
4. For Criminal Offence; as Persons attainted, or outlaw'd.

All

All these are principal Challenges ; but a Prisoner arraign'd for Felony, may peremptorily challenge Twenty of the Jury, without assigning any Cause, because this is allowed in Favour of Life.

After a Challenge to the Array is allow'd, the whole Pannel must be struck out ; but if one Man be sworn, the Array cannot be challenged. *Style* 233.

But there can be no Challenge, either to the Array or to the Polls, 'til the Jury is full ; and 'tis too late after they are sworn. *Hob.* 235.

At Common Law, a Man might peremptorily challenge any Number under Three full Juries, and therefore he might challenge 35, without shewing Cause : But by the Statute 22 *H.* 8, 'tis reduced to 20 ; only in Case of Treason, and Petit Treason, he may challenge 35, by Statute 1 & 2 *Phil.* & *Mar.* cap. 10. If a Man challenged more, it was formerly held, that he should be pressed, because he refused the Law ; this being not a satisfactory Reason, 'tis now held, that he shall be hang'd.

A Jury, after their Evidence given upon the Issue, ought to be kept in some convenient Place ; without Meat, Drink, Fire, or Candle, 'til they are agreed of their Verdict, and without Speech with any, unless it be the Sheriff, or his Deputy, and with him only if they be agreed. *Co. Lit.* l. 2. f. 366.

Rules,
for Juries.

In all Cases where an Alien is Plaintiff or Defendant, the Trial, whether Civil or Criminal, ought to be by a Jury, Half *English*, Half Foreigners, and a Suggestion made upon the Record to that Purpose : And when the Jurors appear, they swear One *English*, and One Foreigner, 'til they have a full Jury. *Style* 341.

If a Jury give their Verdict contrary to their Evidence, an Attaint doth lie against them, by the Statute 23 *H.* 7. cap. 4.

An Attaint is a Writ that lies against a Jury that doth give a false Verdict in any Court of Record, for 40 s. Debt; or Damages, or more, and it is so called, because the Party grieved endeavours to stain the Jury with Perjury : If the Verdict be found false, the Judgment is, That the Jurors Meadows shall be plough'd up, their Houses thrown down, their Woods grubb'd, and all their Lands and Tenements forfeited to the King. But this Writ is seldom used, unless the Corruption be very apparent, and if Judgment be given against him that brought the Attaint, he shall be imprisoned, and grievously fined, at the King's Will. *Co. Lit.* 294 l.

Attaint.

A Jury may find a Thing which is not given to them in Evidence, if they do know it of their own Knowledge: For they may inform themselves of the Truth of the Fact they are to try, by all possible lawful Means they can, and are not tied to the Evidence given at the Bar only. *Style* 335.

Misde-
meanors
of Jurors.

After a Juror is sworn, he may not go from the Bar until the Evidence is given, and the Direction of the Court, for any Cause whatsoever, without Leave of the Court, nor then without a Keeper: So cautious is the Law to prevent all sinister Practice in the Trial of Causes. *Ib.* 388.

If a Juryman 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 Misdemeanor, and finable. *Nels.* 378.

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.

A Jury may be fined for Misdemeanors, but not barely for going against the Direction of the Court. *Ibid.*

If they cast Lots, whether to find for the Plaintiff or Defendant, 'tis a Misdemeanor. 2 *Lev.* 140, 203.

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 does, this is a Misdemeanor, and the Verdict shall be set aside. *Cro. Eliz.* 189.

If they eat and drink before they bring in their Verdict, they are to be fined; only with this Difference, if they eat at their own Charge, the Verdict shall stand, but if at the Charge of the Party for whom the Verdict is found, it shall be set aside. *Dyer* 137.

Where it appears to the Court, that the Jury have been unlawfully dealt with, to give their Verdict, they are finable. *Vaugh.* 153.

Juries of
Virginia,
Laws,
pag. 182.

Grand Juries in the General Court shall consist of 24 Persons, to be summoned and impanel'd by the Officer of the Court, of any Freeholders of this Colony, duly qualified, who are then in *Williamsburg*: Every Person so summoned, failing to attend the Court, forfeits 400 *lb.* Tobacco. These may present for any Offences whatsoever, against Penal Laws, upon their own Knowledge, or Information, and to their Consideration all Bills of Indictment are refer'd. 4 *Annae*, cap. 32.

Before

Before every Court of Oyer and Terminer 24 Freeholders, of the Counties of *York* and *James-City*, shall be impannell'd a Grand Jury, to inquire of and present any Criminal Offences whatsoever, done within any County of *Virginia*, and to consider of all Indictments laid before them. Persons summoned failing to attend the Court, forfeit 400 *lb.* Tobacco. 8 *Geo.* 2. *cap.* 7.

24 Freeholders of each County within this Colony shall be summoned and impannell'd, to appear at their respective County Courts in *May*, and *November*, Annually, to be sworn of the Grand Jury. Every Justice of the Court failing to order Summons, or to swear a Grand Jury, upon Appearance of 15, forfeits 400 *lb.* Tobacco; Sheriff failing to execute Summons, or to return the Pannel, forfeits 1000 *lb.* Tobacco; Persons summon'd failing to attend the Court, forfeits 200 *lb.* Tobacco. These Grand Juries are to inquire of and present all Offences against Penal Laws, done within their respective Counties: Shall not present, as of their own Knowledge, upon Information of less than Two of their Body: If they present upon other Information, they are to write the Names of the Informers under such Presentment: May be discharged when the Court adjourns, but if they cannot agree before such Adjournment, they must appear at the next Court, and then deliver their Presentments. 4 *Anne*, *cap.* 32. Laws of Virginia, pag. 181.

They may present Offenders against Penal Laws, altho' the Penalty be under 20 *s.* or 200 *lb.* Tobacco. 1 *Geo.* 2. *cap.* 13. pag. 410.

Petit Juries, for Trial of all Causes Civil, at Common Law, either in the General Court, or County Courts, shall be of 12 Men; Sheriff must summon a sufficient Number of Jurors, every Court Day: Persons summon'd failing to attend the Court, shall be fined 400 *lb.* Tobacco. 4 *Anne*, *cap.* 32. pag. 181.

And for Trials of Treason, or Felony, 12 Freeholders of the Vicinage or County where the Offence was committed, shall be summoned to be of the Petit Jury: If any of them fail to appear, or are challenged, the Pannel shall be made up of By-standers, being Freeholders. 8 *Geo.* 2. *cap.* 7.

Sheriff shall not summon Persons unqualified to serve on Juries: But after a Juror is sworn, he shall not be challenged for want of Estate.

If a Grand Jury conceals any Criminal Offence, whereof they have Knowledge or Information, but for Favour or Pity to the Offender, will not present him, they shall be fined. *Dalt.* 520. Conceal-ment.

Jurors may be removed. The Justices, in Court, may make an Alteration in the Pannel of the Jury, altho' 'tis return'd, if they see Cause, and may remove a Juror after he is sworn. 3 *Hen. 8. cap. 12.*

Issues on Jurors. Issues upon Jurors are the Forfeitures leviabie upon them for Neglect of their Duty, by Record of Execution awarded by Justices of Peace. 27 *Eliz. cap. 7.*

The Sheriff is to levy such Issues, and if he levies more than he ought, he forfeits 10 Marks, to the King and Party grieved. *Cro. 201.*

J U S T I C E S O F P E A C E.

AR E Persons appointed by the King's Commission, to preserve the Peace of the County where they dwell; of whom some are called of the *Quorum*, because certain Matters of Importance cannot be done without the Presence of them, or One of them, and they are named of the *Quorum*, because in their Commission the King so chooses or charges them. *Lamb. Eiren. pag. 378.*

Their Institution.

There are various Opinions among the learned Men concerning the Original of their Institution; but in the Statute 36 *Edw. 3. cap. 12.* made *A. D. 1362*, they are first called Justices of Peace: There were Conservators of the Peace, long before that Time, of whom the Common Law takes Notice, and to whom the Care and Preservation of the Peace was committed, but these had no Judicial Authority; particular Statutes, made afterwards from Time to Time, establish'd and enlarged the Jurisdiction of Justices of Peace.

Number.

Their Number was at first uncertain, afterwards limited to Six Persons in each County: Two of them to be Men of the best Quality, Two Knights, and Two Lawyers. These had Power to hear and determine Matters relating to the Peace, but no Judicial Authority in other Cases, 'til by succeeding Statutes their Power was enlarged: They are now Judges of Record, and have Cognizance of Matters Civil, as well as Criminal. Afterwards their Number so much increased, that a Law was made, 12 *R. 2. cap. 10. A. D. 1388*, prohibiting more than Six in every County: Two Years after, these were increased to Eight, and this stands unrepealed at this Day. *Cott. Abr.*

My Lord *Coke* observes, That this Court of Justices was such a Form of subordinate Government for the Quiet of the Realm, that, if duly executed, no Part of the Christian World had the like: Therefore he proposes, That in each County should be Eight Honorary Justices constituted, of Men

Men of the best Quality and Estate 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, fit for Business, who should constantly apply themselves to this Attendance, be entitled to a Reward for their Pains, and liable to Penalties upon Neglect, without reasonable Excuse.

And Mr. *Dalton* has well describ'd their Qualifications, *viz.* They must be Men of Substance and Ability of Body and Estate; of the best Reputation, good Governance, and Courage for the Truth; Men fearing God, not seeking the Place for Honour or Conveniency, but endeavouring to preserve the Peace and good Government of their County, wherein they ought to be resident; Lovers of Justice, judging the People equally and impartially at all Seasons, using Diligence in hearing and determining Causes, and not neglecting the Public Service for private Employment, or Ease; of known Loyalty to the King, not respecting Persons, but the Cause; and they ought to be Men of competent Knowledge in the Laws of their Country, to enable them to execute their Office and Authority to the Advancement of Justice, the Benefit of the People, and without Reproach to themselves.

To this Description he adds some Directions, which he recommends to the Consideration of all Justices of Peace, as necessary Cautions, to remind them how Justice may be perverted, as,

1. By Fear; when fearing the Power or Countenance of another, they dare not give impartial Judgment.
2. Favour; when they seek to please their Friends, Neighbours, or Acquaintance.
3. Hatred, or personal Malice against the Party, or some of his.
4. Covetousness; when they receive or expect Fee, Gift, or Reward.
5. Anger, or other Passion; whereby the Mind is disturb'd, and rendred unfit for the Administration of Justice.
6. Ignorance; or want of Science what is to be done.
7. Presumption; when they proceed without Law, or legal Warrant.
8. Delay; which is in Effect a Denial of Justice.
9. Precipitation, or Rashness; when they proceed too hastily, without due Examination, or Consideration of the Fact and Circumstances, or without hearing both Parties,

And

Justices of Peace.

And as they are Judges of Record, and their single Testimony, in some Cases, of greater Force than an Indictment upon the Oath of Twelve Men, they ought therefore to be exceeding cautious not to abuse their Credit and Authority, either by oppressing the Subject, or deceiving the King by dishonouring his Commission and the Trust in them reposed, thro' corrupt and negligent Administration of their Authority, and the Public Justice, or by giving Occasions of Reproach to themselves thro' evil Example in their own Persons.

Justices
of Virgi-
nia.

The Justices of this Dominion are appointed by Commission of the Governor, in Council, under Seal of this Colony; every Person so appointed, before he enters upon the Execution of his Office, shall take the Oaths appointed by Act of Parliament to be taken by all Public Officers, from Time to Time, and also the Oaths here-under mentioned, viz.

Oath of a Justice of Peace.

Their
Oaths.

YOU shall swear, *That as a Justice of the Peace in the County of _____, in all Articles in the Commission to you directed, you shall do equal Right to the Poor and to the Rich, after your Cunning, Wit, and Power, and according to Law; and you shall not be of Council of any Quarrel hanging before you; and the Issues, Fines, and Amerciaments that shall happen to be made, and all Forfeitures which shall fall before you, you shall cause to be entred without any Concealment, or Imbezzeling; you shall not let for Gift, or other Causes, but well and truly you shall do your Office of Justice of the Peace, as well within your County Court, as without; and you shall not take any Fee, Gift, or Gratuity, for any Thing to be done by Virtue of your Office; and you shall not direct, or cause to be directed any Warrant (by you to be made) to the Parties, but you shall direct them to the Sheriff, or Bailiffs of the said County, or other the King's Officers, or Ministers, or other indifferent Persons, to do Execution thereof.*

So help you God.

Oath of a Justice in Chancery.

YOU shall swear, *That well and truly you will serve our Sovereign Lord the King, and his People, in the Office of a Justice of the County Court of _____ in Chancery, and that you will do equal Right to all Manner of People, Great and Small, High and Low, Rich and Poor, according to Equity, and good Conscience, and the Laws*

Laws and Usages of this Colony and Dominion of Virginia, without Favour, Affection, or Partiality.

So help you God.

By these Oaths, the material Part of their Duty is expressed.

The Office and Authority of a Justice of Peace is Two-fold,

1. Ministerial, and
2. Judicial.

Their
Office &
Authori-
ty.

1. Ministerial; as an extraordinary Minister of Justice, in Special Cases: They must execute and return Writs of *Certiorari*, or upon a *Supplicavit* for taking Surety of the Peace, or upon the Statute of *Northampton* for Forcible Entry, or other Writs issuing from a Superior Jurisdiction, and directed to One or more Justices.

Ministe-
rial.

2. Judicial; Every Justice of Peace is a Judge of Record, and may take Recognizances for the Peace, in any Case where in his Discretion he judges it necessary: May issue his Warrant for apprehending Felons, or Persons suspected of Felony, and take their Examination, as also the Prosecutors, and Witnesses, and bind them, by Recognizance, to appear and give Evidence for the King, before the Court to be by him summoned, and held, for further Examination of the Prisoner, whom, by Warrant under his Hand and Seal, he may commit to the County Goal, or admit him to Bail, where by Law he is bailable: These Proceedings must be by him certified to such Court, because the Statute, 1 & 2 *Phil. & Mar. cap. 13*, limits the Power of Justices of Peace, in Capital Cases, and the Act of Assembly, 4 *Annæ, cap. 38*, directs the Method of Proceedings. See *Tit. Criminals*.

Judicial.

Justices of Peace, or any Four of them, (One being of the *Quorum*,) in Sessions, have Jurisdiction of all Matters at Common Law, or in Chancery, arising within their respective Counties; except Criminal Prosecutions touching Life or Member, Outlawry, and Matters under the Value of 20 s. *Sterling*, or 200 lb. Tobacco. 9 *Annæ, cap. 11*.

Sessions.

The Judges of the General Court, and Persons appointed Justices of Oyer and Terminer, by Special Commission, are the proper Justices of Goal Delivery, who have Power to proceed upon Indictments for Capital Offences, and the Deliverance of Thieves and Felons.

Goal De-
livery.

Debt, Trespass, or any other Matters, under the Value of 20 s. *Sterling*, or 200 lb. Tobacco, are finally determinable before One Justice of Peace, who may grant Judgment, and award Execution.

1 Justice.

So

So likewise he may hear and determine Informations or Complaints for Breach of Penal Laws, in all Cases where the Penalty inflicted by such Law is expressly made recoverable before One Justice of Peace; in these he may give Judgment for the Penalties, tho' exceeding 20*s.* or 200*lb.* Tobacco.

1 Justice.

Where any Matter is cognizable before One, or more Justices, may be seen under the respective Titles, and need not be repeated here: But where it is finally determinable before One Justice, Two or more of them, or the Court, have no Jurisdiction.

In every Case where a Justice of Peace has Jurisdiction, his Warrant is not to be disputed by any Constable, or other Officer to whom directed, who may be indicted and fined for not executing it. 2 *Roll. Rep.* 78.

In Cases of Forcible Entry, Riots, and Presentments of Highways, his single Testimony and Record is of greater Force than an Indictment of a Jury. *Nels.* 382.

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; so likewise he may record a Forcible Entry upon his own Possession: If any Man abuses his Person, or Warrant, in any Thing relating to his Office, an Indictment will lie against the Offender. *Sid.* 144.

He shall not be punished for any Thing by him done in Sessions, as a Judge, in any Matter whereof he has Jurisdiction. *Dalt.* 11.

He may send his Warrant to apprehend any Person accused of Felony, tho' the Accusation should be false, but not unless accused; and he ought to cause the Accuser to enter into Recognizance, with Sureties, that he will prosecute the Party accused, with Effect.

All Offences at Common Law against the Peace, or tending to the Breach of the Peace, are cognizable before a Justice, by Virtue of his Commission, as Conservator of the King's Peace in his County, and therefore, whether such Offences are occasioned by Force or Violence, or by Fraud, Deceit, or other Misbehaviour, tending to the Breach of the Peace, he is to exercise his Authority for preserving the Peace and good Government of the People within his County: This Mr. *Dalton* divides into Three Parts;

1. Preventing Breach of the Peace, by requiring and taking Sureties for the keeping it, or for the Goodbehaviour, as the Case shall require.
2. Pacifying Riots, Affrays, or other Quarrels, when the Peace is actually broken.
3. Punishing Offenders, in the Method by Law prescribed.

But

But he recommends the first Branch as most worthy the Care of a good Magistrate. *Dalt.* 10. 1 Justice

A Justice of Peace ought not to bind any Person to the Good-behaviour, upon a General Information; and if the Party so accused, refuses to be bound, or to find Sureties, he ought not to be committed for his Refusal: For he that desires to have another to be bound to the Good-behaviour, must shew some particular Mischief wherein the Misbehaviour of the Party consists; a general Accusation is no Accusation, for no Defence can be made to it for the Incertainty thereof.

He may arrest and commit the Party that doth a Felony in his own View, without any Warrant of Arrest; for there needs no other Proof of the Matter: But upon Information of Felony done, there the Justice must issue a Warrant under his Hand and Seal, to apprehend the Felon; because it must appear by what Authority, and for what Cause, the Party was committed. *Style* 387.

He may require any Person to enter into Recognizance, and to find Sureties, for keeping the Peace, under a great Penalty, if he see Cause, in Regard the Party to be bound is a dangerous Person, and likely to break the Peace and do much Mischief: For there cannot be too much Caution used in preventing the Breach of the Peace in such Cases. *Ibid* 388.

The Justices, in Court, may bind One to the Peace, if they see Cause, altho' there be no Oath made by any Person against him that is to be bound: For such Oath is only to manifest, that there is just Cause why the Party should be bound to the Peace; but if the Court be sufficiently satisfied, they may do it without, for where Things are in themselves manifest, there needs no Evidence to prove them. *Ibid.*

One Justice of Peace, upon his own View, may commit those who offend against Penal Laws. *Nels.* 57.

He may command Weapons to be taken from a Prisoner brought before him.

The constituting and appointing Justices of Peace, is a Roial Prerogative annexed to the Crown of *England*, by the Common Law, and confirm'd to the King by the Statute 27 *H.* 8. They are of Three Sorts, and appointed by Three Ways; How constituted & appointed.

1. By Act of Parliament; the Arch Bishop of *York*, and the Bishops of *Durham* and *Ely*, and their Temporal Chancelors and Stewards, who are Justices of Peace within their respective Diocesses.

2. By

2. By Grant or Charter, or the King's Letters Patents under the Great Seal; as Maiors, and the Chief Officers in Cities and Corporate Towns, enabling them, and their Successors to be Justices of Peace within their respective Cities, or Liberties: Such Grants, or Charters, are not revocable at the King's Pleasure, as a Commission of the Peace is, but the Authority remains to them, and their Successors, in Perpetuity, unless the Charter is forfeited and their Liberties seized into the King's Hands for some Public Mifcarriage, or by the Total Decay of the Corporation: The King may also grant Commissions of the Peace to such other Persons as he thinks fit, within those Corporations. These Justices by Grant, or Patent, have the like Authority, within their respective Corporations, as the ancient Conservators of the Peace had, at Common Law; and such Power also, as is given to any One Justice of Peace, by particular Law or Statute, but not the Whole Power given to Justices of Peace, by Commission. *Dalt.* 10.

3. By Commission; as all Justices of Peace, in their several Counties, are usually appointed at this Day.

But as these Magistrates are favoured by the Law in the Execution of their Office, so they are punishable for any Irregularities, or Abuse of their Authority; and their Jurisdiction is likewise limited in several Particulars, as,

Limitations.

1. They must act only in that County where they are in Commission, and if there be any City, or Corporation, within such County, having proper Jurisdiction within themselves, they cannot intermeddle there, unless they be also Commissioners for such City, or Corporation; and if a Parish extends into Two Counties, or Part thereof lies within the Liberties of a Town Corporate, the Justice's Authority is limited by his County.

2. They cannot take Examinations of Felons, or Recognizance for the Peace, or punish any Trespass or Offence against Penal Laws, but only within the County whereof they are Justices.

3. Where by Law Jurisdiction is given to Two or more Justices, or where the Presence or Assent of One of the *Quorum* is required, such Law must be strictly pursued; Judgment otherwise given, void. *Co. Lit.* 181.

4. Where Offences for Breach of Penal Laws are expressly determinable before One Justice of Peace, the Judgment must be given and executed, as by such Law directed, and not otherwise.

5. If

5. If they take Judicial Cognizance of any Matter, Civil or Criminal, not legally within their Jurisdiction, they are liable to be prosecuted at the Suit of the Party grieved, and finable to the King.

6. They are not to execute their Office in their own Cause, but must bring the Offender before some other Justice.

7. Upon Forcible Entry, they are not to award Restitution, until Inquiry made and Force found by a Jury.

8. They must not refuse Bail where it is by Law grantable; nor admit the Party to Bail where by Law denied. *Dalt.* 456.

All these Matters are Penal to Justices of Peace, if they offend in any of them.

Where Jurisdiction is given them by any Temporary Law, they must be cautious that the same is in Force, or Continued, or made Perpetual, and not Expired.

And their Office and Oath requires them to do impartial Justice, and give Remedy to the Party grieved, in any Matter within their Jurisdiction, without Respect of Persons, and according to Law; and they must suffer the Law to have its Course, and not privately stay Proceedings. *Latch.* 48.

They may persuade contending Parties to an Agreement for small Trespasses, but not for Breach of Penal Laws, nor in any Matter where a Fine is due to the King. *Noy.* 103.

They cannot take Cognizance of Pleas upon Penal Laws, without express Power given to them by those Acts which create the Offence; without such Authority the Indictment is void, if exhibited before them. *1 Leon.* 187.

One Justice cannot commit another, for Breach of the Peace or Behaviour, but the Sessions may. *Dalt.*

The Authority of a Justice of Peace is determined by the Death of the King; by a Discharge under the Great Seal; by *Supersedeas*; and by a new Commission: As likewise, by the Accession of another Office, as being made Sheriff, and, as some hold, Coroner. *Dalt.* 12, 254.

But by an Act of Assembly, 4 *Anne*, cap. 22. 'All Acts of Governor and Council, Courts of Judicature, Justices of Peace, and all other Officers Civil or Military, legally passed after the King's Death, and before Proclamation of the Successor, shall be valid, and all Criminal Offences punishable, as in the King's Life Time.'

Deter-
minati-
on.

Laws of
Virginia,
pag. 176.

L A R C E N Y.

Robbery.

Larceny
Simple.

L A R C E N Y is either Simple, or Mixt.
Simple Larceny is the felonious Taking and Carrying away the Personal Goods of another, not from his Person, nor out of his House; if the Things stol'n, tho' at several Times, exceed the Value of 12 *d.* it's Grand Larceny; but if under that Value, it's Petty Larceny. *H. P. C.* 60.

Mixt.

Mixt Larceny, or Robbery, is a felonious Taking from the Person, or out of the House, Money, or other Goods, of any Value whatsoever, by Violence, and putting the Owner in Fear. *Ibid* 71.

In Simple Larceny it's to be consider'd,

1. Who may be guilty of this Offence.
2. What is felonious Taking.
3. What shall be a Carrying away.
4. What are Personal Goods.
5. The Value.

Who
may be
Guilty of
Larceny.

1. Infants under 14 may be Guilty; but it's Prudence to respite Judgment, yet such have been burnt in the Hand. *Dalt.* 104.

A married Woman may be Guilty, by her own Act, and the Husband may be Accessory, in receiving her, knowing her to have committed Felony: But if she does it by Constraint or Compulsion of her Husband and in his Company, it's no Felony in her; yet, a bare Command, or Persuasion, shall not excuse her, for in such Case, both shall be arraign'd for the Felony. *Ibid.*

If a Servant steals, by Command of his Master, it's Felony in the Servant. *H. P. C.* 66.

What a
Taking.

2. There must be an actual Taking; for if a Man finds Goods, and converts them, this is not Felony; or if he has Goods by my Delivery, and converts them to his own Use, before the Privity is determined, it's no Felony: But if I deliver Goods to a Carrier, to carry to any Place certain, which he does, and afterwards steals them, this is Felony; or if a Man has the Charge or Use of a Thing, a Shepherd of his Sheep, a Guest of Plate or other Things brought for his Use, and he removes them privately, with Intent to steal, but is taken with them before he gets away; in These and such like Cases, the Party has only a bare Charge

Charge of the Goods, but no Possession by Delivery, and therefore if he steals them, it's Felony. *H. P. C. 61.*

So likewise, if a Man pretending to buy Goods in a Shop, or Store, runs away with them, it's Felony : For tho' he has them by my Delivery, yet the Property is not alter'd until the Contract is completed by Satisfaction made, or agreed, and the Running away shews, the Intention of the Party was to get the Goods into his Possession feloniously. *Raym. 275.*

If the Process of Law is made Use of to obtain Goods, *viz.* by a Replevin where the Party has no Property, and by that Means getting a Horse, or other Goods deliver'd to him ; this is a felonious Taking : So by getting Goods out of a House by Ejectment, where he has no Title, or by obtaining a Search-Warrant for Goods pretended to be stolen, and taking the Goods of another. *Sid. 254.*

3. If a Man takes my Horse, with Intent to steal him, but is apprehended before he can get out of the Pasture, this is a Carrying away : So if a Guest takes Sheets out of the Bed, or other Goods out of his Chamber, and brings them into the Hall, intending to steal them, but is apprehended with them before he gets away, this is Carrying away. *C. P. C. 47.*

A Man kills my Sheep, strips them, carries away their Skins, Felony : So it is if he pull off their Wool, intending to carry it away, but is taken in the Fact. *Cromp. 33.*

4. Money, Bonds, and all Chattels Personal, whether the Party has a Property, or only bare Possession, are Goods Personal. *H. P. C. 67.*

But Things annexed to the Freehold, as Fruit on the Trees, Corn or Grass growing, &c. taking them, no Felony. *Dalt. 47.*

Fish in a River or Creek, unconfined, and Creatures wild by Nature and untamed, as Deer, Bears, &c. and likewise Beasts of a base Nature, as Dogs, Foxes, Cats, &c. These and such like are no Personal Goods, and so no Felony to take them.

But where a Man has a Property in them by their being made tame, and fit for Food, as Deer, Partridges, &c. or where they are rais'd tame, as Ducks, Hens, Turkeys, &c. Horses, Colts, Calves, &c. or where they are deprived of their natural Liberty, as Fish in a Pond, Weir, Net, or Trunk, &c. stealing them is Felony.

Taking Wrecks, Waifs, and Strays, before Seizure, no Felony.

5. The Value; if an Indictment be for Taking Goods to the Value of 10 s. or more, and the Jury find only to the Value of 10 d. it's Petty Larceny.

If One Person steal Goods, at several Times, from the same Party, all amounting to more than 12 d. they may be put into One Indictment, and if so found by the Jury it's Grand Larceny.

Judgment.

Two steal Goods, above 12 d. Value, Grand Larceny in both.

Grand Larceny is Felony, and the Offender shall have Judgment of Death, but may pray his Clergy.

Petty Larceny is also Felony, tho' not of Death; but the Offender forfeits his Goods, and subject to Whipping, and other Corporal Punishment. *H. P. C.* 70.

Bail.

Offenders in Simple Larceny ought not to be admitted to Bail, before any Justices, but upon good Consideration and sufficient Surety.

Robbery.

Mixt Larceny, properly term'd Robbery, is an Offence of greater Guilt and Malignity, because,

From the Person.

1. It is a violent Taking from the Person, and putting him in Fear; This distinguishes the Robber from the Pick-pocket, for if the Taking be not violent, nor the Party put in Fear, then 'tis Larceny, not Robbery. *H. P. C.* 72.

An Assault without Taking any Thing, is no Felony: But commanding a Person to deliver, and he doth it, this is Robbery, tho' the Thief deliver the Thing taken, back again. *Cromp.* 31.

So is Compelling a Man to swear to bring Money, he doth it, and the Robber or any other for him receives it. *C. P. C.* 16.

All that are in Company, tho' the Fact is done by One alone, are Principals: Three come to rob, and One commits the Fact out of Sight of the others, and afterwards returns to them, it's Felony in all Three. 1 & 116.

If a Man is pursued, and endeavouring to escape he drops his Hat, or Money, which the Thief takes up, this is Taking from the Person: So is Taking in his Presence, for in Law this is a Taking from his Person. *H. P. C.* 53.

Affaulting One and putting him in Fear, then driving away his Cattle, in his Presence, this is a Taking from his Person, and Robbery.

Punishment.

In Robbery of any Value whatever, tho' but a Groat, the Offender and all Accessories before the Fact, shall suffer Death, as a Felon, without Benefit of Clergy. 23 *H. 8. cap.* 1. 1 *Edw.* 6. *cap.* 12.

Pick-pocket.

Larceny from the Person, may be without putting him in Fear, by picking the Pocket, or cutting the Purse, which is

is supposed to be done secretly, and without Knowledge of the Party: If it be under 12*d.* it's Petty Larceny, but if more, it's Felony, without Clergy, by the Statute 8 *Eliz. cap. 4.*

2. It may be committed by Robbing a Man in his House, he, or his Wife, Child, or Servant, being therein, and put in Fear. It's Felony in the Principal, and Accessories before the Fact, by the Statute 23 *H. 8. cap. 1.* See *Tit. Burglary.* House-
Robbery.

Offenders in Robbery are notailable before Justices of Peace. Bail.

Prosecution for Larceny must be as by Law prescribed for other Capital Offences. See *Tit. Criminals.*

L E A T H E R.

THE Act of Assembly which concerns the Ordering of Leather, and declares the Duty of Tanners, Curriers, and Shoemakers, was made *Anno 3 Will. & Mar. cap. 12.* but this Act being hitherto found impracticable here, as not well adapted to our Practice, and therefore the Execution neglected, it is needless to insert it here.

L E V I E S.

Tithables.

Levies, or Taxes for defraying such necessary Expences of this Government as are payable in Tobacco, are of Three Sorts, Levies.

1. The Public Levy; laid by the Burgeses, in General Assembly, every Session.
2. The County Levy; by the Justices of the County Courts, for each County respectively, in *October*, or *November*, Annually.
3. The Parish Levy; by the Vestries of the several Parishes, respectively, before *Oct. 15*, Annually.

All Male Persons, and all Negro, Mulatto, or Indian Women, above the Age of 16 Years, are Tithables; except Persons excused by their County Court, or Vestry, as Objects of Charity. 4 *Annæ, cap. 7.* Tithables
Laws of
Virginia,
pag. 139.

So likewise all Free Negros, Mulattos, and Indians; and all Wives of such, are Tithables: Tributary Indians excepted. 9 *Geo. 1. cap. 4.* pag. 343.

The Governor, and his Family; the Person of a beneficed Minister, and a Constable in Office, are exempted from all Levies: Men attending Public Ferries, free of Public and County Levies. Exemp-
tions.
pag. 139.
&c.

The Age of every Child imported, or brought into this Colony, shall be adjudged within Three Months after Arrival, by the Court of that County where the Parent or Owner lives, if neglected, such Child immediately Tithable.

Lists of
Tithables

A Justice of Peace shall be Annually appointed, by every County Court, to take Lists of Tithables in each Precinct. Before *June* 10, he is to give public Notice in Writing, set up at the Church Door, of his being appointed, and where he intends to receive the Lists on *June* 10, or if that happen to be *Sunday*, then the next Day; he must return to *August* Court, a General List of all Tithables entered with him, together with the particular Lists to him delivered: The Clerk of the Court is to set up, in the Court-house, the Lists return'd by the Justices, for the public Inspection of all Persons, and better Discovery of Concealers.

Penalty
on Con-
cealers.

Every Master or Mistress of a Family, or the Overseer, or Attorney, between 10 and 30 *June*, shall deliver to the Justice appointed, a List in Writing, under his or her Hand, of all Tithables in the Family, on *June* 9, on Penalty of forfeiting 1000*lb.* Tobacco for every Tithable concealed, recoverable by the Informer, in any Court of Record. Justice of Peace taking the Lists, and not entering his own Tithables, liable to like Penalty.

Laws of
Virginia,
pag. 395.

No Inhabitant of this Colony shall entertain in his House, or hire, or employ, longer than 48 Hours, any Tithable Person, without Certificate from the Sheriff, or Churchwardens, or Collector of the Levy of that Parish whence such Person came, certifying that he or she paid Levies there the Year preceding, or came into this Colony since, or was a Servant at the Time of taking the last List of Tithables: The Party entertaining, hiring, or employing, forfeits 200*lb.* Tobacco, or 20*s.* to the Informer, recoverable before a Justice of Peace; and the Party offering himself to be hired, or employed, and not having such Certificate, liable to be prosecuted as a Concealer of Tithables. 1 *Geo.* 2. *cap.* 7.

Collec-
tors.
pag. 140.

Sheriff shall collect the Public and County Levies, giving Bond and Security in Double the Sum of the Levies; if he refuses, Court may appoint any other Person. 4 *Anne*, *cap.* 7.

Collector shall allow 8 *per Cent.* on Tobacco paid in Cask, under Penalty of 100*lb.* Tobacco for every 8*lb.* due, and so proportionably for more or less, to the Party grieved, recoverable before a Justice, if not above 200; if more, by Action: Shall have 10 *per Cent.* Salary: Shall pay

pay all Public and County Creditors, in *March*, Annually; Creditor then unpaid, may complain to the County Court, and shall have immediate Judgment, with Costs, against the Collector and his Sureties: But if the Sheriff or Collector is absent when such Complaint is exhibited, he shall be ruled to answer at the next succeeding Court, and if he then fails, the Complainant shall have Judgment.

Collector shall not seise Tobacco paid away and marked, where other merchantable Tobacco is tendred: If he distrains any Hoghead of Tobacco, he shall immediately satisfy the Owner for all surplus Tobacco: Shall discount with the Creditors, without Fee.

Creditor neglecting to receive Tobacco levied for him, upon 10 Days Notice given, Collector may tender the Tobacco before 2 Justices, &c.

Collectors of Parish Levies shall be appointed by the respective Vestries: Shall give Bond and Security to pay the Parish Creditors: Shall have 10 *per Cent* Salary, and may distrain for their Dues: Shall pay the Minister, and all other Creditors, before 31 *March*, Annually; in Case of Non-payment, Collector and every Member of the Vestry liable for Damages, to the Party grieved. 1 *Geo. 2. cap. 6.*

But by a late Act of Assembly, 3 & 4 *Geo. 2. cap. 3. pag. 427.*
 ' All Public, County, and Parish Levies, Quit-Rents, and
 ' all other Public Debts, payable in Tobacco, shall be dis-
 ' charged by Inspectors Notes, before or on *April 10*, An-
 ' nually; for such as then remain unpaid, Collector may
 ' distrain the Goods and Chattels of the Debtor: Only 4
 ' *per Cent.* shall be allow'd for Cask, and 4 *per Cent.* Sa-
 ' lary to the Collectors, during the Continuance of this Act:
 ' Collector shall pay the Creditors, before *April 30*, or
 ' forfeits Double the Value then unpaid.' By this Act the
 former Methods and Allowances for collecting and paying
 the Levies are suspended, during Continuance of this Law,
 which expires *Nov. 9, 1739.*

LIBELERS.

AN infamous Libel signifieth a scandalous Report of any Person, cast abroad, or otherwise unlawfully published in Writing: It may be also without Writing, by Pictures, or Signs; as to paint a Man in Fool's Colours, or to fix a Gallows, or other shameful Sign at the Door of the Party. 5 *Rep. 25.*

If it be in Writing, then copying it and delivering that Copy to another, is a Publication; so is malicious repeating it to others, or reading it to them, knowing it to be a Libel.

Punish-
ment.

To libel any private Person is an Offence, punishable by Indictment or Information, and the Offender shall be fined, because it tends to the Breach of the Peace; and tho' the Matter be true, yet it's not justifiable upon an Information: But if an Action on the Case be brought, for Words actionable, there the Defendant may justify, that it was true. *Moor.* 627.

A Man was Suitor to a rich Widow, and the Defendant wrote a Letter to her, advising her not to marry him, for he was a debauch'd Person, had the Pox, was not worth a Groat, and had declared, that if he married her, he would allow 50*l.* *per Ann.* to a Whore: This Letter was conveyed to the Widow, but not subscribed by the Defendant; yet, upon Evidence, appearing to be his Writing, he was fined 200*l.* *Sid.* 138.

If a scandalous Letter be directed to the Party himself, and not to a Third Person, no Action on the Case will lie, because 'tis no Publication: But this tends to the Breach of the Peace, and therefore shall be punished by Indictment, or Information. 2 *Brownl.* 141.

And Sir *Francis Bacon* said, That such a private Letter compels the Party to whom 'tis sent, to publish it to his Friends for their Advice, for fear it should be publish'd on the other Side; and therefore this shall be taken as a Publication by the Delinquent: The Fine assessed hereupon, was 500*l.* *Poph.* 140.

Laws of
Virginia,
pag. 26.

The Act of Assembly, 14 *Car.* 2. *cap.* 5. has provided a Punishment for slanderous Women, *viz.* 'If the Husband is sued for Slander, occasioned by the Wife, and will not pay the Damages recovered against him, she shall suffer a Ducking for every 500*lb.* Tobacco recovered in such Action.'

To libel the Government, or a Magistrate, is a great Aggravation of the Crime: Many Instances might be given of severe Punishments, in Purse and Person, inflicted upon such Offenders; One was fined 5000*l.* *Sterling*, and imprisoned during the King's Pleasure, for speaking these Words, of a Judge sitting in Court, *viz.* 'I accuse Mr. Justice *Hatton* of High Treason. *Cro. Car.*

Convic-
tion.

The Person to be convicted must be, either the Contriver of the Libel, or the Procurer, or a malicious Publisher, 9 *Rep.* 59.

If a Man finds a Libel against a Private Person, he ought to burn it, or carry it to a Magistrate: If against any Person in Office, or Magistrate, or against the Government, or the King, he ought to deliver it to some Magistrate, that the Offender may be found, and punish'd.

If

If a Libel is found in a House, the Owner of that House cannot be punish'd for Framing or Publishing it, but he may be indicted for Having it, and not delivering it to a Magistrate. 1 *Vent.* 31.

It has been Resolved, That scandalous Letters concerning a Private Person, are punishable, upon Indictment or Information exhibited before Justices of Peace, in Sessions, because they tend to the Breach of the Peace. 1 *Lev.* 139.

So are Words spoken of a Justice, as, That he is not fit to talk Law, or the like. 3 *Mod.* 139.

If any Person forges or publishes false Reports, tending to the Trouble of the Country, the next Justice of Peace shall bind him over, by Recognizance, to appear at the next County Court, to answer the Premises, or on Refusal may commit him; if it appears to the Court, that the Publication was malicious, the Offender shall be fined 2000 *lb.* Tobacco, and bound to Good-behaviour. 13 *Car.*

2. *cap.* 91.

Whoever maliciously publishes Writings, Words, &c. to dishonour or defame the Person of the Governor of this Dominion, shall be imprisoned 1 Year, without Bail or Mainprize, and may be fined 500 *l.* If such Publication be of a Councillor, Judge, or Principal Officer, 3 Months Imprisonment, without Bail, and 100 *l.* Fine. 32 *Car.* 2. *cap.* 1.

And if any Person shall maliciously publish, by Words or Writing, That the Acts of Assembly of *Virginia*, unrepealed, nor expired, nor disallowed by the King, are not of Force, or Binding upon all Subjects of this Dominion, the Offender forfeits,

For the 1st Offence, 1000 *lb.* Tob. and 1 Month's Imprisonment.

2d Offence, 2000 *lb.* Tob. and 2 Months Imprisonment.

And for every Offence afterwards, the Fines and Penalties to be doubled.

Besides other legal Punishments. Forfeitures to be divided between the King and Informer, recoverable in any Court of Law. 34 *Car.* 2. *cap.* 8.

Upon Information against any Person, for any of these Offences, made before a Justice of Peace, he may issue his Warrant to cause the Offender to be brought before him, or some other Justice, to answer the Matters wherewith he is charged, and to find Sureties for his Appearance before the County Court next ensuing, and in the mean Time to be of Good-behaviour: If he refuses to find Sureties, being required by the Justice, he must be committed.

L I C E N S E.

Pass. Certificate. Departure out of the Colony.

Penalties
on Ship-
Masters,
transport-
ing with-
out Pass.

Laws of
Virginia,
pag. 146,
&c.

Method
of obtain-
ing Pass.

NO Master of a Ship, or Vessel, shall transport out of this Dominion any Person whatever, without a Pass sign'd by the Secretary, or his Deputy, on Penalty of paying all such Persons Debts: If he transports a Servant, or Slave, without such Pass, or License of the Master or Owner, he forfeits 50*l.* for a Servant, and 100*l.* for a Slave, to be divided between the King and Party grieved: If he is sued, no Act of Limitation shall be pleadable in Bar. 4 *Annæ*, cap. 12.

The Party requiring a Pass shall give Bond, with Two Sureties, in 2000*l. Sterling*, to the Secretary, with Condition to answer all Debts by him owing. But if no Demand, within Two Years, Sureties discharged.

If he be an Inhabitant of this Colony, he may publish his Intentions of Departure, by a Note set up at the Court-house of his County, on a Court Day, and there continued Ten Days, whereof he must take Certificate from the Clerk, *viz.*

I A. B. Clerk of County, do hereby certify, That C. D. is, and for some Time past hath been an Inhabitant of this County, and has published his Intentions of going out of this Colony, according to Law. Dated &c.

Upon producing such Certificate to the Secretary, or his Deputy, a Pass is grantable.

Caveat.

But notwithstanding this Certificate, any Person may enter a Caveat to stay the Pass, if he gives Bond and Security in 500*l.* to answer all Damages recoverable by the Party stop'd: No Pass shall then issue before such Party gives Bond and Security in Double the Sum claimed by the Person who enters the Caveat, to answer his Claim.

Secreta-
ry, & his
Deputies,
to grant
Passes.

Secretary shall appoint Deputies for granting Passes, on Penalty of 50*l.* to the King and Informer: If he, or his Deputy refuse a Pass, where grantable, the Person refusing forfeits 500*l.* to the King and Party grieved.

Prosecution in Six Months.

Certificates and Passes shall be recorded by the proper Officers, on Penalty of 5*l.* to the King and Informer.

Where a License, Certificate, or Pass, is by Law required in other Cases, may be seen under the proper Titles,

M A I H E M.

Cutting out Tongues.

Maihem, or Maim, is a Corporal Hurt, whereby a Man loses the Use of any Member, necessary for the Defence of his Person; as the Hand, Finger, Foot, Eye, Tooth, or when by breaking a Bone, a Contraction or Shrinking of the Sinews ensues: Or any other Hurt in a Man's Body, whereby he is disabled to defend himself, or offend his Enemy. *Co. Lit. f. 194.*

Cutting off the Ear, or Nose, or breaking the Hind Teeth, was not allow'd to be a Maihem, by the old Writers, as being rather a Deformity to the Body, than any Diminution of Strength: Yet they allow Castration to be a Maihem. *Stamf. 39.*

Before the Statute 22 & 23 *Car. 2.* the Offender, convicted upon an Indictment of Maihem, was to pay a Fine, set by the Court upon View of the Person maimed; or, he might recover Damages by Action of Trespass at Common Law: But by that Statute, maliciously to cut off and disable the Tongue, put out an Eye, slit or cut the Nose, or cut off or disable any Limb or Member, with Intention to maim or disfigure, is Felony without Clergy, in Principals and their Counsellors, Aiders, and Abettors. *Moor. 268.*

Antiently, this was Felony at Common Law, and the Offender was to lose the same Part. *3 Inst. 18.*

And by the Statute 5 *H. 4. c. 5.* to cut out the Tongue, or put out the Eyes of any Person, is Felony.

M A I N T E N A N C E.

Champerty. Embracery.

Maintenance is an upholding Quarrels, or Suits, to the Disturbance of Common Right, by lending Money, or making Friends by Word or Writing, on either Side, tho' he has nothing to do therein: It is by the Law distinguished in Two Parts,

1. In Courts of Justice; by maintaining one Side in any Suit depending.
2. In the Country; by stirring up and maintaining Complaints, Suits, and Quarrels, not their own, tho' the same depend not in Plea. *Co. Inst. cap. 28.*

To

To inform a Jury voluntarily, not as a Witness, but of his own Head; One Juror giving Money to another, to pals a Verdict; a Person who is no Party in the Suit writing a Letter to a Jury-man, desiring him to appear; giving Money to either Party to continue a Suit depending: These, and such like, whereby a Third Person encourages Suits and Quarrels, not his own, and tho' he gain nothing thereby, are Maintenance. 28 H. 6. & 17 Edw. 4.

If a Man of Power or Authority declares, in Presence of many People, That he will spend Money for such a Person, in a Suit, &c. 'tis Maintenance. 9 H. 7.

Soliciting a Jury, and shewing them Precedents where great Damages were given, in a like Case, is Maintenance. 3 Cro. 736.

Punishment.

This Crime is punishable, either by Indictment at Common Law, or by Information upon the Statute 32 H. 8. cap. 9. which declares, That none shall unlawfully maintain any Suit, or retain any Person for Maintenance, embrace Jurors, or suborn Witnesses; on Pain to forfeit for any of these Offences, 10*l.* to be divided between the King and Prosecutor.

Prosecution on this Statute must be within a Year after the Offence. 1 Vent. 302.

Champerty.

Champerty is, a Bargain with the Demandant, or Tenant, Plaintiff, or Defendant, to have Part of the Lands, Goods, or Gains, in Variance, that shall be recovered; and in Consideration thereof, the Champertor prosecutes the Suit at his own Costs: Every Champerty is Maintenance, but every Maintenance is not Champerty, for this is but a Species of Maintenance. Co. 2. Inst. cap. 3. Fitz. Herb. Nat. Brev. 171.

Punishment.

This Offence is punishable by Indictment, and the Offender, upon Conviction, shall pay a Fine, and suffer 3 Years Imprisonment, Act. Sup. Chart. cap. 11.

Embracery.

Embracery is, a soliciting or labouring with the Witnesses, or Jury, by persuading them to appear, instructing or informing them of the Cause, or using Promises, Threats, Menaces, &c. Moor. 816.

Fine.

This is also prohibited by the Statute, 32 H. 8. cap. 9. above-recited in Maintenance, and punishable in like Manner.

All these Offences, as tending to the Breach of the Peace, are cognizable before the Justices, by Virtue of their Commission, and the Act of Assembly. 9 Anne, cap. 11. Offenders in all or any of them are bailable,

MARRIAGES.

Births. Burials. Registers.

NO Persons shall be married by any Minister within this Colony, without License to him produced, or Banns published, and Certificate thereof; Nor shall any Minister go out of this Dominion, and there marry any Inhabitant of this Colony, contrary to this Act. Penalty on the Minister, in either Case, 500*l.* and 1 Year's Imprisonment. 4 *Annæ*, cap. 48.

Marriages.
Laws of
Virginia,
pag. 214,
&c.

Banns shall be publish'd 3 several *Sundays*, or Holy Days, in the Church of that Parish where the Parties reside; if they live in Two Parishes, Banns to be publish'd in each, and a Certificate of Publication obtained from the Curate, Reader, or Clerk: Either of these granting false Certificate, forfeits 500*l.* and One Year's Imprisonment, and may be prosecuted for Forgery.

Banns.

Suit may be brought in any Court of Record, and the Offence laid in any County.

Licenses shall be issued by the Clerk of the County where the Feme resides; but he must take Bond and Security in 50*l.* that there is no lawful Cause to obstruct the Marriage. Clerk failing, forfeits 50*l.*

License.

If either Party is an Infant, under Twenty One Years, and not before married, the Consent of Parent, or Guardian, in Person, or in Writing under Hand and Seal, attested by Two Witnesses, shall be produced to the Clerk, and by him specially mentioned in the Bond; such Consent the Clerk shall certify in the License, directed to the first Justice in Commission of the Peace, for his County, or other Person for that Purpose commissioned by the Governor, and such Commissioner is thereupon to sign and direct the License: Clerk issuing License in other Manner, and Commissioner signing or directing any Marriage License without the Clerk's Certificate, shall be imprisoned One Year, without Bail, and forfeit 500*l.*

If a Feme of Twelve, and under Sixteen Years of Age, marries without Consent of Parent, or Guardian, and without Publication of Banns, she loses all her Estate Real, in Possession, Reversion, or Remainder, and the next Heir at Law may enter, and hold her Estate during such Coverture: But after that is determined, the Estate reverts to her, and her right Heirs.

Feme,
under 16.

If a Minister or Reader publishes the Banns for any Person being a Servant, or marries any Servant, knowing him

Servants.

him or her to be such, without Certificate of Consent from the Master, he forfeits 10000 *lb.* Tobacco : The Servant so married shall serve the Master One Year, after all other Time of Service due is expired ; and if any Person Free, marries with a Servant, the Party shall pay 1000 *lb.* Tobacco, to the Master of the Servant married, or serve him One Year.

Fees. Marriage Fees. *See Tit. Fees.* If not paid in ready Money, they shall be payable in Tobacco, within the Parish where the Feme lives, and leviable by Distress, as Clerk's Fees : Before granting License, Clerk may demand Security, within his County, for the Fees, which may be levied by Distress on the Estate of the Security.

Forfeitures. If the Minister refuses to marry the Parties for the Fees by this Act allow'd, or exacts greater, or other Fees, he forfeits 4000 *lb.* Tobacco for a Marriage by License, 500, if by Banns : And if Minister, or Reader, refuse to publish and certify Banns, for the legal Fee, or exact more, the Offender forfeits 150 *lb.* Tobacco, to the Party grieved, recoverable before a Justice of Peace. All other Forfeitures laid by this Act, divided between the King and Prosecutor, recoverable in any Court of Record.

Perquisites. The Minister of every Parish, respectively, shall have Benefit of the Fees due for Marriages, and Funeral Sermons, arising within his Parish, if he does not neglect or refuse to perform the Service, altho' another Minister be employed.

Negros, Mulattos. If any Free white Person marries with a Negro, or Mulatto, Slave or Free, the Offender shall be committed to Prison, by Judgment of the County Court, there to remain Six Months, without Bail or Mainprize, and shall pay 10 *l.* to the Use of the Parish. 4 *Annæ, cap. 49.*

Laws of Virginia, pag. 222. Births. pag. 291. Parent of every Free-born Child, and Owner or Overseer of Slaves, shall give Notice in Writing, to the Minister of the Parish, or where no Minister to the Clerk, of the Birth of every Child, within 20 Days after born, mentioning whether Male or Female, and the Name of the Parent of the Free Child, or Owner of the Slave : The Party failing to give Notice, forfeits 200 *lb.* Tobacco.

Deaths. The Master or Mistress of the Family where a Free Person dies, and the Owner or Overseer of a Slave, shall give Notice as above directed, within 20 Days, of every Person dying in the Family, mentioning the Names of the Dead, and who was Owner of the Slave : Penalty for every Neglect, 200 *lb.* Tobacco. 12 *Annæ, cap. 4.*

Every

Marriages. Melitia.

221

Every Minister of a Parish shall keep a Register of all Births and Deaths, whereof he has Notice, within his Parish, and of all Persons by him baptized: In Parishes vacant, the Clerk shall keep such Register. A Copy of the Register, sign'd by the Minister or Clerk, shall be return'd to the Secretary's Office, *April 20*, and *October 20*, Annually. Re-gisters.

Ministers Fee for keeping the Register, *viz.*

For every Free Child, born and baptized } 3 *lb.* Tob.
and for every Slave born - - - }

For every Death - - - - - 3.

to be paid by the Parent or Owner of Children born, and by the Person who gives Notice of the Death, or is Owner of the Slave; and leviable by Distress.

Minister or Clerk failing to keep or return such Register, forfeits 200 *lb.* Tob.

The Forfeitures given by this Act shall be divided between the Churchwardens of the Parish where the Offender resides, to the Use of the Parish, and the Prosecutor, recoverable before One Justice of Peace. Forfeitures.

Marriages within the prohibited Degrees, and incestuous Copulations. *See Tit. Bastardy.*

M I L I T I A.

Invasions. Insurrections.

THE Militia of this Colony may be computed to consist, at present, upwards of 20,000 effective Men. Number.

The Colonel, or Chief Officer of the Militia, in every County, may list all Freemen, from 21, to 60 Years of Age, to serve in Horse, or Foot, according to their Ability, and appoint their Captains. 9 *Geo. 1. cap. 2.* Who shall serve.

But such Persons as are or have been Members of His Majesty's Council, Speaker of the House of Burgeses, Secretary of this Dominion, Judge of the Court of Vice-Admiralty, Attorney-General, Justices of Peace, or who have born Military Commission here, as high as Captain; as likewise the respective Clerks of the Council, General Court, and County Courts, for the Time being, shall not be compellable to muster in Person, if they provide an able Trooper, well accoutred. Laws of Virginia, pag. 333. Persons privileged.

And every Minister of the Church of *England*; the President, Masters, Professors, and Students, of *William* and *Mary* College, for the Time being; every Overseer of Four Slaves; Miller in actual Service; all Persons employed in any Mine; and all Free Negros, Mulattos, and Others exempted.

and Indians, exempted from being listed : But such Negroes, Mulattos, or Indians; may be listed as Drummers or Trumpeters, if capable; and in Case of Invasion or Rebellion, they shall serve as Pioneers.

If an exempted Overseer, Miller, Free Negro, Mulatto, or Indian, pretumes to appear at any Muster, he forfeits 100 *lb.* Tobacco; on Failure of Paiment, or Security, to the Commanding Officer, he may order the Offender to be tied Neck and Heels 20 Minutes.

Arms,
&c.

Every Trooper shall provide himself with a serviceable Horse, Saddle, Curb-Bridle, Breast-Plate, Crouper, Holsters, Pistols, Sword or Cutlas, double Cartouch-Box, and Six Charges of Powder, and appear so accoutred at every Muster; he must likewise keep at his Habitation, a Carbine well fix'd with Belt and Swivel, One Pound of Powder, and Four Pounds Shot, to bring into the Field when specially required.

Every Foot-Soldier shall provide himself with a Fire-lock, Musket, or Fuzee, well fix'd and Bayonet fitted, Sword or Cutlas, Cartouch-Box and Three Charges of Powder, and appear so arm'd at every Muster, and shall keep at his Abode, One Pound of Powder, and Four Pounds of Ball, to bring into the Field when required.

Penalties.

Trooper or Soldier failing to appear at Musters, or being unprovided with Arms, *&c.* forfeits 100 *lb.* Tobacco, for every Failure; Eighteen Months after being listed is allowed for providing Arms, *&c.*

Captain failing to appear at any Muster, or not exercising his Men when there, forfeits 200 *lb.* Tobacco: Lieutenant, Cornet, or Ensign, failing in his Duty, 100 *lb.* Tobacco. But no Person shall be fined above Five Times in One Year.

Arms,
&c. privileged.

Horses, Accoutrements, Arms and Ammunition, provided and kept pursuant to this Act, not liable to Seizure or Distress: If taken in Execution by any Officer, he forfeits double Damages to Party grieved.

Musters.

Chief Officer of every County shall hold a General Muster once a Year: and every Captain shall exercise his Troop or Company, Quarterly, or oftner if he thinks fit.

Disobedience,
&c.

If a Soldier disobeys his Officer, or is refractory, the Commanding Officer, then present, may cause him to be tied Neck and Heels Twenty Minutes, and if he afterwards offend, may commit him to the County Goal, Ten Days, and not to be discharged 'til he has paid all Prison Fees.

And if he fails to appear when summoned upon any Alarm of Invasion or Rebellion, he forfeits 10 *l.* His Captain is to give Account of such Failure, to the next Court

Court Martial; if he refuses to obey his Captain, he may be committed to the County Goal, by Warrant under his Captain's Hand, there to remain Three Months, without Bail or Mainprife: But the Chief Officer of the County may discharge him sooner, if he see Cause.

If an Officer fails to appear, upon any such Alarm, he forfeits 20 l.

Where a Soldier is capable, but refuses to serve as Sergeant, Corporal, Drummer, or Trumpeter, he forfeits 500 lb. Tobacco: This Fine once paid, exempts him from those Offices, for ever.

Accounts of Defaulters shall be taken at every Muster, in Writing, containing the Names of the Offenders, and their Offences; which shall be delivered by the Captain, under his Hand, to the next Court Martial.

Such Court may be held the first or second *Thursday* in *October*, Annually, at the Court-House of the County, by the Field Officers and Captains, or the major Part, whereof the Colonel, Lieutenant-Colonel, or Major, to be One; but must not be held at any other Time or Place: They are to inspect the Accounts deliver'd in by the Captains, and thereupon to fine the Offenders; but if the Party charged shews reasonable Cause of Excuse, they ought to allow such Plea, and remit the Fine.

The Court may appoint a Clerk, and pay his Salary out of the Fines: May dispose of the Forfeitures arising by this Act, in providing Military Furniture, Arms, and Ammunition, for their County Use.

Where a Fine is assess'd, and Paiment refused to the Sheriff, producing to the Party a Copy of the Court's Order, upon Notice of Refusal given by the Sheriff, to the Chief Commanding Officer residing in the County, he may issue his Warrant to such Sheriff, commanding him to levy the Fine, by Distress and Sale of the Goods and Chattels of the Party, and to make Return of the Warrant to the Clerk of the Court-Martial. If the Sheriff returns, That the Party has no Goods whereon he can levy the Tobacco, as by the Warrant is to him commanded, the same Chief Officer, by his Warrant to the Sheriff, may commit the Body of the Offender, to the County Goal, there to remain without Bail or Mainprife, 'til he shall satisfy the Fine, and all Fees incident, or 'til he be discharged by due Course of Law.

Every Captain may appoint one of his Soldiers to be Clerk of his Troop or Company; such Clerk excused from bearing Arms at any Muster, except in Cases of Invasion or Rebellion.

De-
faulters.

Court
Martial.

Fines.

Clerks.

Every

Oaths.

Every Commission Officer, before he executes his Commission, shall, in his County Court, take the Oaths appointed by Law, and subscribe the Test: Before a Court Martial is held, every Colonel, Lieutenant-Colonel, Major, and Captain, then present, shall take this Oath.

I *A. B.* do swear, *That I will do equal Right and Justice to all Men, to the best of my Judgment, according to the Directions of the Act, intituled, An Act for the Settling and better Regulation of the Militia.*
So help me God.

To be first taken by the presiding Officer, then present, and by him administered to the Rest.

Captain's Privilege.

Captain of a Troop or Company may admit any able bodied White Man, above 16, to serve in the Room of any Person listed.

Public Goaler.

The Keeper of the Public Goal, for the Time being, exempted from Musters. 8 Geo. 1. cap. 9.

Invasions & Insurrections.

Upon any Invasion or Insurrection, the Governor of this Dominion may raise the Militia, and lead them in Person, or appoint Commanders and Officers; May march them to

Laws of Virginia, pag. 387.

any Part of this Colony, and may disband them, as the Danger ceases. 1 Geo. 2. cap. 5.

Impress-

menr. Upon Notice of any Invasion or Insurrection, given to any Officer of the Militia, he must immediately raise the Forces under his Command, and dispatch an Express to the County Lieutenant, or the Chief Commanding Officer of Militia residing in the County, and likewise to the next Militia Officer, to inform them of the Matter, and how he intends to procede; mean Time he is to keep his Men under Arms, 'til he receives further Orders from his Superior Officer: The commanding Officer forthwith, upon Receipt of such Intelligence shall, by Express, acquaint the Governor of the Danger, and the Strength and Motions of the Enemy: For the better hastening the Express, he may impress Boats, Men, and Horses: And 'til the Arrival of the Governor's Orders, he must draw together the Militia of his County to Places most convenient for opposing the Enemy.

Impress-

menr. By Warrant under Hand and Seal of a County Lieutenant, Colonel, Lieutenant-Colonel, or Major of Forces so raised, Provisions, Sloops, and Boats, with their Rigging and Furniture, Waggon, Carts, Horses, Oxen, Tools, and Instruments; as also Sailors, Carpenters, Smiths, Wheelwrights, and other Artificers or Workmen may be impressed.

But Appraisement shall be first made, in Tobacco, by Two Men upon Oath, who are to value the Things impressed, viz.
1. Provi-

1. Provisions, Tools, or other Instruments, or Utensils, at their Worth.
2. Sloops, Boats, Waggon, Carts, Horses, Oxen, and the Appurtenances or Furniture to them respectively belonging and impressed, at their Worth; and also, to estimate what is a reasonable Allowance for the Use of them, *per* Day.

The Party impressing must take Care that such Appraisement and Estimate be made, and give a Receipt to the Owner, mentioning the Particulars by him taken up, how appraised, and estimated, and for what Service impressed; or liable for unlawful Seizure.

At Times and Places to be directed by the Governor, One Man in each of the Counties of *Elizabeth-City*, *Princess-Anne*, and *Northampton*, shall be appointed by the Chief Officer of Militia residing in such County, respectively, to be Look-Outs to Seaward, Night and Day; If they discover or suspect the Approach of Enemy's Ships, they must give immediate Notice to the next Field Officer, and he must forthwith, by Express, give Intelligence to the Governor, and to the County Lieutenant, or the Chief Officer of Militia then resident in the County.

Militia in actual Service shall be paid by the Public, *viz.*

Horse <i>per</i> Day.	lb. Tob.
County-Lieutenant, or Commander in Chief - - - }	70
Colonel - - - - -	60
Lieutenant-Colonel, Major -	50
Captain, Lieutenant - - -	30
Cornet, Quarter-Master - - -	25
Corporal, Trumpeter - - -	22
Horseman - - - - -	20

Foot <i>per</i> Day.	lb. Tob.
Colonel - - - - -	50
Lieutenant-Colonel, Major	40
Captain - - - - -	30
Lieutenant - - - - -	25
Ensign - - - - -	20
Serjeant, Drummer - - -	18
Foot-Soldier - - - - -	15

Look-Out, 200 lb. Tob. *per* Month.

But every Officer and Soldier shall provide himself with Habilliments of War, Arms, and Ammunition, as required by the Militia Act; If discharged in Two Days, no Pay.

Q

Workmen

Workmen impressed shall be likewise paid by the Public, viz.

Smith - - - - -	50	} lb. Tob. per Day.
Carpenter, Wheelwright, or other Artificer - -	40	
Man, in Sloop, or Boat	15	

Messengers shall be paid as Public Expresses.

Provisions, Tools, &c. at the Rate appraised.

Boat, Sloop, Cart, Waggon, Horse, and Ox, shall be paid at the Rate the Hire was estimated; but if lost, at the Value appraised, and half Pay for the Use: If damaged or disabled, Satisfaction for the Damage, besides the Hire. The Damage to be inquired and found by Two Men upon Oath, to be appointed by a Justice of the County where the Thing disabled shall be.

Combinations of Slaves. Commanding Officer of the Militia may order Parties to patroll in his County, at *Christmas, Easter, and Whitsun* Holidays, to disperse unlawful Meetings of Slaves, and prevent their Combinations. Such Parties may seize Slaves illegally convened, and deliver them to the next Constable, to be punish'd as the Law directs.

The Parties employed in this Service above Two Days at One Time, shall have Pay.

Battery Guards. The Batteries shall be guarded by such of the neighbouring Militia as the Governor directs: These Guards exempted from all private Musters, except at the Battery.

Imbezzlement. If any Person shall imbezzle Arms, Accoutrements, or Ammunition, delivered to him for Public Service, out of His Majesty's Stores, or Magazine, and shall not restore the same when required, the Commanding Officer of the County, by Warrant under his Hand, may commit the Offender to the County Goal, there to remain 'till he shall have made full Satisfaction for the Arms, &c. by him detained or imbezzled.

Continuance of this Act. This Act was made Temporary, and expired *Anno 1732*; but was continued by 5 & 6 *Geo. 2. cap. 4.* to 30 *March, 1736*; and further continued by 8 *Geo. 2. cap. 4.* to 30 *March 1738*.

MILLS.

Millers. Toll.

Encouragement for Building.

Laws of Virginia, pag. 197. IF any Person has Land on One Side a Run, and intends to build a Water-Mill, but the Owner of the Land on the other Side will not sell him an Acre adjoining, at a reasonable Rate, the Party intending to build may petition

petition the County Court, who are to order Two credible Persons to view the Land, and if Houses, Orchards, or other immediate Conveniences are not taken away, the Persons appointed shall value One Acre, and put the Petitioner in Possession ; which shall create a Fee-Simple to him and his Heirs. But the Valuation-Money must be immediately paid down, to the Owner of the Land. 4

Anna, cap. 41.

The Petitioner must begin to build in One Year, and finish in Three, and keep up the Mill, otherwise the Land reverts to the former Proprietor.

Infant under 21, Feme Covert, *Non Compos Mentis*, and Person imprisoned, and their respective Heirs, have Three Years after Disabilities removed, to re-build their Mills burnt or fallen.

Where a Mill is standing upon upon any Run, no other shall be built within a Mile below, nor above, upon the same Run, without special Leave of the General Court, or County Court. If the Owner of a Mill is injured by another's Building upon the same Run, he may sue for his Damages.

Toll for Wheat, $\frac{1}{8}$ Part ; Indian Corn, $\frac{1}{6}$.

Miller not grinding in Turn ; or not well and sufficiently grinding the Grain ; or exacting more Toll ; forfeits 15 s. for every Offence, to the Party injured, recoverable before a Justice of Peace.

Owner of the Mill may grind his own Grain at any Time.

Millers shall keep seal'd Measures of Bushel, Half-Bushel, and Peck, and Toll-Dish seal'd ; and shall use Strike Measure, on Penalty of 15 s. for every Failure to the Informer, recoverable before a Justice of the County where the Failure shall be. Owner of the Mill is liable, whether it be kept by himself, or a Servant, or Slave : If the Owner lives in another County, and has not any known Attorney in that where the Mill is, the Appearance of the Miller (whether Servant or Slave) is sufficient for the Justice to proceed against the Owner ; but if he lives in the County, or has an Attorney there, he or his Attorney, must be required to appear.

Where a Mill is kept by a Slave, or imported Servant, who refuses to grind in Turn, or grinds insufficiently, or exacts illegal Toll ; in Lieu of the Forfeiture such Slave or Servant shall have 30 Lashes, on his bare Back well laid on, for the first Offence, and 40 for the Second ; but if he afterwards offends, his Master or Owner shall pay the Forfeiture.

Toll.
Millers.

Mill-
Mea-
sures.

Servants
& Slaves.

Mill-
Dams.

All Mill-Dams on any Publick Road shall be 10 Foot broad at Top, the whole Length of the Dam; the Bridge and Passage the same: If less, the Owner or Occupier of the Mill, forfeits 2000 *lb.* Tobacco, and 200 more for every Month the Dam, Bridge, or Passage, continues less than 10 Foot broad. If the Owner be an Infant, or not Resident in this Dominion, the Guardian, or Attorney, shall cause the Dam, &c. to be made and repaired, at the Charge of the Infant, or Owner, as directed by this Act, or he shall be liable for the Penalties; recoverable in any Court of Record, by the Owner of any other Mill in the same County who has a sufficient Dam, and first brings Suit, to his Use for keeping his Dam in Repair; but if no such Person sues in 2 Months after the Offence, the Churchwardens of the Parish may, for the Use of the Poor.

Where a Mill is occupied by a Tenant, having only a Lease, for 2 Years, or under, the Landlord, not the Tenant, shall make and keep the Dam.

But if a Dam is broke or carried away by Tempests, no Person liable for the Penalties 'til One Month after the Mill takes Toll.

Millers
not to
serve in
Militia.

Millers in actual Service exempted from being listed in the Militia; but if they appear at any Muster, shall pay 100 *lb.* Tobacco, to the Commanding Officer then present, or be tied Neck and Heels. 9 *Geo. 1. cap. 2.*

M I N E S.

Iron-Works.

Exemp
tions, &
Privi-
leges.

Founders Keepers, and Labourers, employed in any Mine, exempted from being listed in the Militia. 9 *Geo. 1. cap. 2.*

County Courts shall order Roads and Bridges from every Iron-Mine to the nearest convenient Landing. See *Tit. Highways.*

Persons employed in or about any Iron-Mine, or Work, have several Privileges and Exemptions, *viz.*

Laws of
Virginia,
pag. 409.
pag. 456.

They are exempted from Clearing and Repairing all Public Roads and Bridges, except such only as are made for the Use of the Mines; and likewise from Clearing Rivers and Creeks. 1 *Geo. 2. cap. 12.*

They are also exempted from serving in the Militia, except in Case of Invasion, Insurrection, or Rebellion. 3 & 4 *Geo. 2. cap. 13.*

They

They shall pay no Public Levies for Seven Years ; and the Adventurers in Iron-Works shall be repaid by the Public for all County and Parish Levies by them Annually paid within that Term. 3 & 4 Geo. 2. cap. 13.

But all Tithable Persons employed in such Works must be listed Annually, as by Law directed for other Tithables, otherwise they lose these Exemptions that Year : And if any of them are employed in Tobacco, the Owner of the Mines loses the Benefit of Exemption for all his Tithables that Year, and if done with his Knowledge or Consent, he forfeits 500 *lb.* Tobacco for every Tithable living upon the Plantation where Tobacco is so made : If done without his Knowledge or Consent, the Overseer liable for the Penalty, to the King and Informer, recoverable in any Court of Record. 1 Geo. 2. cap. 12.

Laws of
Virginia,
pag. 410.

These Exemptions do not extend to Persons who sell Wood for the Use of the Mines, and employ their own Servants or Slaves to cut it.

M I S D E M E A N O R.

THIS is a general Word, and comprehends all Kinds of Misbehaviour ; yet is not properly applicable to any one particular Crime or Offence prohibited by the Law, but to such only, which tho' not specially provided against, are nevertheless punishable by Indictment, and the Offender may be fined and imprisoned, at the Discretion of the Court before whom he shall be convicted.

It would be endless to enumerate the several Offences proper under this Title, I shall therefore mention only Two ;

One sent a Challenge, by another, to Fight ; the Challenger, and the Bearer of the Challenge were both indicted for a Misdemeanor, fined 100 *l.* a Piece, committed for a Month without Bail, and were to make a public Recantation, as the Court should direct, and bound to be of the Good-behaviour Seven Years. *Sid.* 186.

A Man and his Wife disagreeing, she applied herself to one *Golding*, a Parson, and offer'd him 40 *s.* to whip her Husband : The Parson undertook it, and came in Woman's Cloaths to the Chamber where the Husband was, and endeavoured to whip him with a Rod ; in striving they were both hurt : The Parson run away from the Husband, who died in a little Time after this Scuffle. All this being proved, the Wife and Parson were fined 500 *l.* each. *Poph.*

129.

Q3

Every

Every Justice of Peace, by Virtue of his Office, may by his Warrant cause any Person to be brought before him, for Misdemeanors tending to the Breach of the Peace, and may require Sureties of the Offender, for his personal Appearance before the next County Court, to answer the Premises, and in the mean Time to be of Good-behaviour: If the Justice see Cause, he may require the Party to find Sureties to be bound in very considerable Sums, and on Refusal, commit him. *Dalt.*

Impeach-
ments.

But there are some Crimes and Misdemeanors, tho' not Capital, nor punishable in the common Method of Proceedings, before the King's Judges or inferior Magistrates, yet nevertheless of transcendent Malignity: Such as are a Complication of divers Crimes, tending to the universal Prejudice of the Subject, or the total Subversion of the Government in Church and State, committed by Men of Parts and Figure, abusing their Office and Authority, and under Colour of Law oppressing the Subject, or injuring the Common Weal. These are punishable only by the King in his Supreme Tribunal, the House of Peers, upon Articles of Impeachment exhibited against the Offender, by the Knights, Citizens, and Burgeesses, of the House of Commons in Parliament assembled.

M I S P R I S I O N.

What
it is.

IN the Common Law this signifies Neglect, or Oversight, in One who knows that another has committed Treason, or Felony, and was not consenting to the Fact, but yet conceals the Offender. *1 St. P. C. cap. 19.*

But knowing a Treason intended, before it is committed, and assenting to it, is Treason.

So is receiving and comforting a Traitor, or a Counterfeiter of Coin, knowing him to be so. *H. P. C. 127.*

Misprision is either,

1. Of Treason, or
2. Of Felony.

Of Treason.

Concealing Treason, but not assenting to it, and forging Foreign Coin, or knowingly uttering such, are Misprisions of Treason, punishable by Forfeiture of Goods for ever, of Lands during Life, and perpetual Imprisonment. *3 Inst. 134. H. P. C. 126.*

Every Man that knoweth a Treason, intended or done, must forthwith reveal it and the Traitor, to the King, or his Council, or other Magistrate. *H. P. C. 131.*

Other
Misprisions.

To draw a Sword, or strike a Judge, or Juror, in Presence of a Judge sitting in Court; Rescuing a Prisoner from

from the Bar in the King's Supreme Courts of Judicature; Striking there in Presence of the Court; Drawing a Sword upon any Judge or Justice, tho' he strike not, in Presence of those Courts, or before Justices of Assize, or Oyer and Terminer: These are great Misprisions, punishable as in Treason, besides Loss of the Offender's Right Hand. *H. P. C. 131.*

Striking in the King's Presence, if Blood drawn, Loss of Right Hand, perpetual Imprisonment, Fine, and Ransom. *33 Hen. 8. cap. 12.*

Grand Juror discovering Persons indicted, or the Evidence; Any Person reproaching a Judge, or assaulting an Attorney for the King, or abusing a Juror for giving a Verdict against the Offender; Dissuading Witnesses from giving Evidence against a Felon: These are Misprisions punishable by Fine and Imprisonment. *C. P. C. cap. 64.*

To conceal, or procure the concealing a Felony, or compounding it, is Misprision of Felony. Of Felony.

Where the Owner of Goods stolen doth not know the Felon, but takes his Goods again, or other Amends not to prosecute, this is Theft-bote, and more than bare Misprision, because more than Concealment: But only taking his Goods again is no Offence. Theft-bote.

The Punishment is the same, in both these Cases, *viz.* Fine and Imprisonment. *H. P. C. 130.*

Justices of Peace cannot hear and determine these Offences, but they may receive Informations, and cause Offenders to be brought before them, take Examinations, and proceed as in other Criminal Offences triable in the General Court.

MURDER.

Self-Murder.

Murder is, the Killing any Person, within the Realm, upon Malice forethought, the Death ensuing within a Year and a Day after the Stroke given. *H. P. C. 43.* Definition of Murder.

In this Definition it's proper to consider;

1. What is a Killing.
2. The Person killed.
3. What is within the Realm.
4. Malice forethought.

1. Killing; this may be by several Means, without Weapon or Arms, as by Bruising, Crushing, Famishing, Poisoning, Smothering, Strangling, and by diverse other Ways, as laying a Sick Man in the Cold, hiding an Infant under Leaves, Trees, &c. to be destroyed by Vermin, Killing.

min, setting on a Dog, or other Beast accustomed to bite or do Mischief: These, and such like, if done with Intent to kill or hurt, it's Murder, but if without any such Intention, it's Manslaughter. 1 *Lev.* 145.

The Person.

2. The Person kill'd; must be a perfect Body Natural: For if a Woman take Poison to destroy a Child, whereof she is quick, it's not Murder, tho' a great Misprision. But if born alive, and the Child then dies of that Poison, it is Murder; advising to destroy it before born, afterwards it is born and destroyed, the Adviser accessory to the Murder. *H. P. C.* 54.

Within the Realm.

3. Within the Realm: If a Person is wounded, and dies, beyond Sea, the Offender cannot be punish'd here; wounding and dying upon the Sea, is triable before the Admiral of *England.* 22 *Hen. 8. cap.* 13.

The Killing shall have Relation to the Death, and not to the Stroke, and Death ensuing in another County, the Jury shall be of the Vicinage where the Party died. 4 *Rep.* 41.

Malice.

Malice forethought; this is Two-fold, viz, either Malice Express, or Implied.

Express.

Express Malice is where the Intent evidently appears malicious, from the Nature or Circumstances of the Fact; as where there has been a precedent Falling out, or Quarrel, or a Challenge and Time and Place appointed to fight, or where there is a lying in Wait privately to kill the Party, or to do Mischief. *Dalt.* 343.

So likewise, if a Man is resolved to do an unlawful Act, as to rob, or steal, and Death ensues, 'tis wilful Murder. *Dyer* 128.

So 'tis if a Man intends to kill, stab, shoot, or poison another, and the Death of a Third Person ensues. *Plow.* 473, 476.

Malice between Two; the Fight, tho' the Deceased gave the first Stroke, 'tis Murder in the other. 1 *Roll. Rep.* 360.

The Deceased challenged another, who refused to fight, but afterwards upon Importunity met, and killed him, Murder. 3 *Bulst.* 172.

Tho' Death is not intended, if the Act be deliberate and malicious, and Death ensues, 'tis Murder: The Keeper of a Park finding a Boy stealing Wood, tied him to a Horse's Tail, which in running away kill'd the Boy, this was Murder, because a deliberate Act. *Jones* 198.

If a Man assaults another with a dangerous Weapon, or Instrument of Mischief, without just Provocation, 'tis Express Malice, from the Nature of the Fact, which is Cruel, *Mawgridge's Case.*

Where

Where Express Malice doth not appear, yet Malice may be implied and collected several Ways, as, Implied.

1. From the Manner of the Fact.

2. From the Person slain.

3. From the Person killing.

1. From the Manner of the Fact; by wilful Poisoning; From of riding among a Company of People with an unruly Horse, the Fact. used to strike, and knowing him to be so; throwing Stones, on Purpose to do Mischief: These, and such like, are unlawful Acts, and shew that the Party intended to do Mischief, tho' not to any one Person in particular, and this implies Malice: For the Intention of doing Harm makes it Murder. *H. P. C.* 44.

If a Man corrects his Servant, a Father his Son, or a School-master his Scholar, tho' this is allowable, yet if done with such Instruments as may probably kill them, it's Murder; so 'tis if a Mother kicks and stamps on her Child's Belly: In these, and such like Cases, if Death ensues it's Murder, and the Law implies Malice in the Persons who are guilty. *Dalt.* 93.

2. In Respect of the Person kill'd; If a Magistrate, Sheriff, Constable, or other Officer, or Minister of Justice, be kill'd in the Execution of his Office, in keeping the Peace, or executing any lawful Authority or Warrant, it's Murder in the Person killing, and all who are present, aiding, or assisting, are principal Murderers: For in these Cases, the killing a Magistrate, or an Officer of Justice, or any of his Company, in the Execution of their Duty, is by the Law intended to be Malice forethought, because the Party maliciously opposes the Law, and the King's Magistrate, or Minister of Justice. *Dalt.* 344. Or Person kill'd.

But then they must know him to be an Officer, and he must shew his Warrant, if required; or he ought to command them, in the King's Name, to keep the Peace, and they must at their Peril obey him, whether they know him to be an Officer, or not; and he must be doing what is warrantable by the Law, otherwise 'tis but Manslaughter.

1 Cro. 132, 183.

All who are present and assisting a Person arrested, knowing of the Arrest, are principal Murderers if the Officer is killed. *Sid.* 160.

If several Persons come with Intent to rob, kill, or steal, or to commit any other unlawful Act, and One of them commits Murder, tho' not in View or Presence of the Rest, all are principal Murderers. *H. P. C.* 47.

Where one kills another without Provocation, or suddenly without any Quarrel, or privately, the Law implies Malice. *Dalt.* 343. By

By the Statute 1 *Jac.* 1. *cap.* 8. Stabbing, striking, or thrusting another, who hath not then any Weapon drawn, or hath not first stricken the other, if the Party stab'd, &c. dies within Six Months, the Offender shall suffer Death, as a wilful Murderer, without Benefit of Clergy.

If a Person wounded neglects his Cure, or lives disorderly, yet if he die of those Wounds, it's Murder, or Manslaughter, as the Case shall appear upon Evidence against the Offender, because the Wounds were the principal Cause of the Death. *Keel* 26.

Or Per-
son kil-
ling.

3. Malice may be collected out of Circumstances, shewing the Temper and Intent of the Person killing; as if one assaults another with Intention to rob, but being resisted, kills the Person he assaulted, it's Murder.

So it is if a Goaler, by hard Usage, kills his Prisoner; Or if an Officer executes Martial Law in Times of Peace. *Nels.* 416.

If a Man persuades another to kill himself, and is present when he doth it, he is a Murderer. *Dalt.* 344.

If Two Men quarrel, and one challenge the other to fight at a certain Time and Place, who accepts the Challenge, they meet, fight, and One is kill'd, it's Murder; for there being Time to allay the sudden Heat occasioned by the first Quarrel, the second Meeting must be in Malice: And it's not material who gave the Challenge, or strikes first, their Meeting appears deliberate and malicious, and tho' the Deceased gave the first Wound, it's Murder in the other who kill'd him. *H. P. C.* 48.

Where Malice is intended to One, but is executed upon the Person of another, tho' contrary to the Intention of the Person killing, it's Murder. *Dyer* 128.

Two fight upon Malice, and a Third Person coming to part them, is kill'd; Murder in both, unless proved which of them kill'd him. *Lamb.* 238.

A Man maliciously shoots, or lies in Wait, to kill One, but by Accident kills another undesignedly, Murder. *Plowd.* 474.

There is a great Variety of Cases in Law, distinguishing Murder from Manslaughter: Where the Fact or Circumstances appear malicious, deliberate, wilful, or barbarous and cruel, or where the Intention was to do an unlawful Act, and in the Execution of such illegal Purpose Death ensues, tho' not at first intended, it's Murder; But if the Fact be sudden, unexpected, and without any evil Intent, or malicious Purpose, it's Manslaughter. See *Tit. Homicide.*

I shall here mention only One remarkable Case, *viz.* Husband and Wife had lived together many Years, and became very poor; The Man told his Wife, that he was weary of Living, and that he would kill himself; the Woman replied, that she would die with him: Thereupon he desired her to buy Ratsbane, and they would put it into Ale, and drink it together; She bought it, put it into the Cup, and both drank. The Wife considering what she had done, took Sallad Oil, expel'd the Poison, and recovered, but the Man died. The Question was, Whether this was Murder in the Wife? But it was not resolved. *Moor* 754.

There are some Provocations so violent, that they mitigate the Crime; as where a Father rescues his Child from One that would beat or kill him; or where a Man finds another in the Act of Adultery with his Wife. *1 Vent.* 158. Provo-
cations.

But such a Provocation as extenuates the Killing from Murder to Manslaughter, must be where there is some actual Violence, or Striking: Words alone are no manner of Provocation, tho' never so opprobrious, nor any affronting Gestures, tho' never so reproachful. *3 Cro.* 779.

This Crime is aggravated by the Quality and Condition of the Person who commits it: It becomes Petty Treason in a Wife killing her Husband, or the Servant killing his Master or Mistress. *Dyer* 128, 332. Petty
Treason.

All who are present, aiding, and abetting, or ready to aid and abet another, in doing an unlawful Act, as to kill, rob, or beat a Man, or to commit a Riot, and One of them kills any Person, this is Murder in them All, tho' but Lookers on, or in another Room, or at some Distance and out of View: Yet all shall be accounted present, aiding, and abetting, and punishable as Principals, in the Second Degree. *H. P. C.* 51. Princi-
pals.

But then the Abettor must know the malicious Design, and the Killing must be deliberate, and in Pursuance of that unlawful Act.

He that commands, counsels, or procures another to kill a Third Person, who is kill'd, tho' not with such Weapon, nor in the Manner commanded, it's Murder in him that gave the Command, and he is Accessory before the Fact. Accesso-
ries.

If one command or procure another only to beat a Third Person, and Death ensues upon this Beating, it's Murder in the Person commanded, and he who gave the Command is Accessory, because Death ensued upon that unlawful Act of Beating. *Nels.* 418.

If a Man lays Poison to kill another, and a Third Person, by Misadventure takes it, and dies, it's Murder in him that

that laid it: But if *A.* procures *B.* to poison *C.* and he by Mistake poisons *D.* this is Murder in *B.* but *A.* is not Accessory to it. *H. P. C.* 52.

**The
Time.**

Death must ensue within a Year and a Day after the Wound, Hurt, or Poison given, otherwise it is not Murder. *Dalt.* 348.

But an Appeal of Death may be brought by the Wife or Heir of the Deceased, within a Year after the Death: For in this Case the Time shall relate to the Death, not to the Stroke. *See Tit. Appeals.*

**Conceal-
ment of
Bastards.
Laws of
Virginia,
pag. 256.**

By the Statute 21 *Jac.* 1. *cap.* 7. Enacted here, 9 *Annæ*, *cap.* 12. If any Woman, not being a Slave, shall be delivered of a Bastard, born alive, and endeavours by Drowning, private Burial, or any other Means to conceal the Death of such Child, she shall suffer Death, as for wilful Murder, except she proves, by One Witness at least, that the Child was born dead. By this Statute, the Concealment is the Crime, and therefore where it appears that the Birth was intended to be concealed, it's Murder, tho' the Child was not born alive: For the Statute doth not create a new Offence, but declares what shall be Evidence of the Murder. *Keel* 32.

**The Guilt
of Murder**

Wilful Murder is by the Law placed at the Head of all other Offences, as excelling in Malignity and Guilt all Crimes, except Treason: And by the Law of God, *no Recompence was to be taken for the Life of a Murderer, but he shall be put to Death; for the Land cannot be cleansed from the Blood shed therein, but by the Blood of him that shed it.* *Numb.* xxxv. 31, 35.

And by divers old Statutes, no Pardon ought to be granted by the King, in Case of Murder or other Homicide, save only where a Man kills another in his own Defence, or by Misfortune. *See Tit. Pardon.*

**Punish-
ment.**

This Offence is punish'd with the Death of the Offender; after Attainder his Blood is corrupted, and all his Fee Simple Lands, Goods, and Chattels, are forfeited to the King.

Process.

Upon Information of Murder, made before a Justice of Peace, he must forthwith issue his Warrant to apprehend the Offender, and the Aiders and Abettors, if known, or the Persons against whom reasonable Cause of Suspicion appears: If they are fled, Pursuit ought to be made by Hue and Cry, mentioning the Name of the Person murder'd, the Time and Place when and where, and by whom, together with a Description of their Persons, Apparel, &c. where necessary, and whether they are charged with the Fact upon Oath, or upon Suspicion. *See Title Felonies.*

When

When the Offenders, or any of them, are apprehended, and brought before a Magistrate, the Proceedings must be in the Method by Law directed for Felony. *See Tit. Criminals.*

Neither Principal, nor Accessories in Murder, are bailable before Justices of Peace.

If a Man has dangerously wounded or hurt another, so that his Life is despair'd of, the Offender ought to be apprehended, and brought before a Justice, and by him committed to Goal: But at the next County Court, if the Party wounded is not dead, upon Tender of sufficient Sureties, and Regard had to the Fact, and all Circumstances, the Justices may, in open Court, admit the Prisoner to Bail, if they see Cause, 'til the other be dead, but they must take very sufficient Sureties, and in a considerable Sum.

A Self-murderer, term'd in Law, *Felo de se*, is One who voluntarily kills or destroys himself, by Sword, Gun, Poison, Hanging, Drowning, or any other Means causing a violent and unnatural Death. Self-murder.

Four Things are required to make a Man guilty of this Offence,

1. He must be of the Age of Discretion.
2. *Compos Mentis*; that is, of sound Memory.
3. The Act must be voluntary.
4. Death within a Year and a Day after the Wound or Stroke given.

If a Man, not being of sound Memory, gives himself a mortal Wound, but before he dies he becomes *Compos Mentis*, and then dies of that Wound: In this Case he shall not be *Felo de se*, because the Death has Relation to the Original Act, and then he was not of sound Memory. *Co. 1 Rep.*

It is the Opinion of many learned Men, That One who is of sound Memory cannot be guilty of so much Malice to his own Person, as wilfully to kill himself: Because naturally the Intentions of Men aim at what is good for themselves, and conduces to their Preservation. And therefore it's to be presumed, Where a Man kills himself, he is not *Compos Mentis*.

Yet in some Cases a Man may be *Felo de se* involuntarily; if *A.* assault *B.* who falls down with his Sword drawn, and *A.* in Pursuit to kill him, by Haste falls upon the Sword, *A.* is *Felo de se*: But if *B.* were standing in his Defence, with his Sword drawn, *A.* runs upon it, and is killed, *A.* is not *Felo de se*. *H. P. C. 28.*

Conviction for this Offence, must be either,

1. Before

Conviction.

1. Before the Coroner, by the Oath of 12 Men, upon View of the Body, and this not Traversable ; or
2. If the Body cannot be found, before the Justices of Peace, in the County Court ; but this may be Traversed by Executor or Administrator of the Deceased.

Forfeiture.

If the Jury find, That the Deceased wilfully murder'd himself, he shall not have Christian Burial, and forfeits his Goods and Chattels, to the King : But no Corruption of Blood, or Forfeiture of Lands, nor shall the Wife lose her Dower, because it is no Attainder in Deed. *Leigh. Phil. Com.* 103, 104.

But if the Jury find, That he was *Non Compos Mentis*, that is, Not of sound Memory, at the Time of committing the Fact which occasioned his Death, no Forfeiture.

MUTE.

What a Person Mute.

IS One who will not plead, or put himself upon Trial of his Country, or Jury, when arraign'd upon an Indictment for any Criminal Cause : This is Two-fold,

1. When he answers not at all.
2. When he answers not directly, or impertinently, and not to the Purpose.

How punishable.

In the first Case, it shall be inquired, Whether he stand Mute by Malice, or by the Act of God ? If by this latter Cause, then the Felony shall be inquired of, and whether he be the same Person, in like Manner as if he had pleaded Not Guilty. *H. P. C.* 225.

Laws of Virginia, pag. 437.

But if he be Mute by Malice, or has cut out his own Tongue, or will not answer directly to the Indictment, he shall be hang'd. *Ibid.* 3 & 4 *Geo.* 2. *cap.* 4.

Yet this is to be understood where the Prisoner is arraign'd for any Capital Crime, and for which he may not have his Clergy : Otherwise, tho' he stand Mute, he shall have Clergy. *Moor* 550.

NUSANCE.

What it is.

IN the Common Law this signifies an Offence, or Thing done, whereby another Man is annoyed in his Free Lands or Tenements ; and also, the Assise or Writ lying for the same. *Fitz. H. Nat. Brev.* 183.

Nuances are of several Kinds, Common, General, or Special.

Erecting

Erecting a Gate cross any Highway, tho' easy to be opened, is a Common Nuisance, and any Man may break it, or cut it. *Cro. Car.* 185.

Making Dams, tho upon a Man's own Land, whereby Part of the Highway is overflowed; Laying Logs, Rubbish, or Carrion; or Dying-Pits in the Public Roads; these, and such like, are common Nuisances, punishable by Indictment, and finable by the Justices of County Finaable Courts. *Dalt.* 107.

Felling Trees, or making Fences. *See Tit. Highways.*

Special Nuisances are such as annoy some particular Persons only, and here the Party grieved may have Remedy by Action at Common Law, for his Damages: But no Action is maintainable for a Common Nuisance in the Highway, unless any particular Person receives a more particular Damage than any other thereby, and for this particular Injury he shall have a particular Action upon the Case. *Co. 5. Rep.*

Upon an Indictment for a Nuisance, the Court ought not to admit the Defendant to a small Fine, 'til the Nuisance is removed, and Affidavit thereof made, or the Removal certified by Two Justices.

Neither ought the Defendant to take any Exceptions to an Indictment, 'til he has pleaded to it. *Nels.* 426.

An Action upon the Case ought to be brought against One that makes a private Nuisance, and he ought not to be indicted for it: For Indictments are in the King's Name, and are presumed to be preferred for Offences done against the Public, and not for private Injuries. *Style* 418.

O A T H S.

Perjury. Subornation of Perjury.

AN Oath is an Affirmation, or Denial, of any Matter or Thing, before One or more who have Authority to administer the same, for the Advancement of Truth and Right, calling God to Witness, that the Testimony is true, or that the Party will perform and keep what he promises and swears; and it is called a Corporal Oath, because he touches the Scripture with his Hand. *Nels.* 426.

If an Oath be taken before a Magistrate who hath no Authority to administer it in that Cause, 'tis void.

The Forms of Oaths to be administered and taken, in any Case treated of in this Book, may be seen under their proper Titles.

For

Coro-
nation
Oath.
1 Gul. &
Mar.
cap. 6.

For the Reader's Satisfaction, I will here insert the Coronation Oath, taken by every King and Queen of *England*, on the Day of their Inauguration, and publicly administered to them in Presence of the Clergy, Nobility, and Gentry of the Realm, by the Arch-Bishop of *Canterbury*, or other Bishop appointed to officiate that Day, *viz.*

WILL You solemnly promise and swear, to govern the People of this Kingdom of England, and the Dominions thereto belonging, according to the Statutes in Parliament agreed on, and the Laws and Constitutions of the same?

King answers, I solemnly promise so to do.

WILL You, to your Power, cause Law and Justice in Mercy to be executed in all your Judgments?

K. I will.

WILL You, to the uttermost of your Power, maintain the Laws of God, the true Profession of the Gospel, and the Protestant Reformed Religion establish'd by Law? And will you preserve unto the Bishops and Clergy of this Realm, and to the Churches committed to their Charge, all such Rights and Privileges as by Law do or shall appertain unto them, or any of them?

K. All this I promise to do.

Then the King laying his Hand upon the Holy Gospels, says,

THE Things which I have here before promis'd, I will perform and keep.

So help me God.

By the Common Law, all Officers in Church or State, Judges, Magistrates, and all Officers of Justice, are bound to take an Oath for the due Execution of their respective Offices.

Wit-
nesses.

If a Peer of the Realm is Witness in a Cause between Party and Party, he must be sworn to give Evidence, as other Persons. *Style 434.*

A Witness for a Person indicted of Treason, Felony, or other Capital Offence, must not be examined upon his Oath, for the Prisoner against the King, but he may be examined

examined without being sworn: He is suffered to give his Testimony for the Prisoner against the King, without Oath, in Favour of Life. *Style 433.*

A Person produced as a Witness in any Civil Cause, may have Two Oaths administered to him, *viz.*

1. An Oath upon a *Voire dire*, which is, to speak the Truth, in answering such Questions as the Court, or Judge, shall ask him concerning himself or other Things which are not Evidence in the Cause: This is to discover whether the Person, to whom it's administered, has any Interest in the Cause, on either Side; if it appears, that for some By-respect he is not indifferent, he may not be a Witness, otherwise, and if he be found wholly disinterested, then

Voire dire.

2. To give his Testimony, as a Witness.

Onus Probandi is, where by Law, in some Special Cases, the Proof of the Matter in Issue is cast upon either Party, Plaintiff or Defendant. *Onus Probandi*

Perjury is, where a lawful Oath is administered to a Witness, by any who hath Authority so to do in that Cause wherein he is sworn, and the Person wilfully sweareth falsely, either by his own Act, or by Subornation of another, in a Thing material to the Issue, or Cause. *Co. 3. Inst. 165.* *Perjury.*

This Offence is punishable by Indictment, either at Common Law, or upon the Statute 5 *Eliz. cap. 9.*

A false Oath in any Court of Record, or in any Judicial Proceeding before a Judge of Record, tho' not in Court, or tho' not in any Thing material to the Issue, is Perjury at Common Law. 2 *Roll. Abr. 257, 258.*

It may be committed by Swearing to a false Answer, to a Bill in Chancery, or in Affidavits, or in Depositions upon Interrogatories before Commissioners. 4 *Leon. 105.*

If a Man swears the Truth, and doth not know it, he is guilty of Perjury. *Het. 97.*

Where the Offender is convicted upon an Indictment at Common Law, he shall be fined, and imprisoned: If upon the Statute, he forfeits 20 *l.* to the King and Party grieved, shall be imprisoned 6 Months without Bail, and disabled to be a Witness, 'til the Judgment is reversed; if he's not worth 20 *l.* he shall stand One Hour in the Pillory, with both his Ears nail'd. *Punishment.*

If any Person takes the Oath of a Freeholder, at an Election of Burgesses, and is convicted of Swearing falsely, he forfeits 10 *l.* to the King and Informer: The Party who *Laws of Virginia, pag. 129.*

who procures another to take such false Oath, liable to the like Penalty. 4 *Annæ*, cap. 2.

Laws of Virginia, Any Person convicted of a false Oath in obtaining Certificate for the Reward given upon Tar exported, or Hemp forfeits Four Times the Money obtained by such Oath to the Informer. 8 *Geo.* 1. cap. 1.

pag. 320. Upon Conviction of Fraud, in winning Money by Gaming, or Betting, the Offender forfeits Five Times the Value won, to the Informer, and shall be deemed infamous, and suffer Corporal Punishment, as for wilful Perjury. 1. *Geo.* 2. cap. 8.

Subor- Subornation of Perjury is, where one Person hires or nation. procures another wilfully to forswear himself.

This likewise is punishable by Indictment, at Common Law, or upon the Statute above-mentioned, which Enacts That whosoever shall procure another to commit corrupt Perjury in any Court of Record, or where the Matter shall be recorded, the Suborner being convicted, forfeits 40 *l.* to the King and Party grieved; and if not worth it, he shall be committed 6 Months without Bail, stand in the Pillory One Hour, and never more to be admitted as a Witness 'til Judgment is reverted.

Justices of Peace, in Court, but not otherwise, may hear and determine these Offences: The Offenders are bailable 'til Conviction.

ORDINARIES.

Tipling-Houses. Retailers.

Measures. **A**LL Persons retailing Liquors shall sell by seal'd Measures: Keepers of Ordinaries, or Houses of Entertainment shall provide themselves with Gallon, Pottle, Quart, Pint, and Half-Pint Measures, seal'd, on Penalty of 10 *s.* and Costs, to the Informer, leviable by Distress, upon Warrant from a Justice of the County where the Offender lives. 4 *Annæ*, cap. 40.

But Liquors may be sold in Bottles, if for no more than the Bottles contain.

License. No Person shall retail Liquors in his House, without License, on Penalty of 2000 *lb.* Tobacco.

Upon Petition for a License to keep Ordinary, the County Court is to consider the Conveniency of the Place where it's propos'd to be kept, and whether the Petitioner is of Ability to provide Travelers with Lodging, Diet, Provender, Pasturage, and other Necessaries; but must not grant License to poor Persons, under Pretence of Charity,

Charity, but to such only who are able to keep good Houses and a constant Supply of all necessary Entertainment: If the Court grants the Petition, the Party must give Bond and Security, in 10000 *lb.* Tobacco, payable to the King, convenient in the same County, with this Condition, *viz.*

TH E Condition, &c. Whereas the above-bound *A. B.* hath obtained License to keep an Ordinary at *_____* If therefore the said *A. B.* doth constantly find and provide in his said Ordinary, good, wholesome, and cleanly Lodging and Diet for Travelers, and Stablage, Fodder, and Provender, or Pasturage and Provender, as the Season shall require, for their Horses, for and during the Term of One Year, from the *_____* Day of *_____* and shall not suffer or permit any unlawful Gaming in his House; nor on the Sabbath Day suffer any Person to tippie and drink more than is necessary: Then this Obligation to be void, &c.

The License is to be sign'd by the first Justice in Commission, and to continue in Force One Year, and no longer. 35 s. to be paid to the Governor's Use.

If an Ordinary-keeper permits unlawful Gaming in his House, or suffers Tipling on *Sundays* or other Days appointed for Public Worship, or harbours or entertains Seamen, or Servants, Two Justices, whereof One is of the *Quorum*, upon their own View or Knowledge, or Information of One credible Witness, upon Oath, may suppress such Ordinary 'til the next Court, and certify the Cause to them: The Court may disable the Offender from keeping Ordinary any more, or may grant him new License, or restore him upon his former License, as they see Cause. Suppression.

Ordinary-keeper discharged by Two Justices, selling Liquors before he is restored by the Court, liable to the Penalties of Selling without License.

Warrant for suppressing an Ordinary.

To *A. B.* Constable.

King George *sc.* **W**Hereas it appears to us upon our own View and Knowledge, (a) That *C.* (a) Or, upon Information, by Oath made before us, *D. of &c.* doth suffer unlawful Gaming (b) in his House, in the Parish of *_____* within this County, being at this Time an Ordinary, or House of Public Entertainment, wherein they usually commit many Disorders, to the Disturbance

(b) Or, *turbance of the neighbouring People, for which Reasons as the* we E. F. and G. H. *Two of His Majesty's Justices of the Peace for the said County, One whereof is of the Quorum,* is, which *do judge it necessary to suppress the said Ordinary: There-* must be *fore we command you forthwith to go to the said C. D.* recited, *and to charge him from henceforth not to sell or retail any Liquors, until he shall be lawfully authorised thereto, by the Court of this County. And hereof fail not. Given under our Hands, this Tenth Day of October, 1735.*

Rates. Prices of Liquors and Entertainment shall be settled by each County Court, in *March, or April*, Annually, on Penalty of 5000*lb.* Tobacco: And if an Ordinary-keeper demands or takes more, he forfeits 10*s.* for each Offence, recoverable with Costs, before a Justice of Peace.

Table. A Table of the Rates, sign'd by the Clerk of the Court, shall be set up in the common Room of every Ordinary, and there kept the whole Year: Ordinary-keeper failing to do, forfeits 2000*lb.* Tobacco.

Fines. All the Fines laid by this Act, and not otherwise directed, shall be divided between the King and Informer; recoverable in any Court of Record.

Non-Payment. If any Person convicted of keeping a Tipling House, or retailing Liquors without Licence, does not pay the Fine, or give Security for its being paid next Crop, he shall receive 21 Lashes, on his bare Back, well laid on, at the common Whipping-post, in Lieu of the Fine; and then the Informer is not chargeable with any Fees accruing upon his Information.

Selling upon Credit. If an Ordinary-keeper, or Master of a Tipling House, credits a Sailor in actual Pay, for Drink, he shall lose the Money; and if he credits any other Person who is not Master of Two Servants, or visibly worth 50*l.* Sterling, for more than 300*lb.* Tobacco, in 1 Year, he loses the Overplus: If he takes Security, by Bill or Obligation from such Party credited, for more than 300 spent in One Year, tho' pretended to be for other Goods, he forfeits his Licence, and double the Sum by such Specialty secured to be paid, to the King and Informer, recoverable in any Court of Record.

Sailors, or Servants. And if he harbours, entertains, or sells Liquor to any Sailor, actually in Ship Pay, or to any Servant, without Licence of the Captain, or Master, he forfeits for every Offence 10*s.* to the Captain of the Ship, or Master of the Servant, recoverable with Costs before any Justice of the County where the Offender lives.

But this does not extend to Ordinary-keepers in *Williamsburg*; they may credit any Person, sitting the General Court or Assembly. If

If an Ordinary-keeper, or other Person, entertains, harbours, or conceals any Seaman, who is not then about his lawful Business, the Offender forfeits 500*lb.* Tobacco, to the Informer; Failing to pay, or give Security, 20 Lashes.

9 *Annæ*, cap. 3.

Whoever retails strong Liquors in House, Booth, Arbour, Stall, or in any other Place whatever, without License is liable to the Penalties imposed by 4 *Annæ*, cap. 40. But Merchants or Store-keepers may retail Liquors, not intended to be drank at the Place where sold. 9 *Annæ*, cap. 14.

If any Person whatever sells strong Liquors, by Retail, upon Credit, more than 20*s.* in One Year to One Person, he shall not recover any Money or Tobacco for such Liquors: And if any Warrant, Summons, Petition, or Writ, be brought for Liquors so sold, the Process shall be dismissed, and the Defendant shall have double Costs.

But Merchants, Store-keepers, and Ordinary-keepers in *Williamsburg*, may sell, or give Credit, as before making this Act.

Laws of
Virginia,
pag. 241.

pag. 269.

8 *Geo.* 2.
cap. 14.

P A R D O N.

IS the Forgiveness of any Criminal Offence, committed against the King: And it is either,

1. Of Course; as upon Conviction of Homicide by Misfortune, or in Self-Defence, &c. See *Tit. Homicide*. In these Cases it is by the Law allow'd, without Pleading.
2. Of Grace, General or Special; and these must be pleaded by the Party who obtains Benefit thereby. This is a Royal Prerogative, vested in the Crown, grantable by the King, in such Capital Cases and to such Persons as he thinks fit; and it is either by Act of Parliament, or under the Great Seal. *Co. Lit.* 391.

He who claims the Benefit of a General Pardon, ought to plead the Statute by which such Pardon was granted, that the Court may judge whether his Offence be pardoned or not; and he must shew, that he is comprised in the Pardon, and not excepted out of it.

A Special Pardon must also be pleaded in Court; the Party who pleads it, being upon his Knees all the Time his Pardon is reading, at the Middle of the Bar. *Style*

476,

General.

Special.

One convicted of Manslaughter, must sue out his Pardon, or else be burnt in the Hand : For Manslaughter is Felony, for which he is by Law to be burnt in the Hand, except he be pardoned. *Lut.* 1009.

The Ef-
fects.

A Pardon not only takes away the Penalty, or Punishment, but likewise the Guilt ; so that a Man is restored to his Credit, and enabled to be a Witness, tho' he has been convicted of Felony : But it seems otherwise upon a Conviction for Perjury, because it would be an Injury to all People in General, to make them subject to the Testimony of such a Person. *1 Vent.* 349.

A Conviction of Felony, and burnt in the Hand, is in the Nature of a Pardon: For by this Punishment he is clear'd of the Offence, and becomes a lawful Witness. *Raym.* 370.

By the Statute 2 & 3 *Annæ*, As soon as a Judge receives a Warrant under the Sign Manual of the King, for a Pardon to a Person convicted of any Capital Offence, but reprieved from Execution, as One thought fit to serve the King in his Army, or Navy, the Judge may direct his Warrant to the Sheriff, or Goaler, requiring the immediate Delivery of such Prisoner out of Custody, to such Officer under whom he shall be listed.

Deut.
xvii. 6.

It has been formerly held, that the King could not pardon any Person convicted of wilful Murder ; and Recourse has been had to the *Mosaical Law*, which says, *Thou shalt take no Satisfaction for the Life of a Murderer, who is Guilty of Death, he shall surely be put to Death* : And we find a positive Law given by God to *Noah*, about 796 Years before the *Mosaical Law* : *He who sheds Blood, by Man shall his Blood be shed*. But latter Times have inclined to the better Opinion ; viz. that this and other Penal Laws given to the *Hebrews* were obligatory to them only, and not to the *Gentiles* before the Time of our Saviour, nor to *Christians* since ; and we find Instances of Dispensations from the Strictness of these Laws, even among the *Hebrews* themselves, to whom they were given not as Natural, but Judicial Laws, and therefore cannot be taken to be universally Binding ; and *Christians* never punish'd Offenders in several other Cases with the Penalties prescribed by those Laws : As where the Stealer of an Ox was to restore Five Oxen, and so in many other Cases.

It may often happen, that upon Consideration of the Person, Time, and Circumstances, a Pardon may be more effectual to attain the good Ends intended by Punishment, than a rigorous Execution might have done, viz. the Reformation of the Offender, as well as a living Example of

of Justice in Mercy: And in these Cases the King is Supreme Judge.

PICKPOCKET.

THIS is call'd Larceny, or Stealing from the Person, without putting him in Fear, for it is done clandestinely, and secretly, without his Knowledge; and it is either,

1. Capital, if the Theft be of more than the Value of 12 *d*; and the Offender shall have Judgment of Death, without Benefit of Clergy. 8 *Eliz. cap.* 4. and therefore notailable: But to make this Crime Capital, Four Things are required,
 1. It must be done clandestinely and secretly.
 2. The Thief must have actual Possession of the Things taken or stolen.
 3. It must be without putting in Fear.
 4. Above the Value of 12 *d*.
2. If the Thing stolen be under the Value of 12 *d*. then it's Petty Larceny, and the Offender shall be whip'd, and forfeits his Goods. *H. P. C.* 60.

In this Case Bail is Discretionary.

Justices of Peace are to take Cognisance of these Offences, and must procede therein as by Law directed in other Felonies.

Warrant against a Pickpocket.

To *A. B.* Constable.

Lancaster *sc.* **W**Hereas *C. D.* of &c. has made Complaint before me *E. F. Gent.* a Justice of Peace of the said County, That on the Morning of this present Day his Pocket was pick'd secretly and clandestinely, without his Knowledge, of certain Monies of the Value of Twenty Shillings of the Current Coin of this Dominion, and One Watch in Two Silver Cases, of the Value of Five Pounds, the Goods and Monies of the said *C. D.* and that he hath sufficient Cause to suspect *H. I.* of &c. to have feloniously taken the same: Therefore, in His Majesty's Name, I hereby command you forthwith to apprehend the said *H. I.* and to bring him before me, or some other Justice of this County, to answer the Premises, and to be examined concerning the same. Given under my Hand and Seal, this, &c.

Warrant upon Suspicion.

Or,

Upon
Informa-
tion.(a) Ex-
press the
Particu-
lars tak-
en.

W Hereas C. D. of, &c. has this Day made Oath be-
fore me E. F. &c. and thereby charged H. I. of
&c. with the Felonious Taking secretly and clandestinely
from him the said C. D. and without his Knowledge,
on the Day of
certain Monies of the Value of Twenty Shillings, of the
Current Coin of this Dominion, &c. (a) the Goods and
Monies of the said C. D. Therefore, &c. as before, unto
----- County, to be examined concerning the Premisses,
with which he is charged. And hereof fail not. Given,
&c.

P I L L O R Y.

Stocks. Whipping.

Pillory. *T* HIS is an infamous Punishment, introduced in
England in the Saxon Times, for Offences not Ca-
pital, but of a base or scandalous Nature, as Forgery,
Perjury, Cheating, and the like; and it has been since ap-
pointed by several Statutes, and Acts of Assembly.

Stocks. The Stocks was a Punishment anciently inflicted for
Petty Offences, and on disorderly or refractory Persons:
It's likewise a Place wherein the Constable may confine
Delinquents, 'til he can procure Assistance to carry them
before a Magistrate; but the Constable cannot commit
any Person to Goal, without lawful Warrant.

Escape out of the Stocks is Breach of Prison.

**Whip-
ping.** Whipping is by our Law appointed in divers Cases, as a
Punishment for Breach of Penal Laws, where the Offender
refuses to pay the Fine; as likewise for divers Offences
committed by Servants, or by Negros, Mulattos, and In-
dians, Free, or Slaves.

Justices of Peace should be well advised before they give
Judgment in any of these Cases; and the best Way is, to
follow the Acts of Assembly.

P I R A C Y.

T H O' this is an Offence Capital, whereof the Common
Law does not take Notice, and therefore not within
the Cognisance of Justices of Peace; yet I think it not
impertinent to inform the Reader in the Nature of the
Crime, as well as the Method of Punishment.

It is where Felony is committed by any of the King's
Subjects, not upon the Land, or within the Realm, but
upon

upon the Seas : It's not taken Notice of by the Common Law, and therefore triable by the Rules of the Civil Law, or General Law of Nations ; yet by the Statute 25 *H.* 8. *cap.* 15. it shall be tried according to the Course of the Common Law.

By the Statute 11 & 12 *W.* 3. 'tis Enacted, That all Piracies, Felonies, and Robberies, committed in any Place where the Admiral hath Jurisdiction, may be tried, at Sea, or upon Land, by a Court of Vice-Admiralty, appointed by Commission under the Great-Seal of *England*, or the Seal of the Admiralty.

Method
of Trial.

Commissioners so appointed may commit Offenders to Prison, by Warrant under their Hands and Seals, upon Information made before them, upon Oath, which they may administer.

The Court must consist of 7 Persons ; If so many Commissioners cannot be had, then Three of them, whereof a Governor, Lieutenant-Governor, or Councillor shall be One, may assemble Merchants, Factors, or Planters ; Captains, Lieutenants, or Warrant-Officers of Ships of War ; or Captains, Masters, or Mates, of Merchant Ships, to make up the Number.

Court
of Vice-
Admiral-
ty.

These Persons may issue Warrants to bring in the Party accused ; may summon Witnesses, and examine them upon Oath.

When the Court is first assembled, the Commission shall be read, and the Court called, and proclaimed : Then the President first takes his Oath, and afterwards administers the same to the Rest of the Court.

Then the Prisoner shall appear, and the Clerk reads the Articles exhibited against him, wherein the particular Facts of Piracy, when, where, in what Manner, &c. shall be expressed : The Witnesses for and against the Prisoner are examined, upon Oath, and Judgment shall be given by Plurality of Votes, and Execution awarded thereupon, according to the Civil Law.

The Person convicted loses his Life, Lands, Goods, and Chattels, as if attainted at Common Law ; (tho' there can be no Corruption of Blood, because it's not Felony by that Law,) and he shall be executed, by Warrant directed to a Provost-Marshal, for that Purpose appointed by the President and major Part of the Court.

Judg-
ment.

The Court appoints their Clerk, who is to enter the Proceedings, which, together with Copies of the Articles exhibited against the Prisoner, must be transmitted to the Admiralty in *England*.

By

Species of Piracy. By this Act, at first made Temporal, but continued since, if any of the King's Subjects, by Commission from any Foreign Prince, or State, commit Acts of Hostility against any other of his Subjects, it's Piracy.

If a Master of a Ship, Seaman, or Mariner, betrays his Trust, turns Pirate, runs away with Ship, Goods, or Merchandise, or yields them to a Pirate; or brings Messages from a Pirate, to corrupt or seduce any Commander or Mariner to yield, or run away with Ship or Goods; or if any Seaman or Mariner lays violent Hands on his Commander or Master, to hinder him from defending his Ship; or confines the Master; or endeavours to make a Revolt or Mutiny in the Ship: The Offender in any of these Cases shall be adjudged and punish'd as a Pirate.

Accessories.

He that sets forth or fits out a Pirate Vessel, or doth aid, assist, maintain, procure, command, counsel or advise any Person to commit Piracy, who doth it accordingly, is accessory to the Piracy; so is the Receiver or Concealer of a Pirate, knowing him to be so: Such Accessories are triable in like Manner as Principals, and upon Conviction shall be executed.

No Clergy.

Clergy is not to be allowed upon any Conviction for Piracy, because it is not an Offence punishable at Common Law, but by the Civil Law, which doth not allow Clergy in any Case. *Moor. 756. Telv. 155.*

P O O R.

Legal Poor.

THE legal Poor of this Colony are indigent Persons, disabled by Age, Sickness, or Corporal Infirmities, and incapable of maintaining themselves by their own Labour, and therefore are provided for and supported at the Charge of the Parish wherein they have gain'd a legal Settlement: This is levied annually, by the Vestry, in the Parish Levy.

Beggars.

Common Beggars are seldom seen in our Streets, or at our Doors: All able bodied Persons found wandring, begging, loitering, and neglecting to labour; those who leave their Families without Means of Subsistence; and all idle, vagrant, or dissolute Persons, without Employment or honest Labour, are deemed Rogues and Vagabonds, and to be treated as such. *See Tit. Vagrants.*

Settlement.

Removal.

A legal Settlement is, where a Person has been actually resident in any Parish, One whole Year. *1 Geo. 2. cap. 7.*
Virginia Laws, If a poor Person leaves his own Parish, and comes into another, to which he is likely to become chargeable, upon
pag. 396. Complaint made by the Churchwardens to a Justice of Peace,

Peace, he may, by his Warrant, cause such Poor to be removed to the Parish where he was last legally settled: But if by Reason of Sickneſs, or Disability of the Perſon to endure Travel without Danger of Life, ſuch Removal cannot be made forthwith, the Churchwardens of the Pariſh where the Sick Perſon ſhall be, muſt provide Remedies and neceſſary Maintenance for him, 'til recovered, at the Charge of their Pariſh, and remove him as ſoon as it may be done without Danger.

But the Pariſh where ſuch Poor was laſt legally ſettled, ſhall repay all Charges of Cure, Maintenance, and Removal.

Churchwardens refuſing to receive Perſons ſo removed, or to provide for them, forfeit 20 l. each, with Coſts of Suit, and an Attorneys Fee, recoverable in any Court of Record, and to be divided between the King, for the Poor of that Pariſh whence the Removal was order'd, and the Informer, or Proſecutor.

If the Veſtry refuſes to repay all Charges of Maintenance and Cure, being proved before the Court of that County whence the Removal was, upon Petition exhibited by the Churchwardens to the Court of that County wherein the refuſing Veſtrymen live, ſuch Charges may be aſſeſſed upon them, by Order of that Court; leviable by the Sheriff, with Coſts of the Petition and Judgment, by Diſtreſs upon the Eſtate of the Veſtrymen refuſing: Sheriff muſt pay the ſame to the Churchwardens of the Pariſh grieved, for the Uſe of their Pariſh.

Warrant, for Removal of a Poor Perſon.

Northumber- } To the Churchwardens of the Pariſh
land &c. } of A. in the ſaid County, and to the
 } Churchwardens of the Pariſh of B. in
 } the County of Stafford; and to each
 } of them.

W Hereas upon Complaint of the Churchwardens of the Pariſh of A. aforeſaid, made before me C. D. Gent. a Juſtice of Peace of the ſaid County of Northumberland, That E. F. a poor Perſon, came lately into the ſaid Pariſh of A. not having gain'd a legal Settlement therein, and is likely to become chargeable to the ſaid Pariſh; And forasmuch as upon Examination thereof, and of the ſaid E. F. upon Oath, it appears to me that the ſaid Complaint is true, and that the laſt legal Settlement of the ſaid E. F. was in the Pariſh of B. and County of Stafford: Therefore I hereby require you the Church-wardens

wardens of the Parish of A. aforesaid, to cause the said E. F. to be removed from your Parish, as soon as conveniently may be, and him to convey to the Parish of B. in the County of Stafford, and deliver to the Churchwardens thereof: And I also require you the Churchwardens of the said Parish of B. to receive and provide for the said E. F. as an Inhabitant of your Parish, and according to Law. Given, &c.

Poor Children If any Parents, by their own idle or dissolute Lives, or by neglecting to educate their Children, or to instruct them in Christian Principles, are judged by the County Court to be incapable of supporting and bringing up their Children, upon Certificate thereof, granted by the Court, the Churchwardens of that Parish wherein the Children live, may bind them out to Service, or Apprentices, as if they were poor Orphans.

Orphans. Orphan Children of poor Parents shall be bound Apprentices, by Direction of the County Court, to some Handicraft Trade, or Mariner, 'til 21 Years of Age: The Master shall cause them to be taught to read, and write, and shall teach them his Trade, and at the Expiration of their Time of Service, shall pay them the like Allowance as is by Law directed to be given to Servants by Indenture, or Custom. 4 *Annæ*, cap. 53. See *Tit. Servants*.

If the Master misuses his Apprentice, or neglects to teach him his Trade, or to read and write, the Court may remove the Apprentice to another Master.

POSSE COMITATUS.

What it is. IS the Power of the County, consisting of all Male Persons therein, whether Freemen, or Servants, above the Age of 15 Years, and able to travel. *Lamb.* 309.

But Clergy-men, and sick, lame, or impotent Persons are excepted.

Who may raise it. Every Justice of Peace, upon just Cause, may raise this Power, or such a Number as in his Discretion shall appear necessary, and may likewise direct after what Manner they shall be arm'd: The Persons whose Assistance he shall require, or command, in the King's Name, must obey, upon Pain of Imprisonment and Fine to the King. *Dalt.* 453.

The Justice. One Justice may take the Power of his County to suppress Rioters, without staying for the Coming of another Justice, or the Sheriff.

So likewise in Forcible Entry or Detainer, and Force found either by the Justices own View, or by Inquisition taken before him. 14 *H. 7. cap. 8.*

And also to pursue and apprehend Traitors, Murderers, Robbers, and other Felons; All Breakers or Disturbers of the Peace, and all Persons against whom Surety of the Peace shall be granted. *Dalt. 454.*

The Sheriff, or Under-Sheriff, may, by the Common Law, take the Power of his County to execute any of the King's Writs, or Process, because it is the King's Command. *West 1. 17. & W. 3. 39.*

Sheriff.

So he may to execute a Justice's Precept, or Warrant, to him directed.

And without any Writ or Precept, the Sheriff, by Virtue of his Office as Conservator of the Peace, may raise the Power of his County to preserve the Peace if broken in his View or Presence, and to apprehend the Breakers, and all Rioters, Traitors, and Felons. *Dalt. 454.*

A Constable may take the Aid of his Neighbours, or other Persons present, to apprehend a Felon, or One who ble. has dangerously hurt another.

Consta-

As also to execute a Justice's Warrant; or to keep the Peace if broken or disturb'd in his Presence, and to apprehend the Offenders, and carry them before a Justice.

By the Common Law, every Judge of Record, Sheriff, Coroner, Constable, or other Officer to whose Office belongs the Conservation of the Peace, may command and take the Aid and Force of Others to pacify Riots, or Affrays, and to arrest all such who in their Presence, and within their Jurisdiction, shall endeavour to break the Peace by Word or Deed. 28 *Ed. 3. cap. 8.*

Officers.

P O R K.

Beef. Pitch. Tar.

ALL Pork and Beef Barrels must gauge 31½ Gallons, and contain 220 *l.* nett Meat. 4 *Annæ, cap. 6.*

Tar and Pitch Barrels must be of the same Gauge, fill'd with clean Tar, or true made Pitch, without Trash.

If a Cooper, or any other Person, sets up Barrels of less Gauge, for any of these Commodities, he forfeits 5 *l.* per Barrel.

The Party who packs Pork or Beef, for Sale, in Cask of less Contents, or does not put in Meat sufficient to hold out the Quantity required by this Act, forfeits 5 *l.* per Barrel; and for Pitch, or Tar, fill'd into Cask of less Gauge,

Gauge
and Con-
tents.
Laws of
Virginia,
pag. 137.
Forfei-
tures.

Gauge, or mix'd with Trash, so that it's other than clean Tar, or not true made Pitch, 10 s. *per* Tar Barrel, and 20 s. *per* Pitch Barrel, besides Forfeiture of the Tar and Pitch.

The like Penalties upon Exporters, Shippers, Barterers, and Sellers of any of these Commodities, found contrary to this Act.

If imported from *Carolina*, or elsewhere, and exposed to Sale in this Dominion, the Seller liable to all the Forfeitures, in case the Goods are defective in Quantity or Quality.

The Penalties are to be divided between the King and Informer, recoverable in any Court of Record.

P R Æ M I U M

Signifies Reward; and is properly applicable to such Allowances as are given by Public Authority, for encouraging certain Commodities, or Manufactures, the Exportation whereof may tend to the Increase of Trade and Navigation.

Laws of *Virginia*, Of this Nature are the Rewards for Tar, and Hemp, given by Act of Assembly. 8 Geo. 1. cap. 1. viz.

pag. 319. For Tar exported, *per* Barrel, - - - - - 2 s.
Hemp, - - - *per* Hundred, - - - 4 s.

Tar. The Tar must be made from green Trees fit to bark, the Bark of each Tree stript about 8 Foot from the Root, except a Slip 4 Inches broad left on one Side, and the Tree so bark'd must stand one Year, or longer, before it's cut down for making Tar.

The Person claiming the *Premium* must deliver to a Justice of the County wherein the Tar is made, a Note in Writing, specifying the Marks and Numbers of the Barrels, and make Oath, *That the same is good and merchantable, and according to the Directions of this Act, and that each Barrel is of the full Gauge, and doth contain Thirty Two Gallons of Nett Tar; and that it was made on his Land or Plantation in the same County; (or at what Place therein, which must be particularly mentioned.)* This is to be certified by the Justice, and upon the Exporters producing such Certificate to the Naval Officer, or Collector, of the District where the Tar is shipp'd off, he certifies the same to the Governor, who thereupon grants his Warrant to the Treasurer, for paying the Reward.

Hemp. Hemp may be weighed by any Justice, or Constable of the County where it's made, upon Request of the Owner, pag. 458. who must take Certificate of the Quantity weigh'd, which must

must be also certified to the County Court; and the Party claiming the Reward, must make Oath in open Court, to the true Quantity, and that the same is water-rotted, bright, and clean, and made upon his Plantation, in the same County, (*if upon some other, the Place where,*) and that the same has been duly weigh'd: This must be certified by the Clerk of the County, and his Certificate produced to the Governor, for his Warrant on the Treasurer.

The Owner must pay 5 s. per Ton for weighing.

Certificate for Tar, upon the Note sworn to.

Northampton sc. **A.** B. of the said County, Planter, came this Day before me C. D. Gent. a Justice of Peace of the same County, and made Oath, That One Hundred Barrels of Tar, mark'd and number'd as is herein before specified, are good and merchantable, and made according to Law; and that each Barrel thereof is of the full Gauge and doth contain Thirty Two Gallons of nett Tar; and that the same was made on his Land in this County. Certified under my Hand, this 18 November, 1735.

If any Person swears falsely, and thereby obtains Certificate for any of the Rewards given by this Act, he forfeits Four Times the Money obtain'd thereby, to the Informer, recoverable in any Court of Record. 8 Geo. 1. cap. 1.

Penalty
for
swearing
a false
Oath.

Notwithstanding these are no inconsiderable Encouragements, and were given in Anno 1722, yet we have hitherto seen few Instances of Claims, either for Tar or Hemp: I shall not here examine the Reasons which might be assign'd for the Backwardness of our People, and the Difficulty of persuading any of them to forsake their darling Plant, Tobacco; altho' it's now visible to the meanest Capacity among them, that unless the Quantity is greatly lessened, and it's future Increase effectually restrained and prevented, both here, and in Maryland, the Value of this Commodity must inevitably sink, too low to yield a Support to the Planter and his Family: Because the continual Increase of the Number of Hands employed in making Tobacco, both in this Colony, and among our Neighbours of Maryland, must necessarily produce so great an Augmentation of the Annual Exports, as will by far exceed the Demand and Consumption of the rest of the World.

Laws of
Virginia,
pag. 320.

But it's to be lamented, that this public spirited Design of our Government, to encourage the Exportation of Naval Stores from hence, which would have been favoured and

and supported by the Parliament of *Great-Britain*, and proved of infinite Advantage to our selves, yet has not hitherto met with the desired Success : This may be imputed to the Manner and Method of settling the intended Rewards, which seem not well adapted to the Circumstances and Practice of our People. The Sums intended and appropriated for this Purpose, were 4000 *l.* for Hemp, and 1200 *l.* for Tar; these might have been sufficient, if properly regulated and applied, to establish a Manufactory and Staple of these Commodities, such as, before this Time, would have supported it self, without needing farther Encouragements from the Public. This is a Subject worthy the Care of the Legislature of *Virginia*, and to them I recommend it as well deserving their Consideration.

Imported Money.

There are also other Encouragements given by Law, *viz.* 15 *per Cent* Discount allowed in Payment of the Duties upon Liquors, and Slaves, if discharged in Money imported. See *Tit. Customs.*

200 *lb.* Tobacco *per* Head, for Wolves kill'd in this Dominion. See *Wolves.*

P R E M U N I R E.

The Offence.

IS either the Writ so called, or the Offence for which such Writ is granted. *Co. Lit. l. 2. f. 199.*

If a Man brought Suit in any Spiritual Court, for a Temporal Matter cognizable in the Courts of Common Law, he incurr'd a Premunire. 3 *Inst.* 218.

And by some Statutes, this Offence is laid upon other Persons, *viz.*

Those who deny the King's Supremacy. 2d Offence. 1 *El. cap. 1.*

Those who affirm the Authority of the Pope, or refuse to take the Oath of Supremacy. 3 *El. cap. 1.*

Those who speak seditiously of the Inheritance of the Crown, or affirm the King to be an Heretick. 13 *El. cap. 1.*

Judgment.

The Judgment for this Offence is,

That he be out of the King's Protection; That he forfeit his Lands, Goods, and Chattels, to the King, and his Body to remain in Prison, during the King's Pleasure. 16 *R. 2. cap. 5.*

But this Offence has rarely happened, of late Years especially, so that this Judgment is now almost antiquated.

It was formerly so odious, that a Person attainted of Premunire might be killed by any One, without Punishment ; but by the Statute 5 *El. cap. 1.* 'tis made Felony to kill such a Person.

P R O C E S S.

THIS in its general Signification comprehends all the Proceedings, Original, or Judicial, in any Matter Criminal or Civil, depending in the King's Courts, or before his Judges : Sometimes the Original Writ only, by which a Man is call'd to answer in Court, is term'd the Process, because it is the Beginning, by which the Rest of the Business is directed : But usually it is understood to mean the Proceedings after an Indictment is found, or the Party otherwise convicted : And it is always in the Name of the King, directed to the Sheriff. *F. H. N. B. & Br. Abrid.*

It differs from a Precept or Warrant issued by a Justice of Peace ; for this is only to cause the Party to be attached, or apprehended, and to be examined concerning the Premises, before any Indictment or Conviction : And this may be made either in the Name of the King, or of the Justice. *Co. 8. Rep.*

All legal Proceedings ought to take Commencement either by Original Writ, Indictment, or Information. *Style 478.*

Upon Warrants issued by a Justice of Peace, for Debt, Trespass, Breach of Penal Laws, or any other Matter legally cognizable and determinable before him, after Conviction of the Offender, either by Confession or Proof, he may issue subsequent Process of Execution, or Distress, as by Law, in such respective Case directed : This ought to be in the King's Name, witnessed by the Justice.

In all Cases, where by Law Power is given to Justices of Peace, out of Sessions, to hear and determine Complaints or Offences, they may grant their Warrant against the Party, to appear before them, and thereupon may proceed to hear and determine the Complaint or Offence, without any Indictment, or other Process. *Dalt. 529.*

P R O C L A M A T I O N.

IS a public Notice given by the King's Authority, of any Matter whereof He thinks fit to advertise his Subjects ; and all Persons must, at their Peril, obey and execute the King's lawful Commands, so to them notified.

Against If Slaves run away, lie out, lurking and doing Mis-
 outlying chief, Two Justices of the County wherein they are sup-
 Slaves. posed to lie hid, may issue this or the like Proclamation,
Virginia viz.
 Laws,

pag. 227. Prince William *sc.* *B*Y A. B. and C. D. Gent. Two
 of His Majesty's Justices of the
 Peace, of the said County; One of them being of the
 Quorum.

A Proclamation.

W Hereas We have been credibly inform'd, That One
 Negro Man Slave, named F. belonging to G. H. of
 (c) Or, the said County, Planter, (c) is a Runaway, now lying
 whose hid, lurking, and doing Mischief within this County:
 Name & Therefore, in His Majesty's Name, We hereby require
 Owner the said Slave forthwith to surrender himself, or to re-
 are un- turn home to his Master: And We also require the
 known. Sheriff of the County aforesaid to make diligent Search,
 and to apprehend the said Slave, and him to deliver to his
 Master, or to commit to the Goal of this County, there
 to remain until he shall be claimed by his Owner, or
 otherwise discharged as the Law directs: And the said
 Sheriff is hereby impowered to raise and take with him
 such Power of his County as he shall think fit and ne-
 cessary for the effectual apprehending the said outlying
 Slave: And We further Declare, if the said Slave shall
 not surrender himself, nor return home, immediately af-
 ter due Publication of these Presents, That then any
 Person whatsoever may lawfully kill and destroy him,
 without being liable to any Penalty for so doing. And
 hereof all Persons are required to take due Notice. Given
 under Our Hands and Seals, this 20th Day of September,
 1735, and in the Ninth Year of the Reign of Our So-
 vereign Lord King George the Second.

God Save the King.

This must be publish'd on a Sunday, at the Door of
 every Church and Chapel in the County, by the Clerk
 or Reader, immediately after Divine Service.

If such Slaves are taken, the County Court, upon the
 Owner's Request, may order them exemplary Punish-
 ment, by Dismembring, or any Other Severity, not touch-
 ing Life, to terrify Others from the like Practices.

But if kill'd, the Owner shall be paid by the Public,
 as if such Slave had been condemn'd and executed by le-
 gal Sentence. 4 Anna, cap. 49. See Tit. Slaves.

Q U A-

Q U A R E N T I N E.

BY this is usually understood, a Space of Forty Days, required of Ships and Persons coming from Places infected with the Plague, or an infectious pestilential Distemper; the Ships must lie at certain distant Places, appointed for that Purpose, and all Persons in them must continue on Board, without being permitted to land, under any Pretence whatever, 'til their limited Time is expired, which is commonly called performing Quarentine.

It also signifies a Benefit allowed by the Law of *England* to the Widow of every Man dying possess'd of Land of Freehold or Inheritance, whereby she may challenge to continue in his Capital Messuage, or Chief Mansion-House, the Space of Forty Days after his Decease, within which Time Dower shall be assign'd her; and if the Heir, or any other, attempt to eject her, she may have the Writ, *de Quarentina habenda*: But if she marries within the Time, she loses her Privilege. *Reg. Orig.* 175. *Co. Lit.* 32, 34.

All Ships and Vessels coming into this Dominion, from Places infected with the Plague, shall keep Quarentine, in such Place and Manner, and for such Time, as shall be directed by Proclamation, issued by the Governor, with Advice of Council. 8 *Geo.* 1. *cap.* 2. Laws of
Virginia,
pag. 320.

None of the Persons, or Goods on Board, shall be landed, or go into any other Vessel, or Boat: Nor shall any Person go on Board, without License from the Persons publicly authorised to see Quarentine perform'd. But the Ships, Persons, and Goods, and all Ships, Vessels, Boats, and Persons, receiving Goods or Persons, under Quarentine, shall be subject to the Rules and Orders notified by the Governor's Proclamation. Method
and Rules
of Qua-
rentine.

If the Commander, or Master of any Vessel under Quarentine, quits such Vessel himself, by going a-shore, or into any other Vessel or Boat; or if he suffers any of his Passengers, or Sailors, so to do, without legal License, and before the Quarentine is discharged, the Ship, with her Tackle and Furniture, is forfeited to the King. Penal-
ties for
Breach;

The Person who quits the Ship may be compelled, by the proper Officers appointed to see Quarentine performed, to return on Board; and after Quarentine expired, upon Conviction by Oath of One credible Witness, before One or more Justices of Peace living near the Place where

the Offence was committed, he shall be fined by the Justices, in any Sum not exceeding 20 *l.* which shall be paid down to the Justice or Justices before whom such Conviction shall be; and they may reward the Informer according to their Discretion, but not with more than One third Part of the Forfeiture, and the Remainder, after Charges deducted, must be by them paid to the Churchwardens of their Parish, for the Use of the Poor: If the Forfeiture is not paid down, the Justices may commit the Offender to the County Goal, for any Time not exceeding One Month.

If any Person goes on Board a Ship under Quarentine without License of the proper Officers, he shall not be suffer'd to return, but compel'd to stay there 'til the Ship is releas'd; and the Master shall keep and maintain him on Board.

The Persons appointed to see Quarentine perform'd may seize and detain all Boats and Skiffs, belonging to Vessels under Quarentine, 'til they have perform'd it.

If an Officer so appointed permits any Person to quit such Vessel, he forfeits One Hundred Pounds to the King and Informer.

Watches shall be kept Day and Night, in the adjacent Parishes, to prevent any Person's landing from, or going on Board such Ships, without legal License.

Dis-
charge,

After Quarentine performed, and Oath made by the Master and Two other Persons belonging to the Vessel before any Officer of the Customs in the Port where such Vessel lies, or before any Officer appointed to see the Quarentine perform'd, *That such Ship, or Vessel, and all and every the Person and Persons therein, have duly performed the Quarentine, and that the Ship, or Vessel, and all Persons on Board, are free from Infection:* Upon Certificate thereof obtained from the Officer, the Ship and Persons are freed.

But the Goods must be open'd and air'd, as directed by Proclamation.

QUIT-RENTS.

Tenure
of Lands,
by Sub-
jects of
this Co-
lony.

THE Lands of *Virginia* are held by Grant from the Crown of *Great-Britain*, in free and common Socage; the Patentee, his Heirs and Assigns, paying for every Fifty Acres a Fee-Rent of One Shilling *Sterling*, Annually for ever, to the King, who is Supreme Lord of the Fee.

The

The Sheriff of every County shall collect these Quit-Rents, in Money or Tobacco, and account for the same with the Receiver-General, according to the Specie by him received. 13 *Car. 2. cap. 52.*

Where the Patentee dies within Three Years after Date of his Patent, without Seating and Planting, or paying Quit-Rents, and the Inheritance descends to an Infant under the Age of One and Twenty Years, the Court of that County wherein the Patentee dies, must take Security of the Guardian of such Infant, for due Paiment of the Quit-Rents, and Annually inquire into the Performance.

11 *Anne, cap. 4.*

And where Distress is not found upon the Lands of any Infant, sufficient to satisfy the Quit-Rents due, the Sheriff may distrein the Goods and Chattels of the Guardian: But the Lands shall not lapse, nor be forfeited, if cultivated and improved, and all Quit-Rents due for the same are paid, within Three Years after the Infant's coming of Age.

But if such Lands descend to a Female, who marries before the Age of 21, the Three Years commence from the Coverture.

Quit-Rents shall be paid Annually, by *April 10*; if then unpaid, Sheriff may distrein the Goods and Chattels of the Debtor, which shall be sold as Goods taken in Execution. 3 & 4 *Geo. 2. cap. 3.*

Distress made for Quit-Rents shall be redeemed only by Paiment of *Sterling* Money, or Bills of Exchange, to discharge the Quit-Rents in Arrear; otherwise the Sheriff must sell the Goods distreined, for such Money, or Bills, to the highest Bidder, and account for them accordingly.

R A P E.

Woman.

FORCIBLY to Ravish a Woman, so as to have Carnal Knowlege of her Body, she never consenting either before or after the Fact, is Felony at Common Law; and by several subsequent Acts of Parliament, enforced by the Statute 18 *El. cap. 6.* If she is under Ten Years of Age, tho' she doth consent, it's a Rape; and if above Ten, then not consenting at first, tho' she consent afterwards, it's likewise a Rape.

And if a Woman consent for Fear of Death, it's a Rape, because Consent ought to be free and voluntary.

Dalt. 392.

S 3

The

What a
Rape.

Method
of Col-
lecting
Quit-
Rents.
Laws of
Virginia,
pag. 284.

pag. 427.

Distress.

Prose-
cution.

The Woman injured ought forthwith to complain to a Magistrate, or levy Hue and Cry against the Ravisher: By the Common Law, she ought to complain within 40 Days; but it should rather be immediately, because Concealing it implies Consent before the Fact: In *Scotland* she must complain the same Day or Night in which she was ravish'd.

In an Indictment of Rape, no Time of Prosecution is limited: But in an Appeal, if the Woman does not prosecute within convenient Time, she shall be barr'd. *Dyer* 304.

Tho' she will not prosecute, yet the Husband may; and if she have none, then the Father, or next of Kin, may appeal. *Nels.* 482.

Aiders,
&c.
Punish-
ment.

All who are present, aiding, assisting, or procuring another to commit a Rape, are Principal Felons. *12 Rep.* 37.

Anciently this Crime was punishable by Loss of Eyes and Genitals: But by the Statute, *West. 2. cap. 34*, and other Statutes made since, confirm'd and explain'd by *18 El. cap. 6*. the Offender shall suffer Death, as a Felon, without Benefit of Clergy.

Upon Complaint made to a Justice of Peace, upon Oath, he may issue his Warrant to apprehend the Offender, charged by Oath of the Party injured, and thereupon proceed as in other Felonies.

If Bail is allowed, it ought to be upon sufficient Reasons, appearing from the Nature of the Fact, Persons, and Circumstances.

Women
Stealers.

Taking away, by Force or Fraud, any Woman, Maid, Wife, or Widow, who has Substance in Lands or Goods and Chattels, or is an Heiress apparent, and marrying or defiling her against her Will, is Felony without Clergy. *39 El. cap. 9*.

The Crime is not mitigated, tho' the Woman consents to the Marriage after it has been consummated. *3 H. 7. cap. 2*.

Procurers, Abettors, and wilful Receivers, are Accessories before the Fact, and punishable as Principal Felons.

Not only the Taking or Carrying away must be by Force, but likewise the Marrying or Defiling: And this Act does not extend to a Person who takes a Woman whom he claims as his Ward, or Bond-woman. *Dalt.* 392.

By the Statute 4 & 5 *Phil. & Mar. cap. 8*. If any Person takes away a Female under 16 Years, without Consent of her Father or Mother, or Guardian, to whom
Tuition

Tuition was devised by her Father, and out of their Custody, the Offender shall be imprisoned Two Years, without Bail, or pay a Fine: But if he defiles or marries her, without Consent of her Parent, or Guardian, Five Years Imprisonment, or Fine.

If a single Woman, above 12, and under 16, marries without Consent of Parent, or Guardian, she loses her Inheritance, during such Coverture. *See Tit. Marriages.*

But these Offences last mentioned are not cognisable before Justices of Peace.

RECOGNISANCE.

IS a Bond or Obligation of Record, testifying, That the Party oweth to the King, a certain Sum, upon Non-performance or Breach of the Condition therein mentioned. Record.

It becomes a Record, as soon as taken or acknowledged before a Justice of Peace or Judge of Record, and entred in his Book: And upon Breach of the Condition, an Indictment will not lie, but a *Scire Facias*. *Raym.* 196.

Justices of Peace are by Law enabled and required to take Recognisances, in certain Cases: But in Matters relating to the Peace, or Good-behaviour, every Justice, by his Commission and Office, is enabled to bind the Offender; and where he has Authority to cause a Person to do any Thing, he may bind the Party, by requiring him to enter into Recognisance, and to find Sureties for the Performance, and upon Refusal may commit him. *Dalt.* Where
to be tak-
en by
Justices.

437.

A Justice of Peace can take no Recognisance but only for such Matters as concern his Office; and every such Obligation must be made to Our Sovereign Lord the King, and so expressed: Otherwise, or if taken where the Justice has no Jurisdiction, it's void, and the Justice punishable by Imprisonment, or Fine. *Ib.* 439.

The Forms of Recognisances, and where to be taken by Justices of Peace, out of Sessions, appears under each respective Title, in this Book.

In every Recognisance, the Name, Place of Abode, and Trade or Calling of the Parties bound, both Principal and Sureties, must be punctually expressed; and the Principal is bound in double the Sum for which each Surety is bound. Rules.

It may be taken with or without Sureties, at the Discretion of the Justice before whom it's acknowledged: And after it is taken, if he is deceived in the Ability of the Sure-

Recognisance.

ties, or if they are likely to become insolvent, he may compel the Party bound to put in more, or commit him.

But this is to be understood where the Recognisance is taken by Virtue of his Office, and not upon a *Supplicavit*; for in this Case, he must require and take very sufficient Sureties.

In all Cases where Power is given to a Justice of Peace to take Bond of any Person, or to take Sureties for any Matter, or Cause, he may take a Recognisance.

Method
of Ac-
know-
ledge-
ment.

When it is made up, the Justice reads the Condition to the Parties bound, calling them by their Names, *viz.*

*YOU A. B. of &c. C. D. of &c. E. F. &c. acknow-
ledge to owe unto Our Sovereign Lord the King, &c.*

THEN the Justice subscribes his Name,
Acknowledged before me,
G. W.

But the Parties bound, need not set their Names to it.

Who
may not
be bound.

A married Woman, or an Infant under the Age of 21 Years, may not be Personaly bound: They must find Sureties, or be committed. *Dalt.*

It hath been held a great Misdemeanor in a Justice of Peace, to entice an Infant to enter into Recognisance, knowing him to be an Infant: One *Hickes* was fined 100 *l.* and committed for his Offence. *Moor* 555.

Manner
of Re-
cording.

'Tis expedient for the Justice to keep a Book, wherein to enter his Recognisances, thus,

December 10, 1735.

A. *B. of the Parish of C. in the County of D. Planter,
entred into Recognisance of 20 l. for his Appear-
ance before a Court to be held by the Justices of the said
County of D. on the 16th Day of this present Month, for
his further Examination, he being bound over upon Sus-
picion of stealing Goods, of the Value of 12 l. from E,
F. (d.)*

(d) Or,
as the
Case is.

Sureties. { *G. H. of &c.* }
 { *I. K. of &c.* } 10 *l.*

Or,

as before unto----- Appearance, at the next Court to
be held for this County, the Day of to
answer the Complaint of E. F. who has this Day pray'd
Surety of the Peace against him, and to be examined
concerning

concerning some other Misdemeanors tending to the Breach of the Peace, wherewith he stands charged by the said E. F.

And so if it be for Appearance of Witnesses against a Criminal, or for Bail, or any other Matter, specify the Names of the Cognisors, or Parties bound, the Time and Place of Appearance, and the Cause, so as to make a summary Record of the Recognisance and Condition.

After it is acknowledged and taken by the Justice, he must certify and return it to the Court before whom the Party is bound to appear; this must be done, notwithstanding the Death of the King, or of the Cognisor, or of the Party at whose Suit they are taken. Return.

If the Sureties die, the Recognisance is good against their Executors; but if forfeited, the Justices can award no Process upon it, because these Records must be certify'd into a Superior Court.

Whatever is a Breach of the Peace, is a Forfeiture of the Recognisance, if it be taken for the Peace, or Good-behaviour: But opprobrious or affronting Words and Gestures, are not a Breach, so as to make a Man forfeit his Recognisance; for tho' such Words or Gestures may be Provocations to break the Peace, yet they do not immediately tend to it, as Assaulting and Threatning do. Forfeiture.
4 *Inst.* 180, 181.

If the Recognisance is not forfeited, 'tis discharged by Demise of the King, or Death of the Cognisor; so likewise by Release of the Party at whose Suit it was taken for the Peace or Good-behaviour, whether such Release be made by the Party himself, or before a Justice, and by him certify'd under the Recognisance. *See Tit. Behaviour.* Discharge.

R E C U S A N T S.

AR E Persons who adhere to the Pope, and See of Rome, and refuse or deny to allow the King to be Supreme Head of the Church.

From the first Settlement of Christianity in *England*, 'til *Anno* 1534, the Nation continued subject to the See of Rome in Matters Ecclesiastical, and the Pope was universally acknowledged Supreme Head of the Church: So great and extensive was Then his Authority, that considerable Sums of Money were Annually drawn out of the Kingdom, and sent to Rome, for First Fruits and Tenths of Ecclesiastical Livings, Peter Pence, Investitures of vacant State of England, under the Pope's Supremacy.

vacant Bishoprics and other Preferments in the Church, Appeals, and divers other Pretences, whereby a great Revenue was raised for the Pope's Use : All Churchmen were exempted from Temporal Jurisdiction, and no Clergyman was punishable in the King's Courts, tho' guilty of the greatest Crimes : The Laity, on the contrary, were subject to the Censures of Churchmen, who imposed upon them sometimes Pecuniary Fines, sometimes Corporal Penances and Punishments, for such Matters as by the Clergy, in their Discretion, were judged either indecent, immoral, or sinful ; and every Person was obliged to be his own Accuser, by confessing his Sins to a Priest, under the Seal and Solemnity of a Sacrament, and thereupon to perform the Penance enjoined him by the Confessor, otherwise he was not to hope for Absolution or Forgiveness : And if a Layman was accused of Heresy, by which was meant the Embracing and Holding any Opinion, concerning Matters of Faith, Belief, or Church-Government, contrary to the received Doctrines of those Times, he was thereupon tried, before certain Ecclesiastical Commissioners appointed by the Pope's Authority ; and if by them found Guilty, and pronounced an Heretick, his Sentence was, *To be burnt alive*. These, and many other Prerogatives and Privileges, were claim'd and enjoined, for many Ages, by the Clergy over the Persons of the Laity ; and successive Popes endeavour'd, from Time to Time, to extend and enlarge their Power, even to the Deposing Kings, and Absolving Subjects from their Oaths of Allegiance.

Some of the *English* Princes, sensible and weary of this Burden upon Themselves and their Subjects, attempted to assert their own Prerogative, and to rescue themselves from this Foreign Yoke : But These were excommunicated by the Pope, and the whole Kingdom laid under an Interdict, which was in the Nature of a Prohibition, issued by the Pope, and directed to the Clergy of *England*, whereby they were restrain'd in the Exercise of their Function, and prohibited from solemnising publicly any Parts of Divine Worship. So long as This continued, the Churches were shut up ; no Divine Service was perform'd in them, or in any other Public Places ; the Dead were buried without the Ceremonies of the Church, and the Public Profession of Christianity seem'd lost throughout the Nation. The Clergy, then very numerous and rich, sided with the Pope, and in this State the Controversy stood some Years, 'til the Kings finding themselves too weak, and unable to cope with the Power of the Church, were forced to submit, tho' to the further lessening their Own, and increasing the

the Pope's Authority, which by these Contests was more firmly established and extended, in Matters Civil as well as Ecclesiastical.

But *Henry 8*, a Politic and Magnanimous Prince, beloved and fear'd by his Neighbours as well as his own Subjects, first put a Period to the Papal Power in *England*. This King, intending to procure a Divorce from his Queen *Catherine*, the Relict of his elder Brother, Prince *Arthur*, with whom he had cohabited many Years, solicited the Court of *Rome* for that Purpose : But after several Years Expectation, finding nothing but Delays and Difficulties from thence, founded upon the political Views and private Interests of that Court, which the King well perceived, he determined, by the Help of his Parliament, to assert his own Power and Right of Administring Justice within his own Kingdom, in all Cases : With this View he caused the Case of his Marriage with his Brother's Wife to be stated, and proposed to the most learned and famous Divines and Lawyers, both in his own and foreign Universities and Kingdoms, Persons of greatest Repute for Knowledge and Learning, in all Parts of the Christian World, from whom he received this Opinion, under their Hands, *viz.* ' That such Marriage is unlawful, and prohibited by all Laws Divine and Human, and therefore ' the Parties so married ought to be divorced and separated. ' This was by the King communicated to his Parliament, and by them approved ; and hereupon certain of the Bishops, Nobility, and Judges were, by the King's Commission, appointed to hear and determine the Cause : These Commissioners proceeded, and upon Hearing the Parties, and Examination of Witnesses, decreed the Marriage null and void, and thereupon the King was divorced. The Queen would by no Means submit to this Sentence, but appeal'd to the Pope, who was highly offended and incensed against the King, for this Contumacy and Disobedience, as he term'd it, Threatning the King and Realm with the severest Punishments, which he afterwards endeavoured to put in Practice : And to prevent the Effect of these Threats, the first Act of Parliament, Declaring the King to be Supreme Head of the Church, was passed, 26 *H. 8.* Which was soon after enforced by other Acts, whereby the Power and Authority of the See of *Rome* was, in few Years, totally suppressed in *England*.

Upon the Reformation of the Church, begun in the Reign of his Son *Edward, 6.* and completed by his Daughter Queen *Elizabeth*, these Laws for Abrogating and

The first
Occasion
of Less-
ening
the Papal
Authority.

and Annulling the Pope's Authority, were confirm'd and enlarged by others then made to the same Effect.

But because frequent Attempts have been since made by Papists, to revive this Power, tho' with the Destruction of the King and Kingdom, succeeding Times have found it necessary to add other Statutes to keep them in Subjection, by laying such Persons under great Incapacities and Disabilities, as well as making them liable to severe Penalties, if they offend. *See Tit. Divine Service.*

I thought it not improper to give the Reader this short Historical Abstract, to shew upon what Occasion, and by what Steps the Pope's Authority was abolish'd in *England*, by a Prince, who, tho' he lived many Years afterwards, and was often solicited by the Protestants Abroad, to enter into their Communion, yet refused, but lived and died in the Practice and Profession of the Doctrines of Popery, (some few Points excepted;) notwithstanding he renounced, and by Law prohibited all Obedience to the Pope, or See of *Rome*, both in Church and State.

Among the Inhabitants of this Colony we have not any known or reputed Popish Recusants, but are happy hitherto in a profess'd Conformity to the Doctrine and Discipline of the Church of *England*; We have no Separatists, or Nonconformists, except *Quakers*, and these enjoy a legal Toleration: Therefore it's needless here to insert those strict and severe Penal Statutes, which are in Force against Recusancy, at this Day.

By the Laws of this Colony, Popish Recusants Convicted, are disabled,

Laws of
Virginia,
pag. 128.
pag. 162.

1. From Voting at any Election of Burgeesses, tho' such Persons are Freeholders. 4 *Annæ*, cap. 2.
2. From being Witnesses, in any Cause whatsoever. 4 *Annæ*, cap. 19.

RELIGION.

pag. 23. **E**VERY Person refusing to carry his Child to be baptized by a lawful Minister of the County wherein he lives, forfeits 2000 *lb.* Tobacco, to the Parish and Informer. 14 *Car.* 2. cap. 3.

pag. 178. **Punish-** If any Person who has been brought up in the Christian Religion, by Writing, Printing, Teaching, or advised ment of Speaking, denies the Being of a God, or the Trinity, or Atheism, the Truth of the Christian Religion, or the Divine Authority of the Scriptures, or asserts, That there are more and Irre- Gods than One; Upon Conviction of any of these Of- ligion. fences,

fences, by Indictment or Information in the General Court, for the first Offence the Party convicted shall be disabled to hold any Office or Employment, Ecclesiastical, Civil, or Military, or any Profits or Advantages arising thereby; and if at the Time of Conviction he shall be possessed of any Office, Place, or Employment, it shall cease and be void. 4 *Annæ, cap. 30.*

Upon a second Conviction, he is disabled to prosecute any Action, at Common Law, or in Chancery, or to be Guardian, Executor, Administrator, Devisee, or Legatee, or to bear any Office; and shall be imprisoned Three Year's, without Bail or Mainprise.

For Words, Information must be made upon Oath, before One or more Justices of Peace, within One Month after the Words spoken; and Prosecution must be within Words. Twelve Months after such Information.

But if upon the first Conviction for any of these Offences, the Party acknowledges his Error, publicly before the Court where he was convicted, all Disabilities are removed and discharged thereby. Recan- tation.

By Virtue of this Act, One or more Justices may receive Informations for Words spoken, if made upon Oath, within the Time limited; and they may grant Certificate of such Oath made before them: But they cannot award Process upon any such Information.

R E N T S.

FOR Rent Arrear, and due, the Landlord, or any Person by his Order, assisted by the Sheriff or Under-Sheriff of the County, or a Constable of the Parish wherein the Premises lie, may distrein the Goods and Chattels of the Tenant, or so much as shall be sufficient to satisfy the Rent due, and all Charges of Distress and Sale. 3 & 4 *Geo. 2. cap. 9.*

If the Distress is not Replevied, within Five Days after taken, and Notice thereof, and the Cause, given or left at the Mansion-House, or most notorious Place on the Premises, the Goods shall be sold by the Officer, in the same Manner, as Goods taken in Execution, by Public Auction to the highest Bidder, for ready Money or Tobacco, according to the Specie wherein the Rent is reserved to be paid: The Overplus, if any arises by such Sale, after Satisfaction for the Rent, and all Charges of Distress and Sale, may remain in the Officer's Hands, for the Use of the Owner of the Goods distrein'd, 'til paid to him, or his Order.

Goods,
&c. may
be dis-
trein'd
for Rent.
Laws of
Virginia,
pag. 448.
And
Sold.

But

But re-
plevia-
ble by
Security.

But if the Tenant, within Five Days after Seifure, tenders One or more fufficient Sureties, approved by the Landlord, to be bound with him for Paiment of the Sum due, and Costs, with lawful Interest, at the End of 12 Months, the Officer shall restore the Goods distrein'd.

Or may
be sold
upon
Credit.

Where no such Security is offered, and the Goods cannot be sold at Three Fourths of the Value, at least, in the Opinion of the Officer, he may sell them upon Credit, paialbe at the End of 12 Months; and the Buyer must be bound, with One or more Sureties, to pay the Purchase-Money, or Tobacco, with Interest, to the Landlord. 8 Geo. 2. cap. 11.

Tobacco
Rents
not dis-
treinable
from 31
Aug. to
31 Dec.
Treble
Damages
for Pound
Breach,
or Res-
cous.

If Rent reserved is paialbe in Tobacco, no Distress shall be made between 31 August, and 31 December, in any Year. *Ibid.*

Upon Pound-Breach, or Rescous, of Goods or Chattels distrein'd for Rent, the Party grieved shall recover Treble Damages, and Costs of Suit, by Special Action upon the Case, against the Offender, or against the Owner of the Goods, if they are afterwards found to come to his Use or Possession. 3 & 4 Geo. 2. cap. 9. See *Tit. Execu- tion.*

Double
Damages
for
wrong-
ful Dis-
tress.

If Distress and Sale be made where no Rent is Arrear, or due, the Owner of the Goods distreined shall recover Double the Value of the Goods taken and sold, with full Costs of Suit, against the wrongful Distreinor.

No
Goods to
be taken
in Exe-
cution,
'til Rent
is paid.

No Goods upon any Messuage, Lands, or Tenements, held by Tenant for Life, Years, at Will, or otherwise, shall be liable to be taken in Execution, unless the Party Suing out the Execution pays the Landlord his Rent, due to that Time: But if there be more than One Year's Rent in Arrear, then the Party paying the Landlord for One Year's Rent, may proceed with his Execution; and the Sheriff is to levy the Rent so paid, as well as the Execution-Money, or Tobacco, to the Use of the Plaintiff.

Goods
removed
fraudu-
lently,
seisable.

If any Tenant fraudulently removes his Goods off the Premisses, to prevent the Landlord's Distress for Rent Arrear, the Landlord, or any Person by him im- powered, may seise such Goods, within Five Days after Removal, where-ever they are found, as a Distress for his Rent, and they may be sold, as if taken upon the de- mised Premisses.

Rent
Arrear,
upon
Lease for
Life, re-
covera-
ble.

But this does not extend to Goods *bona fide* sold, for a valuable Consideration, and removed before Seifure. Action of Debt may be brought, and maintained, against Tenant for Life, during the Continuance of his Estate, for any Arrears of Rent, in the same Manner, as if the Rent were due upon Lease for Years. Not-

Notwithstanding any Lease is determined, or expired, Distress, yet the Rent in Arrear, and due before Determination of after the Lease, may be levied by Distress upon the Tenant's Lease Estate: But this must be done within Six Months after determined. Expiration of the Lease, and the Landlord must continue his Title or Interest, as well as the Tenant his Possession of the Premises.

This Act does not extend to prejudice any Debts, Fines, Forfeitures, &c. due to the Crown.

R E S T I T U T I O N

THIS is of several Kinds; a Man may have a Writ of By Writ. Restitution to be restored to the Possession of a Freehold, or Place of Profit, or to an Office of Dignity or Public Trust, from which he is illegally moved; and in divers other Cases: But this Writ is not properly grantable, except only in such Cases where the Party grieved cannot have Remedy in the ordinary Course of Law. *Style 547.*

If Goods are stolen, and not waived in Flight, or Of Stolen seized by a proper Officer, there the Party may take his Goods. Goods again, tho' he doth not prosecute; but if the Goods are waived or seized, the Party shall have no Restitution, 'til the Offender is convicted upon his Prosecution, and then he shall recover no more than what is mention'd in the Indictment, tho' other Goods were stolen at the same Time: The Reason is, because by such Omission the Offender might have escaped Punishment.

But if the Criminal is convicted, at the Prosecution of the Party who lost the Goods, he shall have Restitution, tho' they were sold in open Market: Because this tends to the Advancement of Justice, and to make Men vigilant in prosecuting Offenders; and it will discourage Persons from buying Goods for a small Value, tho' in a Shop, or open Market, of such whom they ought reasonably to suspect, that they did not come by them honestly. *Co. Mag. Char. 714.*

And if the Party who so bought Stolen Goods, upon a Writ of Restitution brought by the Owner, pleads, that he bought them in Market-Overt; upon a Demurrer to such Plea, the Plaintiff will have Judgment. *And. 344.*

But if a Felon steals Goods, and afterwards waives them, and escapes, and it is not known who he was, the Owner cannot have Restitution, because the Felon cannot be indicted, or attainted. *Moor 360.*

Riot.

R I O T.

*Rout. Unlawful Assembly.*Definit-
on.

IF Three or more Persons meet, with Intent to do any unlawful Act, this is an unlawful Assembly; if they proceed to effect such Intent, it's a Rout; and if they do execute it with Force, it's a Riot. *Dalt.* 321.

If they assemble peaceably, and afterwards do some riotous Act, this is a Riot: For the Act shall have Relation to their assembling together, so far as to construe it to be with a riotous Intent, altho' it did not appear so at the first, because the Intentions of Men are best interpreted by their Actions. *Style* 558.

Four Things are here to be considered,

1. The Number of Persons met.
2. The Intent.
3. The Act.
4. The Manner and Circumstances of doing it.

The
Number.
Intent.

1. The Number; this must be Three, or more, otherwise it's no Riot, Rout, or unlawful Assembly.

2. The Intent; if they met with Design to break or disturb the Peace, or to offer Violence to the Person, Possession, or Goods of another, and then quarrel, or make an Affray, or commit any Outrage, this is a Riot in those who came with such Intent.

But if the Meeting was accidental, or at Public Places on a Court Day, or at Public Elections, Musters, &c. or where Men meet at lawful Sports, as Hunting, Racing, Shooting, Dancing, or the like Diversions and Pastimes, which are not Evil in themselves, nor prohibited by Law, and a Quarrel happens unexpectedly, this is no Riot, but a sudden Affray. *Co.* 11, 87.

Act.

3. The Act must be unlawful in it self, and committed with Force and Violence; otherwise it's not a Riot.

Every Man may lawfully assemble his Friends and Neighbours, to assist him in defending his House, or Possessions, from Injury and Violence; but not to prevent a Beating threatened to his Person. *H. P. C.* 137.

So he may to remove a Nuisance; but this must be done without Threats, or Disturbance of the Peace. *Dalt.* 304.

And
Manner.

4. The Manner and Circumstances; these must be such as apparently shew a riotous Intent, by using Threats, turbulent Behaviour, Shew of Arms or Weapons, or by actual Force and Violence.

If

If a Man comes to Church, Court-House, or other Place of Public Assembly, attended with an unusual Number of Servants, or People, and arm'd with offensive Weapons ; tho' he have no Intention to make a Riot, or to do Mischief, yet this is a Rout, by the Manner of his Appearance, being needless, disorder'd, to the Terror of the King's Subjects, and against the Law. 2 *Edw.* 3. *cap.* 3.

Where Three, or more, enter into the Lands or Possession of another, with Force, this is a Riot, tho' the Entry be upon good Title. *Crompt.* 64.

Every Justice of Peace who has Notice of a Riot, intended or committed, must forthwith endeavour to prevent or suppress it; and for this Purpose he ought to send immediate Notice to the next Justice, and to the Sheriff, or Under-Sheriff, and to require their Assistance : In the mean Time, he may raise such Power of his County, as to him appears necessary, and must repair to the Place where the Rioters are assembled, to suppress the Riot, apprehend the Offenders, and compel them to find Sureties for their Good-behaviour, or commit them ; and he may seize their Arms, for the King's Use : This he may do, by Virtue of his Office, without staying for the coming of another Justice, or the Sheriff. *Dalt.* 195.

One Justice.

If he sees a Riot, he may record it, upon his own View, and certify the Record to the next General Court ; If the Riot is recorded by him as a Judge, sitting in Court, it will amount to a Conviction of the Offender, whereupon he shall be fined ; but otherwise, the Record of a Riot, by One Justice, upon his own View, may be traversed by the Defendant.

After the Riot is over, he can only proceed against Offenders as Trespassers against the Peace, by sending his Warrant, and requiring them to find Sureties for the Good-behaviour, and for their Appearance at the next General Court : But he cannot fine them ; this must be done by a Superior Jurisdiction.

If he neglects to suppress a Riot whereof he has Notice, he is finable.

But regularly, by the Statute 23 *H.* 4. *cap.* 7, Two Justices, assisted by the Sheriff, or Under-Sheriff, are to take Recognisance of Riots, and to inquire who are the Rioters ; to apprehend and imprison Offenders, or bind them to Good-behaviour, and to seize their Arms, and appraise them for the King's Use : If the Justices are opposed, they may justify the Beating, Wounding, and Killing the Rioters. *Lamb.* 313.

Two Justices.

T

They

They may record a Riot, upon their own View, which is not Traverfable, but fhall amount to a Conviction of the Offenders, without Inquiry by a Jury; and upon this Record, being by the Juftices certified to the General Court, Procefs fhall iffue againft the Rioters, that they may be fined there.

If the Offenders efcape, being taken by the Juftices who came to view and fupprefs the Riot, they may iffue their Warrant to the Sheriff, to apprehend the Perfons efcaped, and may bind them to Good-behaviour, or commit them, when taken.

Juftices having Notice of a Riot, and neglecting to fupprefs it, or to apprehend the Rioters, or to record a Riot committed in their View, or committing without Recording, or failing to make Inquifition within One Month after a Riot is committed; Every Juftice offending in any of Thefe, forfeits 100 l. *Roll. Rep. 169, &c.*

Record of a Riot, upon View of Two Juftices.

This
maybe by
One
Juftice,
and with-
out the
Sheriff.

Orange/c. **M**emorand. That on the Day of 1735, and in the Year of the Reign of Our Sovereign Lord King George the Second, We A. B. and C. D. Gent. Two of His Majesty's Juftices of the Peace for the faid County, and E. F. Gent. the Sheriff thereof, upon Complaint and Request to us made by G. H. of the Parifh of I. in the fame County, Planter, did perfonally go to the Manfion-houfe of the faid G. H. in the Parifh and County aforefaid, and there We did fee K. L. and M. N. both of the fame Parifh and County, Planters, and Others, to the Number of Seven Perfons, arm'd with Clubs, Swords, Guns, and Piftols, unlawfully and riotoufly afsembled together, and violently committing divers evil, unlawful, and riotous Acts, in the Houfe aforefaid, to the Terror of the People, againft the Peace of Our faid Lord the King, and contrary to the Form of the Statute in that Cafe made and provided: And therefore We the aforefaid A. B. and C. D. then and there immediately caufed the faid K. L. and M. N. to be arrefted, and committed them into Cuftody of the Goal of the County aforefaid, there to remain until they fhall be difcharged by due Courfe of Law; they being convicted of the faid Riot, and of being unlawfully met, and afsembled, upon our own View, Testimony, and Record. And in Testimony thereof, We have affixed Our Seals to thefe Presents. Dated the Day and Year above-mentioned.

This

This Record must be certain as to Time, Place, Persons, and their Number, and Weapons, and the Manner and Circumstances of the Offence; because it is a Judgment, and not Traversable by the Defendants, but being certified by the General Court, the Parties will be thereupon fined, without other Trial.

Mittimus, upon View.

To the Sheriff of the County of Orange, and to the Keeper of the Goal of the said County.

Orange sc. *W* Hereas upon Complaint made to us A. B. The like
and C. D. Gent. Two of His Majesty's by One
Justices of the Peace for the said County, by G. H. of Justice.
the Parish of I. in the same County, Planter, We did
this present Day of 173 go to the
Mansion-house of the said G. H. and then there We did
see K. L. and M. N. both of the same Parish, Labourers,
and other Persons, unlawfully assembled together in a
riotous Company and Manner, and with Force and Arms,
committing divers riotous Outrages, to the Terror of
the People, and against the Peace of Our Sovereign
Lord the King, and contrary to the Form of the Statute
in that Case made and provided: Therefore We herewith
send you the Bodies of the said K. L. and M. N. convicted
of the said Riot, and upon our own View and Record:
And We command you, in His Majesty's Name, to receive
them into your Goal and Custody, and them there safely
to keep, 'til they shall be discharged by due Course of
Law. Given under our Hands and Seals, this
Day of

Or they may be bail'd, by entring into Recognisance, Bail.
with or without Sureties, as the Justices think fit, upon
this Condition, viz.

THE Condition of this Recognisance, Whereas the
above-bounden K. L. and M. N. were this present
Day apprehended by Command of A. B. and C. D. Gent.
Two of His Majesty's Justices of the Peace for the said
County, for a Riot made and committed by the said K. L.
and M. N. at the Mansion-house of G. H. in the Parish
of I. aforesaid, whereof they are convicted by the View,
Testimony, and Record of the said Justices; If therefore
the said K. L. and M. N. shall personally appear before
His Majesty's Judges of the General Court, on the Fourth
Day of the next Court, to do and receive what shall be

enjoined them by the said Court, and not to depart thence without License; And if, in the mean Time, they shall be of the Good-behaviour, then this Recognisance to be void.

The Statute above-mentioned not only requires the Justices to make a Record of the Riot, upon their own View, and to commit the Offenders; but it also impowers them, together with the Sheriff, upon such Conviction, to fine the Rioters, and commit them 'til paid: Yet Mr. *Dalton's* Advice seems safest and best, which is, to certify the Record to a Superior Court, that they may be fined there. *Dalt.* 197. *Dyer.* 210.

Inqui-
sition.

If a Riot is committed, but not in View or Presence of the Justices, and the Rioters are gone, Two Justices may issue their Precept, within One Month after the Fact, directed to the Sheriff, to summon a Jury, to inquire of the Offence; and if 'tis found by them, the Justices may, by their Warrant, command the Offenders to be brought before them, and may bind them to the Good-behaviour, or commit them.

But if the Offenders cannot be taken, and the Sheriff returns, that the Defendants are not found in his Bailiwick; they may be Outlaw'd, upon Process issued from the General Court.

Precept for summoning a Jury.

Precept
for a Ju-
ry.
Two
Justices.

Orange sc. *A. B. and C. D. Gent. Two of His Majesty's Justices of the Peace for the said County. To the Sheriff thereof, Greeting. On Behalf of Our Sovereign Lord the King, We command you, That you cause to come before us, at the Court-house of your County, the Day of next, Twenty Four good and lawful Men of your Bailiwick, to inquire upon their Oaths, for Our said Lord the King, as also for Our Indemnity in this Behalf, of a certain unlawful Assembly and Riot in the Parish of within your County, lately committed, as 'tis said; And that you return Twenty Shillings in Issues upon each Person by you impanel'd, to be by him forfeited, if he shall not appear to be Sworn to inquire of the Premises, at the Day above-mentioned: And this you shall in no-wise omit, on Penalty of Twenty Pounds; And have there then the Names of the said Jurors, together with this Precept. Given under Our Seals, this Day of, &c.*

The

The Inquisition.

Orange sc. *Inquisition for Our Sovereign Lord the King, taken at* *in the County* *Verdict.*
aforsaid, this *Day of* *173* *before*
A. B. and C. D. Gent. Two of His Majesty's Justices
of the Peace for the said County, upon the Oath of
(the Names of the Jury,) good and lawful Men of the
County aforsaid, who being charged and sworn, upon
their Oaths, do say, That K. L. of the Parish of I. in
the said County, Labourer, and other Malefactors and
Breakers of the Peace, to the Furors aforsaid unknown,
the *Day of* *last past, with Force and*
Arms, viz. Clubs, Swords, Guns, and other Weapons un-
lawfully and riotously entered the Mansion-house of G. H.
in the Parish aforsaid, between the Hours of Ten and
Eleven in the Forenoon of the same Day, and him the
said G. H. did assault, beat, and wound, and other
Enormities unlawfully and riotously then there did com-
mit, to the great Disturbance of the King's Peace, and
Terror of his Subjects, contrary to the Form of the Sta-
tute in that Case made and provided. In Testimony
whereof, We the Furors aforsaid, to this Inquisition,
have severally affixed our Seals, the Day, Year, and
Place, first above-mentioned.

After a Riot is found, upon such Inquisition, the Jus- Further
 tices may award their Precept to the Sheriff, commanding Proceed-
 him to cause the Offenders to be brought before them, ings.
 and may thereupon require them to find Sureties for the
 Good-behaviour, or commit them to Goal: This they
 may do, in Pursuance of the Statute, which likewise
 enables them to fine the Offenders, and commit them 'til
 paid; As also to award Process of Outlawry against those
 who will not be taken, and where the Sheriff returns,
Non est inventus: But the best Method for the Justices,
 is, to certify the Inquisition taken before them, together
 with the whole Record, to the Clerk of the General
 Court, that thereupon further Process may be awarded
 from thence.

All that has been mentioned under this Title is to be
 understood of great and notorious Riots only; the Intent
 of the Statutes, whereby Authority is given to Justices
 of Peace, to convict and punish Offenders upon their own
 View, appears to be, for preventing Delays in Suppressing
 dangerous Riots, which, if not speedily quell'd, might
 hazard the Peace of the whole County: But for small

Riots, the Justices may make Inquiry, at any Time afterwards, and proceed against Offenders as Trepassers against the Peace. *See Tit. Behaviour.*

Rivers.

Creeks. Weirs. Hedges. Nuisance. Rolling-houses. Public Landings.

Nuisances. *Virginia Laws, pag. 175.* **M**ASTER or Owner of a Ship, or other Vessel, who suffers Stones, Gravel, or other Ballast, to be cast into any Creek, River, Haven, or Harbour, in this Dominion, or does not lay it upon Land, above High-Water Mark, forfeits 10 *l.* for every Offence, to the King and Informer. 4 *Annæ, cap. 27.*

The like Penalty on the Master who does not cause the Body of any Person, dying on Board, to be buried ashore.

How to be removed. County Courts shall, Annually, between 30 *April*, and 1 *August*, appoint proper Persons, within certain Precincts, to clear Rivers and Creeks from all Trees, Roots, or other Things dangerous to Navigation, or Passage of Vessels, on Penalty of 2000 *lb.* Tobacco, to the Informer. 4 *Annæ, cap. 32.*

Every Person so appointed, neglecting to perform the Service, in *March*, and *October*, Yearly, forfeits 15 *s.*

Whoever fells a Tree into any River, or Creek, and does not immediately remove it, forfeits 10 *s.* for the first Offence, and 15 *s.* for every Offence after the first Conviction.

Weirs. If any Person has a Weir in a River or Creek, he must cause the Stakes to be taken up, as soon as the Weir becomes useless, on Penalty of 15 *s.*

Forfeitures, in the Three last mentioned Cases, are given to the Informer, recoverable with Costs, before a Justice of Peace.

Hedges. *pag. 328.* All Hedges made cross any River, or Creek, shall be destroy'd by the Persons who placed them; and if made, or set, and the Passage thereby obstructed, the Party forfeits 200 *lb.* Tobacco, for every Hedge made, or not destroyed: Suffering a Hedge to continue, after Conviction, the Offender forfeits 100 *lb.* Tobacco *per Week*; Penalties to the Informer, recoverable before a Justice of Peace, 8 *Geo. 1. cap. 7.*

pag. 373. Further Penalties for setting or continuing Hedges, whereby the Course or Passage of any River or Creek is hindered or obstructed, *viz.*

For placing such Hedge, or not destroying those already placed } 500 lb. Tob.

And for Continuance after Conviction, *per* Week. } 500.

Besides former Penalties ; recoverable by the Informer, in any Court of Record. 12 Geo. 1. cap. 7.

But Persons having Land on both Sides, up to the Head of a Creek, and no Public Landing thereon, may set Hedges, without Forfeiture.

For every Tree fell'd into a River, or Creek, and not removed in 48 Hours, 15 s. to the Informer, recoverable before a Justice.

Where Two Counties are divided by a River, or Creek, both Courts shall join in Contract with Undertakers for Clearing ; the Charge must be divided and levied in Proportion to the Number of Tithables in each County. 8 Geo. 1. cap. 7.

And if a River or Creek is in One County only, the Court of that County shall contract for the Clearing, and raise the Charge in the County Levy.

All Places where Store-houses or Rolling-houses are built, shall be accounted Public Landings. 4 Anne, cap. 39.

And all Rolling-houses, not above One Mile distant from a Public Landing, shall be kept up and continued by the Proprietors ; and all Public Landings shall remain free for Public Use.

Where Rolling-houses and Public Landings are not already made or built, but petitioned for by any of the Inhabitants, and by the County Court found necessary, they may order a Summons for the Proprietor of the Land ; or if it belongs to an Infant, or Person out of the Country, then the Guardian, or Attorney ; and direct a Rolling-house to be built by the Owner of the Land, or the Guardian, or Attorney, not above Half a Mile distant from a convenient Place, which they may appoint to be thereafter a Public Landing. 11 Anne, cap. 5.

If the Proprietor, Guardian, or Attorney, refuse to continue a Rolling-house already built, or to erect One where required by the County Court, within One Year after their Order, then, upon Petition of any Freeholder of the same County to them exhibited, the Court may appoint Three Persons to value and appraise, upon Oath, any Rolling-house already built, and Half an Acre of Land adjoining, or Half an Acre whereon to build ; which Appraisement being executed, and returned to Court by the Persons appointed, and the Valuation-Money paid or tendred to the Owner of the Land, or to

Clearing
Rivers,
&c.

Store-
houses,
and Pub-
lic
Land-
ings.

Laws of
Virginia,
pag. 193.
pag. 284.

the Guardian, or Attorney, by the Petitioner, he shall thereupon stand seised of such Half Acre, in Fee, to him and his Heirs, upon Condition, that he and his Assigns shall keep and maintain a sufficient Rolling-house upon the Premises, otherwise the Land reverts to the Proprietor, or may be granted to such other Person as will keep and maintain a Rolling-house thereon.

But the Court cannot take away a Dwelling-house, or any Out-house or Building appertaining thereto; nor a Garden, Orchard, or Court-yard, belonging to a Dwelling House.

And if the Petitioner has no Land adjoining to his Half Acre, he must keep no Beasts there, unless within a Fence upon his Half Acre, under Penalty of 5 s. for every Horse, Mare, Head of Cattle, Sheep, Goat, Hog, Shoat, or Pig, found at large upon the adjacent Lands, payable to the Owner of the Land where found; and recoverable before a Justice.

Storage.

Rates of Storage for Merchandise, lodged or kept in a Rolling-house, viz.

For every Cask of 60 Gallons, or more, and every Bale, or Parcel, of like or greater Bulk, for the First Day, or for Three Months.	s. d. 1 0
--	--------------

For every Month after the first Three.	0 6
--	-----

For every Cask, Bale, or Parcel of less Contents or Bulk, the First Day, or Three Months.	0 6
---	-----

For every Month afterwards.	0 3
-----------------------------	-----

For Grain, Salt, or the like Commodities unpack'd, for every 16 Bushels, and so proportionably for a greater or less Quantity, the First Day, or Three Months.	1 0
--	-----

And for every Month after	0 6
---------------------------	-----

To be paid before Removal of the Goods.

Ware-house-keepers.

If the Owner of a Rolling-house refuses to receive Tobacco, or other Merchandise, brought to his House, he is liable for Damages to the Party grieved: And if Goods are lost out of his House, or receive Damage, thro' Carelessness or Neglect, in himself, or his Servants, he must make Satisfaction for the Loss or Damage.

Laws of Virginia, pag. 314.

Every Owner of a Rolling-house must keep a fit Person to receive and take Care of Merchandise brought thither, and to give Receipts; otherwise the Owner of the House liable for Damages, 7 Geo. 1. cap. 7.

Convenience.

If any Rolling-house is, by the County Court, found inconvenient, they may order such to be discontinued, and establish others, Tobacco

Tobacco or other Merchandise lodg'd at a House laid aside by the Court, shall not be accounted convenient, nor any Storage demandable.

Persons grieved by any Order of the County Court, made in Pursuance of the Act 11 *Annæ*, cap. 5. may appeal to the General Court.

R U N A W A Y S.

Servants. Slaves.

EVERY Servant, whose Time of Service is expired, must obtain his or her Freedom to be recorded in the County Court, and a Certificate thereof, from the Clerk; upon producing whereof, he or she may be afterwards hired by any other Person, who must keep such Certificate 'til Expiration of the Time contracted for. *4 Annæ*, cap. 49. Certificate of Freedom. Laws of Virginia, pag. 223, &c.

Whoever entertains any Servant by Importation, or by Contract or Indenture made here, without such Certificate, forfeits 60 *lb.* Tobacco, *per* Day, to the Master of the Runaway. Penalties, For Entertainment.

But if a Servant makes Use of a forged Certificate, or steals that by him delivered to be kept by the Person to whom he hired himself, and thereupon procures Entertainment, or other Service, he shall stand in the Pillory upon a Court Day, Two Hours, and make Satisfaction for Loss of Time, and all Charges, by future Service; but the Person entertaining him upon such forged or stolen Certificate, is not liable to any Penalty. Using One forged, or stol'n.

The Party forging such Certificate, forfeits 10 *l.* to the Master of the Servant, if he will sue, if not, then to the Informer: Failing to pay the Fine, or to give Security for Paiment within Six Months after Conviction, the Offender shall have 39 Lashes, at the Whipping-post. Forging it.

Where a Servant is hired upon a forged Certificate, but afterwards denies the Delivery, the Party hiring may prove it by his own Oath; otherwise liable for the Penalties of entertaining a Runaway without Certificate. Proof of Delivery.

Rewards for Taking up a Runaway, Servant, or Slave, *viz.* Reward.

If taken up above 10 Miles from the Runaway's Place of Abode,	} 200 <i>lb.</i> Tob.	For Taking Runaways.
Under 10, and above Five Miles, - - -		
To be paid by the Public, to the Taker, in the County where he lives, and levied again by the Public upon the Owner of the Runaway.		

The

Runaways.

The Person who apprehends a Runaway, must bring him before a Justice of Peace, and obtain his Certificate, viz.

Justice's Accomack sc. **A.** B. of the said County, Planter, this
Certificate. Day brought before me C. D. Gent.
a Justice of Peace of the same County, One Negro Man
Slave, named E. belong to F. G. of the County of Northampton, Gent. by the said A. B. taken up at
in this County, above Ten Miles distant from the Plantation to which the said Runaway belongs. Certified under my Hand, this Day of, &c.

The like for a Servant : In every Certificate must be expressed the Names of the Taker, Runaway, and Owner, the Place where Taken, and Distance from the Plantation to which the Runaway belongs, and whether above 10, or under 10, and above Five Miles, to be adjudged by the Justice ; who thereupon, by his Warrant, commits the Runaway to the next Constable, ordering him to give the said Runaway a certain Number of Lashes not exceeding 39, and to convey him to the next Constable, and so from Constable to Constable, 'til deliver'd to his Master, or Overseer.

To J. O. and all other Constables, to whom these Presents shall come.

Warrant. Accomack sc. **I** send you herewith One Negro Man
Slave, named E. belonging to F. G. of the County of Northampton, Gent. the said Slave being a Runaway, taken up in this County, by A. B. and by him brought before me : And in his Majesty's Name, I command you the said J. O. to receive the said Runaway into your Custody, and to give him Lashes, on his bare Back, well laid on, and then to convey and deliver him to the next Constable, to be conveyed from Constable to Constable, 'til he shall be delivered to his said Master, or his Overseer : And I require every Constable to whom the said Slave shall be delivered, together with this Warrant, to take the said Runaway into his Custody, and to give a Receipt, and convey and deliver him, as aforesaid. Given under my Hand, &c.

The Runaway being delivered, with the Justice's Warrant, to the next Constable, he must give a Receipt to the Taker, upon the Back of his Certificate, viz.

December

December 10, 1755.

REceived of A. B. the Runaway within-mentioned. Receipt.
J. O. Constable.

And every Constable delivering his Prisoner to the next Constable, must take such Receipt: Constable refusing to execute the Warrant, or give a Receipt, forfeits 200 *lb.* Tobacco, to the Churchwardens of the Parish, for the Use of the Poor: If he suffers the Runaway to escape, he is liable for Damages, to the Party grieved. Penalty, on Constables.

Whipping a Runaway Servant, no Bar of Satisfaction by Service, due from him to his Master for running away. Whipping.

But if a Runaway has cross'd the Bay of *Chesapeak*, and is taken in a County adjoining to that Bay, the Justice must commit him to the Sheriff, requiring him to transport the Runaway cross the Bay, and deliver him to a Constable of the County adjoining on the other Side, and then to be conveyed and delivered from one Constable to another, 'til brought to his Master, or Overseer. Runaways crossing the Bay.

And if the Runaway is taken in a County not lying upon the Bay, but back in the Country, then he shall be committed to the next Constable, and so from Constable to Constable, 'til brought to the Sheriff of a County upon the Bay, who is to transport and deliver him as aforesaid.

Sheriff's Fee, for his Trouble and Charges in Transporting a Runaway cross the Bay, 500 *lb.* Tobacco; to be paid by the Public, and repaid by the Master. Sheriff's Fee.

Sheriff or Constable causing or suffering a Runaway to work, whilst in his Custody, forfeits 1000 *lb.* Tobacco, to the Master. Penalty, for Working.

Runaway Servants shall repay the Reward and all other Charges, expended by the Master, and occasioned by running away; for which they shall be bound to serve the Master, after their other Time of Service is expired, at the Rate of One Month and a Half for every 100 *lb.* Tobacco expended, besides serving double the Time they were absent. ing a Runaway Servants.

But the Master must bring such Runaway to the County Court, held next after his being retaken, and prove the Time of Absence, and the Charges by him expended in Pursuit; for which, and the Reward due for Taking the Runaway, the Court is to order Satisfaction to the Master, by Service, at the Rate of One Year for 800 *lb.* Tobacco, and so proportionably, besides double the Time of the Runaway's Absence.

If the Runaway is not brought before the Court held next after Re-taking, the Court may afterwards examine into

Runaways.

into the Reasons of such Delay, and thereupon determine the Master's Claim, by Allowance or Refusal thereof, without Appeal.

But if the Runaway, so order'd to further Service, pays all Charges, or tenders Security for Paiment within Six Months after Conviction for running away, the Master shall accept it, as a full Discharge of the Service.

Laws of
Virginia,
pag. 366,
Etc.

If a White Servant runs away, and changes his Name, or Habit, or makes Use of other Disguise, and is convicted thereof, he shall serve Six Months for such Fraud, besides all other Service due for running away. 12 Geo. 1. cap. 4.

And if a Person imported as a Tradesman, or Workman, upon Wages, refuses or neglects to do his Duty, or absents himself without Leave; Upon his Master's Complaint to the County Court, they may order reasonable Satisfaction for the Servant's Refusal or Neglect of his Work, by further Service, without Wages; and for every Day's Absence without Leave, Two Day's Service, in like Manner, after other Time of Service is ended.

Run-
aways
unknown

If a Runaway Servant, or Slave, taken and brought before a Justice of Peace, cannot speak *English*, or obstinately refuses to declare the Name of his Master, he must be committed to the County Goal.

Notice.

Sheriff must give Notice of such Commitment, by setting up a Note at the Court-house Door, describing the Person and Clothes of the unknown Runaway; such Note must be continued there Two Months, and he must likewise send a Copy to the Clerk or Reader of each Church and Chapel in his County: If he fails in any of the Premises, he forfeits 500 *lb.* Tobacco.

Clerk or Reader must publish such Notice by affixing it to a proper and open Place, near his Church or Chapel, and continuing it there Two Months, under Penalty of 200 *lb.* Tobacco.

These Penalties are recoverable by Action, and to be divided between the King, and Prosecutor.

Certificate for a Runaway unknown.

Certifi-
cate.

Accomack. sc. A. B. of the said County, Planter, this Day brought before me C. D. Gent. a Justice of Peace of the same County, One Negro Woman, supposed to be a Runaway Slave, by him taken up at in this County; but upon her Examination before me, it appear'd, That she could not speak English, nor declare the Name of her Owner. Certified under my Hand, this, &c. *Mittimus.*

Mittimus.

To the Sheriff of the County of *Accomack*, and to the
Keeper of the Goal of the said County.

Accomack *sc.* **I** send you herewith One Negro Woman, Commit-
supposed to be a Runaway Slave, this ment.

Day taken up by A. B. in this County, and brought be-
fore me, but appearing not able to speak English, or to
declare the Name of her Owner: And I require you to
receive the said Negro Woman into your Goal and Custody,
and her there safely to keep, until she shall be thence
discharged in the Manner by Law required: And that
you forthwith publish legal Notice of this Commitment.
Given under my Hand, this Day of

In this Case, the Goaler must give a Receipt upon the
Taker's Certificate, and if the Owner of such Slave is af-
terwards found, the Sheriff, ought to certify the Names
of the Owner, Slave, and Place of Residence; which being
produced to the Justice, may be by him added to the Cer-
tificate first granted, together with the Distance of Miles,
which will intitle the Taker to the Reward. Receipt.

If no Owner appears within Two Months, the Sheriff
is to deliver his Prisoner to the next Constable, to be con-
veyed from one Constable to another, 'til delivered to the
Keeper of the Public Goal, together with the Warrant
of Commitment, the Sheriff certifying, on the Back there-
of, that the Slave therein-mentioned has remained in his
Custody the Space of Two Months, and that he did
give Notice of the Commitment, in Manner by Law
required, but that the Owner of the said Slave is not yet
known. Re-
moval.

The Public Goaler, by Consent of the General Court,
or nearest County Court, may let such Runaway to Hire:
Money or Tobacco arising thereby, shall be applied to-
wards Paiment of the Charges of Taking, Imprison-
ment, &c. And the Overplus disposed of as such Court
directs. Hire.

Goaler causing an Iron Collar, with the Letters, *P.G.*
to be put on the Runaway's Neck, when hired out, not
liable for any Escape afterwards.

But when the Owner appears, and demands his Slave,
the Party hiring must immediately deliver him to the
Goaler, and then pay the Hire in Proportion to the Time
of Service done; the Goaler must deliver the Slave to his
Owner, who must pay down all Fees and Charges, if the
Hire receiv'd be not sufficient for that Purpose. Delivery.

And

- Death.** And if such Runaway dies in the Public Goal, the Owner being unknown, all Fees and Charges shall be defrayed by the Public.
- Ferriage.** Ferriage of Constables and their Assistants, charged with conducting Runaways, going, and returning, shall be paid by the County where the Ferry-keeper lives, repaid by the Public, and levied upon the Master.
- Prison-Fees.** Prison-Fees for Runaways, *viz.*

County Goal.

	s.	d.	lb.	Tob.
Commitment. - - - - -	1	0	or	10
Keeping and Maintenance, <i>per</i> 24 } Hours. - - - - -	0	6		5
Releasement. - - - - -	1	0		10

Public Goal.

	s.	d.	lb.	Tob.
Commitment. - - - - -	2	0	or	20
Keeping and Maintenance, <i>per</i> 24 } Hours. - - - - -	0	6		5
Releasement. - - - - -	2	0		20

Sheriff or Goaler demanding and taking more, forfeits 20 s. besides Re-paiment of the Money or Tobacco illegally taken, recoverable before a Justice of Peace.

Commitment and Releasement of Runaways let to Hire, shall be but once charged.

For Runaways belonging to *Maryland*, or *Carolina*, Sheriff, or Goaler, may demand the Fees payable in those Provinces, respectively, by Inhabitants of *Virginia*, for their Runaways taken there.

Other Runaways. But when Runaways supposed to belong to Inhabitants of *Maryland*, or *Carolina*, shall be committed to the Public Goal, the Keeper is to send a Description of the Runaway, when committed, and from what County removed, to such Place upon the Borders as shall be agreed upon between the Governor of *Virginia*, and those Governments.

Claims. Persons intitled to the Reward for Taking a Runaway, must produce their Warrants before the Court held for Public Claims, and make Oath, that the Service therein mentioned was by them realy and *bona fide* done, and performed, and that no Satisfaction hath been received for the same; which being certified by the Clerk, is transmitted to the General Assembly, for Allowance in the Public Levy. 4 *Annae*, cap. 8.

If the Claim held is not exhibited and proved, at the First or Second Court of Claims held next after Performance of the Service, the Party intitled to the Reward is barr'd afterwards.

Clerk's Fee, for certifying a Claim, 20 *lb.* Tobacco, allowed by the Public; where the Claim is 100 *lb.* Tobacco, or more, and admitted by the Assembly to be due from the Public.

Method of Prosecution against Outlying Slaves. See *Tit. Proclamation.*

S C I R E F A C I A S.

THIS is a Judicial Writ, to revive a Judgment, Nature upon which no Execution has been issued, or if of the issued, has not been executed, within a Year and Writ. a Day after the Judgment obtained: And it is in the Nature of a Summons to the Defendant, requiring him to shew Cause why Execution should not be levied. *O. Nat. Brev. 151. Reg. Orig.*

If Execution be not taken within One Year and a Day after Judgment is given in a Cause, there must be a *Scire Facias*, to revive the Judgment. *Style 296.* Rules.

Where either Plaintiff or Defendant dies, there cannot be any Execution issued, until a *Scire Facias* be sued out, and Judgment thereupon: Because there must be a new Judgment upon the *Scire Facias*, to warrant the Execution, that being different from the old Judgment. *Pr. Reg. 579.*

This Writ must express, as briefly as possible, the Substance of the Judgment upon which it is founded; and it must issue from that Court or Jurisdiction only, where the Judgment is recorded: For the Record is the Warrant for the *Scire Facias*, and if there be no such Judgment, there is no Ground to move for the Writ. *Ibid. 575.*

There are great Diversities in Point of regular Practice upon this Writ; what has been here said is intended only to shew the Nature thereof, summarily, because by our Laws all Civil Matters, in Debt, Trespass, Account, or for any Cause whatsoever, under the Value of 20 *s. Sterling*, or 200 *lb.* Tobacco, are finally determinable by One Justice of Peace, out of Sessions, who may enter up Judgment, and award Execution thereupon, without Appeal: And therefore it will be Prudence in him not to grant Execution upon any Judgment before him recovered, if
above

above a Year and a Day be past since the Judgment was obtained; but upon Complaint to him made, that the Debt is not paid, he may issue his Warrant, reciting the Substance of the Judgment formerly recovered, and summoning the Defendant to shew Cause why Execution should not be had thereupon.

Warrant, in Nature of a Scire Facias.

To A. B. Constable.

Warrant,
upon a
Judg-
ment.

Hannover sc. *W* Hereas on the 6th Day of November, 1734, before me C. C. Gentleman, a Justice of Peace of the said County, E. F. recovered the Sum of One and Twenty Shillings Current Money, for Debt, and Ten Pounds of Tobacco, for his Costs, against G. H. whereof he is convicted, as appears to me of Record: And forasmuch as the said E. F. has complained to me, That he has not received any Satisfaction for his said Debt and Costs: Therefore, in His Majesty's Name, I command you to summon the said G. H. to appear before me, at my House in this County, on the 20th Day of this present Month, to shew Cause why Execution should not be made of the Debt and Costs aforesaid; And that you be then there to shew how you have executed this Precept. Given under my Hand, this 10th Day of December, 1735.

If the Defendant appears, and proves Paiment, or Discount, it must be allowed: But if he refuses or fails to appear, and the Officer returns the Warrant, executed, or Copy left, the Plaintiff may make Oath to the Satisfaction by him received, and then the former Judgment may be revived, and Execution issued hereupon.

There ought to be at least Eight Days between the Test and Return of this Warrant.

S E R V A N T S.

License. *I* F a Master of a Ship, or other Vessel, transports any Laws of *I* Servant out of this Dominion, without a legal Pass, Virginia, or his Master's Licence, he forfeits 50 lb. to the King pag. 146. and Party grieved. 4 *Annæ*, cap. 12.

Hog- If a Servant is convicted of Hog-stealing, his Master stealing. shall pay the Fine, and be repaid in Service, at 150 lb. pag. 151. Tobacco, per Month. 4 *Annæ*, cap. 14.

Ordinary

Ordinary-keeper who harbours, entertains, or sells Liquors to a Servant, without the Master's Licence, forfeits 10 s. for every Offence, to the Master, recoverable before a Justice. 4 *Annæ*, cap. 40.

Where a Mill is kept by a Servant imported, who fails in his Duty, he shall be whip'd ;

For the First Offence, - - - - - 30 Lashes.

Second, - - - - - 40.

But upon a Third Conviction, his Master shall pay the Fine. 4 *Annæ*, cap. 41.

If any Minister, or Reader, knowingly publishes Banns of Marriage between Servants, or between a Free Person and a Servant, or marries Such, without Consent of Master or Mistress, he forfeits 10000 lb. Tobacco : And every Servant so married, must serve One Year, after other Time of Service expired ; and the Free Person, so marrying, forfeits 1000 lb. Tobacco to the Servant's Master, or must serve One Year. 4 *Annæ*, cap. 48.

All Christian Servants, above 19 Years of Age, imported here without Indenture, shall serve 5 Years ; if under 19, then 'til they are 24 Years of Age. 4 *Annæ*, cap. 49.

The Age of such Servants must be adjudged by the County Court, and recorded, within Six Months after their Arrival, otherwise they are not compellable to serve above Five Years, tho' under 19 ; the Servants Age, judg'd and recorded, shall be deemed his true Age.

If a Servant pretends to have Indentures, but does not produce any before a Justice of Peace, within Two Months after by him required, such Servant shall take no Advantage by his Indenture.

All imported Servants, not born or bred Christians in their Native Country, except *Turks* or *Moors* in Amity with the Crown of *Great-Britain*, or such who prove their Freedom in *England*, or any other Christian Country, shall be accounted and remain Slaves, notwithstanding they become Christians after their Arrival here.

Whoever imports a Freeman, and sells him as a Slave, forfeits Double the Purchase-Money, to the Party from whom the Freeman recovers his Freedom ; and no Act of Limitation pleadable in this Case : But the Persons having been in *England*, is no Discharge from Slavery, nor any Evidence of his Freedom.

Masters shall provide Lodging, Diet, and Clothes, for their Servants ; must not correct them immoderately ; nor whip a Christian white Servant naked, without Order of a Justice, upon Penalty of 40 s. to the Party whipped,

U

recoverable

Ordinaries.

Laws of Virginia,

pag. 197.

Mills.

pag. 199.

Marriages.

pag. 216.

Time of Service.

pag. 218,

&c.

Indentures.

Slaves.

Penalty on selling a

Free Per-

son as a

Slave.

Master's

Duty.

recoverable, upon Petition to the County Court, exhibited within 6 Months.

Servants
Com-
plaints.

Complaints of all Servants, whether imported upon Indenture, or by Contract made here, or bound by the County Court, or Churchwardens, may be received by any Justice of Peace, who may summon the Master, and bind him over to answer the Complaint, at the next County Court.

So likewise every County Court may receive Complaints of Servants against their Masters, within their respective Jurisdictions, upon the Servant's Petition to them exhibited, and may thereupon summon the Master, and determine the Matter of Complaint, by their Order, which is final, and without Appeal.

Sale.

If the Master refuses to execute the Court's Order, upon a second Complaint made by the Servant, the Court may forthwith direct the Sheriff to sell the Servant by Public Outcry, to another Master, paying the Overplus of the Sale, after Charges deducted, to the former Owner.

Sick, or
impo-
tent Ser-
vants.

Sick, lame, or disabled Servants, if they cannot be sold for so much as will pay the Charges of Sale, must be provided for by the Churchwardens, 'til they recover, or can be sold, or 'til their Time of Service is expired; and the Charges of such Servant's Maintenance, from Time to Time, to be order'd by the Court, may be levied by Distress upon the Goods and Chattels of the Master.

Free-
dom, and
Wages.

Every Servant, tho' a married Woman, upon Petition to the County Court, may have their Freedom recorded, and Judgment for their Wages, or other Allowance.

Who
may not
have
Servants.

No Negro, Mulatto, or Indian, tho' a profess'd Christian, nor any *Jew*, *Moor*, *Mahometan*, or other Infidel, nor any Person married to any of these, may purchase or keep a Christian white Servant; if they do, the Servant immediately becomes free.

Bargain
and Pro-
perty.

The Master shall make no Bargain with his Servant, for any Matter of Liberty, or Profit, but only in open Court, and there approved: Property of Money or Goods, imported by Servants, or lawfully accruing to them during Service, shall remain to their Use.

If a Servant becomes sick, or lame, and chargeable to the Master, he must not dismiss such Servant, but maintain him the full Residue of his Time of Service, on Penalty of forfeiting 10*l.* to the Churchwardens of the Parish wherein such Servant becomes chargeable.

Allow-
ance.

Allowances to Servants imported, without yearly Wages, to be paid by the Master, at the Time of Service ended, *viz.*

To

To a Man, Ten Bushels Indian Corn, Thirty Shillings in Money, or the Value in Goods, One Fuzee, or Musket, of Value Twenty Shillings, at least.

To a Woman, Fifteen Bushels of Corn, Forty Shillings in Money, or Goods to that Value. Recoverable with Costs, upon Petition to the County Court, in Case of Refusal.

All Servants must faithfully and obediently execute their Master's lawful Commands: If any Servant resists, or offers Violence to his Master, Mistress, or Overseer, he shall be adjudged to serve One Year, for every such Offence.

No Person shall deal or trade with a Servant, or Slave, for Money, or any other Commodity, without Leave of the Master, on Penalty of One Month's Imprisonment, without Bail, or Mainprize, and afterwards continuing in Prison 'til Security given, in 10 *l.* for the Good-behaviour One Year; a second Offence shall be a Breach of the Behaviour, and the Offender further forfeits Four Times the Value of the Goods so bought, sold, or received, to the Owner of the Servant, or Slave: And if the Party convicted does not immediately give sufficient Surety for the Behaviour, he must have 39 Lashes, at the Whipping-post.

Servants convicted of Breach of Penal Laws, shall be punished by Whipping, in Lieu of the Fines, at the Rate of 25 Lashes for every 50 *s.* or 500 *lb.* Tobacco forfeited; but if the Offender procures any Person to pay the Fine for him, he may be bound to serve the Party paying his Fine, at the Rate of One Month and an Half, for every 100 *lb.* Tobacco, after Expiration of the Time due to his present Master.

Punishment of Women Servants, having Bastards. See *Tit. Bastardy.*

And of Servants running away, neglecting their Duty, or being absent without Leave. See *Tit. Runaways.*

Servants, and Slaves, of Persons dying, Testate or Intestate, whilst the Crop is on the Ground, unfinished, and employed in the Crop at the Time of such Person's Death, shall be continued upon the Plantations where they were so employed, unless otherwise directed by any Testator's Will, 'til December 25, then next following, to finish the Crop, which shall be Assets. 10 *Annæ, cap. 2.*

Where any Female Mulatto, or Indian, who is by Law obliged to serve 'til the Age of 30 or 31 Years, shall be delivered of a Child, during the Time of her Servitude, such Child must serve the Master or Mistress of the Mother.

Servants
Duty.

Trading
with a
Servant,
or Slave.

Breach
of Penal
Laws, by
Servants.

Servants,
&c. of
Persons
dying.
Laws of
Virginia,
pag. 276.

Children
of Mulat-
tos, or
Indians.

'til it comes of the same Age to which the Mother was bound to serve. 9 *Geo. 1. cap. 4.*

Forgery. If a Servant forges a Pass, or knowingly makes Use of Laws of a Pass counterfeit and forged, intending to escape by Sea *Virginia*, or Land; he must stand in the Pillory, Two Hours, upon a Court Day, at the Court-house where convicted, and receive 30 Lashes at the Whipping-post. 12 *Geo. 1. cap. 4.*

Ignorance.

Where any Servant imported as a Tradesman, or Workman, upon Wages, shall be found ignorant in his Trade, the Master may carry him before the County Court, and complain of the Deceit; which being inquired and found by the Court, they may order Satisfaction to the Master, either by deducting All or Part of the Servant's Wages, or by compelling him to further Service, without Wages, for the Money advanced, as to them appears just.

S H E R I F F S.

THE Office and Authority of a Sheriff is of such large Extent, that it requires a separate Treatise; I shall therefore in this Place, collect such General Observations only, as may prove useful or instructive to the Reader, and shew the Authority and Duty of these Officers, within the Limits of their daily Practice.

Antiquity of this Office.

He is an Officer of great Antiquity, to whom, long before the Conquest of *England* by the *Normans*, the Government and Conservation of the Peace of his County was committed by the King: And tho' there was then an Earl or Alderman placed in most Counties, yet these were Feudal or Honorary Dignities, and the County was still subject to the immediate Jurisdiction of the Sheriff, by the King appointed for that Purpose. *Seld.*

He was a Minister of Justice, and Chief Conservator of the Peace of his County, almost 300 Years before Justices of Peace were instituted. *Co. Lit. l. 3. s. 248.*

Extent.

Anciently, the Power and Jurisdiction of Sheriffs, by Virtue of their Office and the King's Commission, was very extensive: But some of these Officers having abused their Authority, it was first abridg'd by the Statute of *Magna Charta, cap. 17.* whereby the Sheriff is restrained of holding Plea of any Felony, or for any Debt, or Trespass; and by subsequent Statutes, his Judicial Power has been almost wholly taken away, so that at this Day his Office is chiefly Ministerial.

He is, by my Lord *Coke*, said to have a Threecfold Custody,

I. OF

1. Of Justice; for no Suit begins, and no Process is served, but by the Sheriff; and he is to return indifferent Jurors, for Trial of Mens Lives, Liberties, and Estates,
2. Of the Law; he is after long and chargeable Suits, to make Execution, in Cases Civil or Criminal, which is the Life and Fruit of the Law.
3. Of the Common Wealth; for he is principal Conservator of the Peace, within his County, which is the Life and Security of the Common Wealth. *Co. Lit. 168. a.*

The Sheriff's Office is held by Virtue of the King's Commission, and determinable at his Pleasure; but the King cannot determine this Office in Part, nor abridge the Sheriff of any Thing incident or appurtenant to his Office: For the Office is entire, and it ought to continue so, without any Fraction or Diminution, unless it be by Act of Parliament. *Co. 4 Rep.*

How held
and de-
termined.

Altho' he has his Commission, yet he cannot execute his Office, until he is sworn, but the old Sheriff must continue 'til another be sworn: The taking his Oath doth complete him in his Office, and 'til he is completed the old Sheriff is in Office; for there must not be a Vacancy, lest there be a Failure of Justice. *Dalt. Off. Sher.*

By this Office his Authority of a Justice of Peace is suspended; but after another Sheriff is sworn, then his Authority, as a Justice, remains as it was before, without his taking any of the Oaths anew; except his Name be left out of Commission of the Peace, whereby his Authority is determined. *Dalt. 12.*

The Reason why his Authority of a Justice is suspended during his Sherifalty, is, because the Sheriff is a Minister, but the Justice, a Judge; both equally necessary: One to command, the other to execute; but if the same Person be Judge and Minister, it would follow, that the Sheriff ought to command himself, and that he, or his Officers, might execute his own Precept made as a Justice or Judge, which the Law will not allow. *Ibid.*

By the Common Law, the Sheriff is principal Conservator of the Peace, within his County; He may command any Offender to find Sureties for the Peace, and bind the Parties by Recognisance, which he may take for that Purpose, by Virtue of his Office, and without any Writ or Precept to him directed by a Justice or Justices. *Dalt. 3.*

Sheriff's
Authori-
ty.

He may raise the Power of his County to take, pursue, apprehend, and imprison Traitors, Felons, and Rioters; to suppress Rebellions, Insurrections, and all tumultuous or

riotous Assemblies, and to preserve the Peace: Every Man, at his Command, must forthwith aid and assist him, on Penalty of being attached for his Contempt, and paying a Fine to the King. 3 *H. 7. cap. 1.*

If he sees a Man assaulted, or if an Assault be made upon himself, he may compel the Offenders to find Sureties for the Peace, or put them in the Stocks if they refuse. 5 *H. 7. cap. 6.*

If a Felony is committed, the Sheriff may raise Hue and Cry, without other Warrant, to pursue and apprehend the Felon; and if he resists, or will not surrender himself, so that he cannot otherwise be taken, he may be kill'd by any Officer, or his Assistants. *Doct. & Stud. 133.*

In Felony, Riot, forcible Entry, Breach of the Peace, and generally, in all Cases where the King is Party, the Sheriff, or his Officers, may break open Doors or Houses, to apprehend Offenders: But the Officer ought first to acquaint the Persons in the House with the Cause of his coming, and require the Doors to be opened. *Dalt. 343.*

In the Execution of his Office he may arm himself, and his Assistants, with Arms offensive and defensive: And he may apprehend any Person appearing in Public Places, or Meetings, arm'd with unusual and offensive Weapons, to the Terror of the People, seize his Arms, and carry them, together with the Offender, before a Justice of Peace. *Ibid. 37.*

Duty in
Riots, &c

He must assist the Justices in suppressing Riots, or removing a forcible Entry or Detainer, and arresting the Offenders: If they resist, or flee, and cannot otherwise be taken, they may be kill'd by the Sheriff, or other Officer, or any in their Company. *Dalt. 343.*

Juries.

He must summon Persons qualified to serve on Juries, and ought to return a Pannel of their Names, with the proper Addition of every Juror by him summoned. 27 *Eliz. cap. 7.*

Sheriff, Under-Sheriff, or Bailiff, neglecting his Duty in summoning Juries, or excusing any one for Favour or Reward, or allowing an Exemption to any Person under 70 Years old, forfeits 20*l.* to the Party grieved, or to the Prosecutor. *Ibid.*

If he returns any Bailiff, Coroner, or Steward, or a Servant of theirs, on a Jury, he forfeits treble Damages to the Party, and 40*l.* to the King and Prosecutor. 23 *H. 6. cap. 10.*

Process.

The Sheriff, and his Under-Sheriffs, or other Officers, must at all Times, and in all Places within his County, receive all Writs and other Process to him directed, and issued by

by legal Authority, and must execute the same, and make Return thereof, as to him shall be by such Writ or Precept commanded, without disputing the Validity of the Process. *Doct. & Stud.* 150.

But this must be understood where the Matter of the Command is legally within the Jurisdiction of that Authority whence the Process issued; otherwise the Command is void: As if a Justice of Peace, by his Warrant, should command the Sheriff to arrest a Man for Debt, Trespass, &c. or to hang a Murderer, or Felon, or where he requires the Officer to do any Thing in a Matter which is not by Law cognisable before him, the Officer must not execute such erroneous Process, and is punishable if he does. *Co.* 6, 54.

A sworn Officer need not shew his Warrant for an Arrest; it's sufficient if he declares the Contents to the Party arrested: But a Person specially deputed, who is not a known Officer, ought to produce his Warrant to the Party, if required. *14 H. 7. cap. 9. Co.* 9, 69. Arrest.

If the old Sheriff executes any Writ or Precept, after he is removed, and another Sheriff appointed and sworn, the Party grieved may have his Action for false Imprisonment, or Recovery of Damages. *Crompt.* 205.

If the Sheriff arrests any Person in any Civil Action, or makes a Warrant for that Purpose to his Deputy, without having the original Process; upon Conviction, he shall be committed 'til he pay the Party grieved all his Costs and Damages, and 10*l.* besides, and 20*l.* to the King. *43 Eliz. cap. 6.*

Every Sheriff is chargeable for the safe keeping of all Prisoners committed to the Goal of his County, and must answer for his Goalers; but the Goaler who has a Prisoner actually in his Custody, shall be liable for wilful Escape, if he has wherewith to satisfy, and if he suffers a Felon to escape, he shall be hang'd. *Cro. Eliz.* Prisoner and Escape

If a Prisoner for Treason or Felony breaks away from the Sheriff, or Officer, charged with his Commitment to Goal, and makes Resistance, or flies, he may be kill'd by his Conductors, if they cannot otherwise retake him. *Dalt.* 355.

So likewise, where a Prisoner in Goal attempting to escape, assaults his Goaler, but is kill'd by him, it's justifiable.

And if the Sheriff, or any of his Officers are killed, in the legal Execution of their Duty, or Office, it's Murder, *Ibid.* 343.

If any Person after he is arrested, makes Resistance, or assaults the Officer, he may justify the Beating such unruly Prisoner, and put him in the Stocks, or otherwise secure him, 'til he can procure sufficient Help to carry him to Prison. 21 *H. 7. cap. 39.*

If the Party arrested, and resisting, be kill'd by the Officer, it's justifiable. *Doct. & Stud. 133. Crompt. 24, 6.* But Mr. *Dalton* questions this. *pag. 355.*

Where the Sheriff is of Kin to either Party, Process may be directed to the Coroner. 13 *Edw. 4. cap. 6.*

So likewise, all Process against the Sheriff himself, or his Under-Sheriff, or Bailiff, must be executed by the Coroner.

Execu-
tion.

Sheriff or Officer serving Execution or Attachment upon Goods and Chattels, ought to be cautious in his Proceedings, and to seise such Goods or Chattels only, as plainly appear to be the Estate of the Debtor: For the Officer is bound, at his Peril, to take Knowledge of the Property of Goods, by him taken in Execution, or attached; if he sells, or delivers them to the Plaintiff, and upon Trial afterwards it appears, that the Debtor had no Property in the Goods, but a bare Possession only, the right Owner shall recover the full Value of his Goods so taken, and Costs of Suit, against the Officer: And on the other Side, where the Sheriff returns, that the Defendant has no Goods, &c. but afterwards it appears, that the Officer might have seised the Defendant's Estate, but refused so to do, the Plaintiff may have Action against the Sheriff, for his false Return. *Dalt. Off. Sher. 60, &c.*

Upon an Execution for 20*l.* if the Sheriff takes one entire Chattel, and sells it for 40*l.* and returns the Execution, with the 20*l.* surplus, in Court, he may detain this Overplus, 'til the Defendant demands it of him; for he is not bound to search out the Defendant: But if the Execution be for 40*s.* and the Officer, by Force thereof, seises divers Goods and Chattels, to the Value of 20 or 30*l.* and sells all, the Defendant may recover his Damages, by Action of Trespass against the Sheriff. *Noy 59.*

Sale of Goods taken in Execution, by the Sheriff or Officer, shall be good to the Purchaser, altho' the Judgment be afterwards reversed. *Dyer 363.*

If the Sheriff returns, that he has levied the Debt and Costs, as to him is commanded, which he has ready in Court, &c. but yet the Plaintiff is not paid, and a new Sheriff is made before the Plaintiff's Debt is satisfied, he may have a *Scire Facias* against the old Sheriff, and Execution thereupon. 9 *Edw. 4. 50.*

Where

Where a Sheriff dies, in his Office, his Successor must take Notice, at his Peril, of all Prisoners in his County Goal, charged in Execution: Because there is none to make Delivery of them, or to inform him who is in Execution, who not; and it is no Detriment to the Sheriff to keep them safe, 'til he has Knowledge of all the Executions. *Co. 3. 73. b.*

Altho' the Sheriff may not break open any House, to execute a Writ of *Fieri Facias*, or to serve an Execution at the Suit of any private Person, yet if the Officer enters, the Doors being open, and executes his Process, but is disturbed or assaulted by the Persons in the House, the Sheriff may break it open to rescue his Officer, and to take Execution. *2 Cro. 555.*

Upon Recovery in a Real Action, and Execution thereof directed to the Sheriff, by Writ of *Habere facias Seisinam*, or *Habere facias Possessionem*, commanding him to put the Plaintiff into actual Possession, he may break the House, and deliver Seisin and Possession thereof to the Party in the Writ named. *F. N. B. 220.*

Every Sheriff must make true and perfect Return, under his Hand, of every Writ, Precept, or other Process to him directed; if he makes a false or insufficient Return, he shall be liable to the Action of the Party grieved. *Co. 5, 90. & 11, 40.*

No Person can make legal Return of Writ or Process, but he only to whom it is directed, and that is the Sheriff. *Bulstr. 70.*

If upon an Execution against the Body of the Defendant, the Sheriff returns, that he has taken the Body, &c. he is chargeable for an Escape, if he has not the Defendant's Body at the Day of Return. *Br. 107.*

So likewise, if he returns upon an Execution against the Estate, that he has levied the Debt; he is chargeable for the Money, if he has it not ready at the Day of Return, and the Plaintiff then unpaid.

But if the Execution is duly served, and the Plaintiff's Demand satisfied, the Return is not material. *Co. 4, 67.*

Every Return ought to answer the Substance of the Writ; the Omission of any material Part makes the Return vicious, and the Sheriff liable for Damages. *Co. 3, 15.*

If the Sheriff fails to return the original Writ of Arrest, he is liable to the Action of the Party arrested, for false Imprisonment, and to the Plaintiff, for Damages. *Lit. 4. 18 Edw. 4. cap. 9.*

And

Where
he may
break
Doors,
&c.

Return.

And if he levies Money upon an Execution, but neither returns the Writ, nor pays the Plaintiff, he is chargeable to the Plaintiff in an Action of Account, and to the Defendant for Trespas: But the Plaintiff may take new Execution against the Defendant, and he must seek his Remedy against the Sheriff. *Co. 5, 90.*

Tho' Execution against the Body or Goods of the Defendant, duly executed, and the Plaintiff satisfied, is valid notwithstanding the Writ be not return'd; yet in Execution, by *Elegit*, against the Lands, it is otherwise, for this must be return'd and filed upon Record, because the Value of the Lands extended must be found by Inquisition of 12 Men, upon Oath, by them certified under their Hands and Seals, and not by the Sheriff only; and if such Inquisition be not return'd, the Execution is voidable, and of no Effect. *Co. 5, 30.*

Bail.

If the Party arrested in any Personal Action tenders sufficient Bail for his Appearance, he shall be bailed. 23 *H. 6. cap. 10.*

Where the Sheriff takes a Bail Bond, of Two good Men, of visible Estates in his County, at the Time of taking the Bond, and afterwards they become insolvent, yet the Sheriff shall be excused; for he is obliged to let to Bail, upon good Security, and this Security was good, when taken, tho' it proved insolvent afterwards. *Pr. Reg. 587.*

Under-Sheriff.

He may appoint one or more Under-Sheriffs to be his Deputies, to execute his Office in his Name and Stead; which they may do in all Cases, such only excepted where the Law requires the Personal Service of the Sheriff himself. *Hob. 13.*

He may remove an Under-Sheriff when he thinks fit, notwithstanding any Agreement or Contract to the contrary; because neither the Common Law, nor any Statute allow a Deputy in this Office, so as to make his Commission irrevocable. *Ibid.*

The Under-Sheriff must be sworn; his Oath is appointed by the Statute 27 *Eliz. That he shall duly execute his Office, so long as he continues therein.*

But the Sheriff cannot make a Deputy, and abridge him in his Office; a Condition that he shall not serve Executions above 20*l.* is void, and so is any other Condition to restrain him in the Execution of his Duty: The Sheriff may remove him at his Pleasure, but the Office is entire, and cannot be abridg'd. *Hob. 13.*

Every Sheriff must answer for the Misdemeanors of his Under-Sheriffs, or Bailiffs: For they are his Servants, and ought

ought to be under his Government, and therefore he must take good Security for their just and faithful Execution of their Duty. *Pr. Reg.* 588.

When a new Sheriff is sworn, the old Sheriff must deliver over to him all Prisoners in his Custody, charged in Execution, or imprisoned by Writ or other Warrant; as likewise all Process received by the old Sheriff, but not executed, or not return'd by him: Such Delivery, and the Receipt of the new Sheriff, discharges his Predecessor.

If a Sheriff dies, or is removed before the usual Time, Process must be stay'd, 'til another Sheriff be elected and sworn. *12 Ed. 4. cap. 1. 22 H. 6. cap. 51.*

I shall now proceed to describe the Appointment, Office, and Duty of Sheriffs, established by the Laws and Practice of this Colony.

Between 31 January, and 31 March, Annually, every County Court of this Dominion must recommend Three Justices of their County, to the Governor, who thereupon grants his Commission to One of the Persons recommended, to be Sheriff of that County, for the ensuing Year: If the Governor thinks fit, he may continue the same Sheriff Two Years successively, but no longer. *4 Anne, cap. 3.*

No Person capable of being Sheriff, who is not, at the Time of his Appointment, a Justice of Peace in the same County.

If the Court fails to recommend Three Persons, the Governor may appoint any Person named in Commission of the Peace for that County, tho' not sworn, to be Sheriff: And if he dies in his Office, his Successor may be appointed in like Manner. *7 Geo. 1. cap. 4.*

If One of the Persons recommended and appointed, dies Sheriff, he is to be succeeded by One of the surviving Nominees.

Every Person appointed Sheriff, before he is sworn and before he executes his Office, must give Bond with Two Sureties, in 1000 *l. Sterling*, to the King, and acknowledged in his County Court, and there Recorded, for true and faithful Performance of his Office. *4 Anne, cap. 3.*

If he refuses to serve, he forfeits 3000 *lb.* Tobacco, to the King; upon Payment of the Fine he is excused from the Office, 'til every Justice in Commission of the Peace in his County has served, or paid his Fine. *7 Geo. 1. cap. 4.*

But if he will make Oath, in open Court, that he has used his best Endeavours, truly and *bona fide*, without Covin or Collusion, to get Security for the Performance

Re-
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Laws of
Virginia.

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Sheriffs.
pag. 133.

pag. 309.

Must
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Bond &
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pag. 133

Refusal.
pag. 312.

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Laws of
Virginia,
pag. 133.

377.

mance thereof, and that he cannot obtain such Security ; he shall be excused without paying any Fine.

The Sheriff, or his Deputies, must duly execute all Pro-
cesses to him directed.

Writs returnable to the County Court must be executed and returned Two Days, at least, *Sundays* exclusive, before the Day of Return mentioned in the Writ.

Processes returnable to the General Court may be executed at any Time, before the Return Day ; if executed so late that the Sheriff cannot return it before the Day of Appearance, and thereupon *alias* or *Pluries Capias*, Attachment, or other Process is awarded, the Sheriff must not execute such subsequent Process, but return the first Writ by him executed. 1 *Geo. 2. cap. 3.*

The Fourth Day after the Return Day of any Process, is the Day of Appearance, if not *Sunday*, and then the next Day.

133. If the Sheriff fails in the due Return of any Writ, or Precept, to him directed, he forfeits 1000 *lb.* Tobacco ; and if he makes a false Return, 3000 *lb.* Tobacco : Penalties to the King and Party grieved, and in both Cases the Sheriff further liable to the Action of the Party grieved for Damages.

134. No Writ or other Civil Process must be executed upon a *Sunday*, nor upon any Person upon Duty at a Muster of Militia, nor at any Election of Burgesses ; Process then executed, void : But Traitors, Felons, Rioters, Breakers of the Peace, and Prisoners escaped, may be apprehended at any Time, or Place.

All Process, in Civil Actions, must be returned within the Time limited, according to the Truth of the Case : If the Defendant fails to appear, Plaintiff may take Attachment against his Estate, returnable to the next succeeding Court, and if not then replevied by Appearance, Judgment for his Debt and Costs.

Writs against any Defendant, who is a known Inhabitant of another County, must be returned according to the Truth of the Case, and the Process abates.

Bail.

Sheriff, or his Officer, shall not take any Bail Bond, or other Obligation which he may take by Virtue of his Office, of any Person in his Custody, but what shall be payable to himself, as Sheriff, and dischargeable upon Condition, That the Party shall appear at the Day and Place mentioned in the Process whereupon he is in Custody : Obligations otherwise taken, void.

But

But where by any other Act, in special Cases, Obligation is expressly directed to be taken in other Manner, such Cases are excepted.

Where a Writ is executed upon the Body of the Defendant, in any Action where the Law requires and allows Bail, the Sheriff must return the Names of the Bail by him taken for the Defendant's Appearance; and the Bail shall be subject to the same Judgment and Recovery, and have the same Liberty of Defence, as the Defendant might have, or be subject to. *4 Annæ, cap. 19.*

But if the Sheriff does not return Bail, he shall be liable himself, in the same Manner: If he dies, Judgment may be confirmed against his Executors, or Administrators, and if none such, Execution may issue against his Estate.

Sheriff, or Bail, are discharged by the Defendant's Appearance, and putting in Special Bail, at the next Court after Conditional Judgment, entered in the County Court; And any Interlocutory or Final Judgment, entered in the Secretary's Office, against Defendant and Sheriff, or Bail, may be set aside by the Defendant's Appearance and putting in good Bail, the First Day of the General Court succeeding next after Return of Writ, and pleading to Issue immediately.

Where Judgment is confirmed against Sheriff or Bail, the Party grieved may have Remedy, by Attachment against the Defendant's Estate, grantable by the Court, upon Motion.

Where no Debt or Damage is mentioned in any Writ returnable to the General Court, or where Bail is not by Law required, the Sheriff may take the Engagement of any known or reputable Attorney, under his Hand, endorsed upon the Back of the Writ, that he will appear, or cause Appearance to be entered for the Defendant: Such Appearance must be entered with the Clerk, in the Secretary's Office, the Fourth Day after the Return Day of the Writ.

If the Attorney fails to enter Appearance, he forfeits 50 s. to the Plaintiff, who may have immediate Judgment and Execution.

Where the Bail return'd is held insufficient, or where Defendant fails to give Special Bail, when ruled so to do, the Sheriff, or Bail return'd, shall be liable for the Recovery, and may have Remedy by Attachment.

Upon every Writ of Execution by *Fieri Facias*, against the Goods and Chattels of the Defendant, or Debtor, delivered to the Sheriff, Under-Sheriff, or Coroner; the Sheriff

Laws of
Virginia,
pag. 159.

377.

159.

377.

Execu-
tions.

pag. 361:

Sheriff, or Officer, must endorse the Day, Month, and Year, when by him received, because the Property of the Debtor's Goods is bound from the Day of delivering the Writ to the Officer; and if several Executions against the same Person, are deliver'd to the Officer in the same Day, that which was first delivered shall be satisfy'd first.

12 Geo. 1. cap. 3. This Act declares the Law concerning Executions, and prescribes the Method and Form how they shall be issued, executed, and returned, too long to be inserted here: For so much as appertains to my Subject, the Jurisdiction of a Justice of Peace, out of Sessions. See *Tit. Debt*.

If the Sheriff returns, that he has levied the Debt, or Part thereof, and does not immediately pay it to the Creditor, or his Attorney, he may have a *Scire Facias*, and Execution, against the Officer, for the Money by him levied.

If Goods taken in Execution remain unsold in the Hands of the Officer, for Want of Buyers, he must make Return accordingly, whereupon a Writ of *Venditioni Exponas* issues, by Virtue whereof he is to sell them for ready Money, or upon Credit, as he and the Creditor thinks best.

8 Geo. 2. cap. 11. But by a late Act, no Execution, or Distress, for any Debt due in Tobacco, shall be levied between 31 August, and 31 January, in any Year.

And where Execution shall be serv'd, or Distress made upon the Goods or Estate of any Debtor, if he within Five Days tenders sufficient Security, approved by the Creditor, for Paiment of the Debt, with Interest, in 12 Months, the Officer shall restore the Goods taken.

If no such Security be offered, and the Goods cannot be sold, at Three Fourths of the Value, at least, in the Opinion of the Officer, he may sell them for Money, or Tobacco, as the Debt is due, paialbe in 12 Months; but the Buyer must be bound, with Surety, for Paiment of the Principal and Interest, to the Creditor.

Laws of
Virginia,
pag. 363.

Execution against the Body or Goods of a Debtor may be issued by the Clerk of the Court where Judgment was obtained, and directed to the Sheriff of any County within this Colony, where the Debtor or his Goods shall be found, who must execute and return such Writ to the Court where the Judgment was given. 12 Geo. 1. cap. 3.

Prisoners in Execution may have Liberty of the Prison Bounds. See *Tit. Goal*.

Sheriff's Duty relating to poor Prisoners under 10 l. See *Tit. Insolvent Debtors*. If

If any Person, charged in Execution, shall be unable to pay his Prison Fees, they shall be satisfied by the Virginia, County, for the first 20 Days, and for all becoming due afterwards, the Creditor is liable to the Sheriff: But the Prisoner remains liable to the Creditor for such Fees *Laws of Virginia, pag. 366.*

Notwithstanding a Creditor consents to release an Insolvent Debtor out of Prison, yet the Creditor may, at any Time afterwards, sue out a *Scire facias*, and have Execution against Lands, Goods, or Chattels, acquired by the Debtor.

Sheriff's Duty in executing Writs for Election of Burgesses. *See Tit. Assembly.*

He is to collect and receive Quit-Rents, Levies, and other Public Debts. *See Tit. Quit-Rents, and Levies.*

Secretary's, Clerks, and Surveiors Accounts, for their Fees, must be by them delivered, under their Hands, before *December 20*, Annually, to the Sheriff of the County wherein such Fees are due, and he must receive the Tobacco of the Persons chargeable; if refused and unpaid after *April 10*, he may distrain the Negros, Goods, and Chattels of the Party refusing, either in the County where he lives, or where the Fees became due: No Action maintainable for any of these Fees, unless the Sheriff returns, that the Defendant hath not sufficient, within his Bailiwick, whereon to make Distress. *8 Geo. 2. cap. 10.*

If he is sued for any Thing by him done, in Pursuance of this Act, he may plead the General Issue, and give this Act in Evidence.

He must account for these Fees, before *31 May*, Annually, abating *4 per Cent.* for collecting.

Refusing to account, or to pay the Tobacco due for Fees put into his Hands, discounting the *4 per Cent.* and allowing for the Accounts of such Persons as do not dwell, or have no visible Estate in his County, the Party grieved, upon Motion made in the next succeeding General Court, or the Sheriff's County Court, shall have immediate Judgment and Execution against the Sheriff: But must give Ten Days Notice of such Motion.

The Party chargeable with Clerks and Surveiors Fees may pay them, either in the County where he lives, or where the Fees became due, if he has an Estate in that County. *8 Geo. 2. cap. 1.*

Sheriff's Fees are settled in General Assembly, from Time to Time; the Act now in Force was made *8 Geo. 2. cap. 10.* and expires *Octob. 5 1736*; by it, these Fees are due and demandable, *viz.*

Fees.

Pounds

	Pounds Tobacco.
For Arrest, Bond, and Return, - - -	30
Returning <i>Non est inventus</i> , - - -	10
Serving Order of Court upon any Person, and	} 15
Return, - - - - -	
<i>Subpœna</i> for an Evidence ; but not if summo-	} 10
ned in Court, - - - - -	
Attachment, upon the Body, - - -	30
Goods, if not sold, - - -	30
General Court Writ, Summons, or Order,	} 30
and Return, - - - - -	
Writ of <i>Habere facias Seisinam</i> , or <i>Habere</i>	} 50
<i>facias Possessionem</i> , - - - - -	
Execution, or Attachment, if the Goods are fold, viz.	
5 per Cent. for the first 1000 <i>lb.</i> Tobacco, or the first 100 <i>l.</i> Money ; and 2 per Cent. for all above.	
<i>Subpœna</i> to answer in Chancery, and Copy,	15
Summons, upon Petition for Debt, - - -	15
A Warrant, - - - - -	10
Pillorying, or Ducking any Person, - - -	20
Putting into the Stocks, - - - - -	10
Imprisonment and Release, - - -	20
Keeping and providing for a Debtor in Goal,	} 10
per Day, - - - - -	
Runaway, or Criminal,	} 5
Summoning an Appraiser, Auditor, Viewer,	} 10
or Evidence to a Deed, Will, or Writing,	
if required to be summoned, but not else,	
a Witness in Trial of a Warrant,	5
Summoning and impanneling a Jury, in every	} 50
Cause where a Jury is sworn, - - -	
a Jury upon any Inquisition,	} 150
Survey, Writ of Dower, or	
Partition, if they appear,	
Every Days Attendance upon a Jury, in the	} 50
Country, after sworn to try the Issue join'd,	
Return of Writ of Dower, or Partition, - - -	50
Selling a Servant, by Order of Court, at Pub-	} 20
lic Outcry, and all Fees incident,	
Proclamation, in proving Wills at Common	} 20
Law, or in Process of Outlawry, - - -	
The Party at whose Instance such Business is perform-	
ed, shall be chargeable for these Fees.	

For

For Criminals; to be paid by the County, and repaid by the Public, *viz.*

Going to *Williamsburg* for a Commission of Oyer and Terminer, *per* Mile, coming and the like for returning, } 2

Coming to, and attending the General Court, with the *Venire*, and Return thereof; the same as is allow'd to a *Venire* Man, }

Summoning Court of Oyer and Terminer, or for Examination of a Criminal, and for attending the Court, } 200

Executing a Person condemn'd, and all Fees incident, } 250

And for Public Services, to be rais'd Annually in the County Levy, with Cask, *viz.*

Attending Orphans Court, and Courts of Claims and Grievances, Impanneling Grand Juries, Publication of Writs for Election of Burgeſſes and Attendance, Serving Public Orders of Court, and all other Public and County Service. } 1000

There are other Fees due to Sheriffs for Services by them occasionally done, which will appear under their respective Titles.

He is to have no Allowance for any Public Services, but such only as are provided for by Law; all others must be executed as appertaining to his Office. 4 *Annæ*, cap. 8.

Where the Coroner executes Writs, or other Proceſs, he may demand the same Fees as are given to the Sheriff, for the like Services.

If the Sheriff, or Officer, charges, demands, and takes more, or requires any Fee for Buſineſs not actually by him done, and proved by his Book, upon Oath, he forfeits for every Offence 200 *lb.* Tobacco, besides the Fee overcharged, to the Party injured. Proſecution in 12 Months.

Duty and Fees of Sheriffs concerning
Criminals. } See these
Runaways. } Titles.
Juries. }

Before every Session of Assembly, the Sheriff of every County must appoint a Day, for a Court to be held, by the Justices of his County, for Proof of Public Claims, and must attend the Court, on Penalty of 1000 *lb.* Tobacco, to the King and Informer. 4 *Annæ*, cap. 8. Court of Claims. Laws of Virginia, pag. 141.

Sheriff, and Officers, attending the General Court, may summon Grand Jurors, Jurors, and Witnesses, and execute
X the pag. 165.

Admini-
stration.
Laws of
Virginia,
pag. 180.

the Commands of that Court, in all Parts of *Williamsburg*, and Half a Mile round it. 4 *Annæ*, cap. 20.

Laws, to
be pub-
lish'd.

pag. 218.

pag. 339.

pag. 311.

Disabi-
lities on
Sheriffs.

pag. 11.

pag. 451.

Where the Estate of any dead Person is of so little Value that none will take Administration within 3 Months after the Party's Death, the Court may direct the Sheriff to take Possession, and sell the Estate by Outcry: The Buyers must give Obligation, with Security, payable to the Sheriff, who is to assign such Obligations to the Creditors of the Deceas'd, according to legal Priority of their respective Debts, or to such Persons as the Court shall direct: Sheriff's Fee, 5 *per Cent.* of the Value sold. 4 *Annæ*, cap. 33.

The Acts of Assembly here under-mentioned are to be Annually read, by the Sheriff of every County, publicly at the Door of his Court-house, on the Court Days by those Acts respectively directed, *viz.*

An Act concerning Servants and Slaves. 4 *Annæ*, cap. 49. at the Court held next after the last Day of *February*; under Penalty of 600 *lb.* Tobacco, to the King and Informer.

An Act directing the Trial of Slaves committing Capital Crimes, &c. 9 *Geo.* 1. cap. 4. in *June*, or *July*; Penalty, 500 *lb.* Tobacco, to the Informer.

An Act for the more effectual preventing the Tending of Seconds. 7 *Geo.* 1. cap. 5. in *June*, or *July*; Penalty, 500 *lb.* Tobacco, to the King and Informer.

Duty of Sheriffs in dispersing and apprehending Slaves unlawfully assembled. See *Tit. Slaves.*

No Sheriff, or Under-Sheriff, shall practise as an Attorney, in his County Court, on Penalty of being fined 1000 *lb.* Tobacco, to the Use of his County. 13 *Car.* 2. cap. 49.

No Sheriff capable of being a Member of the House of Burgeses; but a new Member shall be elected in his Stead, as if he were dead. 3 & 4 *Geo.* 2. cap. 10.

Burgeses exempted from being appointed Sheriffs.

S H I P S.

Ship-Master and Officers. Mariners. Sailors. Naval Officers. Collectors.

Duties. **P**ORT Duty shall be paid by all Ships and Vessels, enter'd in any District of this Colony, to lade, or unlade. 32 *Car.* 2. cap. 3. & 9 *Annæ*, cap. 5.

Duty, per Ton	- - - - -	s. d.
		Sterl. 1 3
And for every Person imported, who is	2	0 6
not a Mariner in actual Pay	- -	5

Governor

Governor and Council may allow 10 *per Cent.* Discount, upon Paiment of the whole Duties of a Ship, in one entire Sum, either in Money, or good Bills of Exchange.

But Vessels belonging wholly to *Virginia* Owners are exempted from these Duties, as likewise from Paiment of the Impost of 2 s. *per* Hogshead, &c. upon Tobacco exported. Excep-
tion.

The Master must deliver his Boatswain's Book to the Collector, upon Oath; and if the Collector thinks fit, he may swear any of the Ship's Company, to discover her Freight: If the Master makes false Entry of his Ship's Burden, or conceals any Part of her Freight, or Passengers, he forfeits 100 l. and treble Duties, to the King and Informer. Penal-
ties, for
false En-
tries.

If he makes short Entry of the Number of Persons imported in his Vessel, and liable to the Duty, he forfeits 10 l. to the King and Prosecutor.

He must also give Bond, in 20 l. for Paiment of the Duties upon all Tobacco, which shall appear, by Certificate from Officers of the Customs in *England*, to have been enter'd at the Custom-house there, more than was enter'd and paid for here: If the Bond is not put in Suit, within One Year after Date, 'tis void.

Method of Mensuration of Vessels, *viz.*

The Length of the Gun Deck, after deducting Three Fifths, of the greatest Breadth from Out to Outside, and the Remainder multiplied by the whole Breadth from Out to Out, and the Product multiplied again by Half the Breadth, and then the whole Product divided by 94, the Quotient answers the Tonnage. Mensu-
ration.

By this Rule all Vessels shall be measured, and the Duties paid.

Where a Vessel belongs to *Virginia* Owners, One of them must prove the Property, upon Oath, before the Governor, and obtain his Testimonial under Seal of the Colony, or before the General Court, certify'd by the Clerk under Seal of his Office: Collector shall not allow the Privilege of Exemption, without such Testimonial or Certificate to him produced, by the Master of the Vessel claiming Freedom, and Oath by him made, That he doth not know that any Part of the said Ship or Vessel doth belong to any Person whatsoever, which is not an Inhabitant of *Virginia*. Virginia
Owners.

No Ship or Vessel shall break Bulk, or take on Board any Merchandise, before Bond given by the Master, with One Surety, that he will not depart with his Ship, or *Virginia*, Bonds
Laws of
Virginia,

Vessel, from the District or Port where she is enter'd, until Paiment be made of the several Customs, Duties, Impositions, and Fees, accruing due from the said Ship, or Vessel, or for or by Reason of any Tobacco, Skins, Furrs, or other Goods and Merchandise, ship'd and laden in her, nor until the said Ship, or Vessel, be duly clear'd by the Collector and Naval Officer of the said District or Port.

The Sums of the Bonds, *viz.*

For every Vessel under 50 Tons	- - -	50 <i>l.</i>
Above 50, and under 100 Tons	- -	100
100 Tons, or more	- - - - -	200

The Bonds to be deliver'd back, when clear'd; but upon Breach of the Condition, forfeited without Relief in Equity. 4 *Annæ, cap. 27.*

Clearing.

Before the Officer by whom the Vessel is clear'd, the Master must make Oath to the Goods he has on Board, and that he will not lade or take on Board his Ship, or Vessel, any more Merchandise, liable to a Duty or Custom, or which the Law requires to be enter'd, without Permit.

All Duties upon Goods exported shall be paid to the Collector or Receiver of the District where the Vessel rides, before Clearing.

In Case of Suspicion of Fraud, or Concealment, Naval Officer or Collector may examine the Crew belonging to the Vessel, or any other Person, upon Oath.

Collector's Fees		<i>l.</i>	<i>s.</i>	<i>d.</i>
Fees.	For Entering and Clearing a Vessel of 50 Tons, or less, (Vessels transporting Goods from one District to another, are excepted,) and all Fees incident.	}	0	10 0
	Above 50 Tons, and under 100, - -			
	100 Tons, or more - - - - -		1	5 0
	Taking a Plantation Bond - -		0	2 6
	Certificate of Duties paid upon Goods exported to the Plantations, }		0	2 6
Naval Officer's Fees.				
	For a Vessel of 50 Tons, or under, (except as before,)	}	0	7 6
	Above 50, and under 100,			
	100, or more, - - - - -		1	5 0
	Taking a Bond, - - - - -		0	2 6
	A Permit to trade, - - - - -		0	2 6
	Every Loading Coquet, - - - - -		0	0 6
	A Permit to load for Exportation,		0	2 6

Certificate

	l. s. d.
Certificate for Goods imported, and removed out of one District to another, after landed ; to be paid to the Officer of that District from whence the Goods are removed.	} 0 2 6

Only Half these Fees for Vessels belonging to *Virginia* Owners.

If a Collector, Naval Officer, or Receiver of *Virginia* Duties, demands and takes greater or other Fees, and is convicted, he forfeits,

For the first Offence, 100 *l.* to the King and Party injured.

Second Offence, 20 *l.* to the Informer ; and is disabled in his Office, his Commission void, and the Offender for ever incapable of being Collector, or Naval Officer.

If the Party injured does not sue in 3 Months, any other Person may, and recover the Penalty : But Prosecution must be within 12 Months after the Offence.

A Table of these Fees shall be kept by every Collector, and Naval Officer, publicly in his Office.

Penalties on Masters of Ships suffering Ballast, or dead Bodies, to be cast into the Water. *See Tit. Rivers.*

And for transporting any Person out of this Colony, without License or legal Pass. *See Tit. License.*

Every Master of a Vessel, at the Time of his Clearing out, must take this Oath, *viz.*

I A. B. Master of the Ship (or Vessel) C. do swear, That I will make diligent Inquiry and Search in my said Ship (or Vessel) and will not knowingly or willingly carry, or suffer to be carried, in my said Ship, out of this Dominion, without such Pass as is directed by Law, any Person or Persons whatsoever that I shall know to be removing hence in order to deceive their Creditors ; nor any Servant or Slave, that is not attending his or her Master or Owner, or sent by such Master or Owner.

To be administered by the Officer of the Customs in the Port where the Vessel rides. 12 *Geo.* 1. *cap.* 4.

But taking this Oath does not discharge the Master from any Penalties, to which he is liable by the Act. 4 *Anne*, *cap.* 12.

All Masters of Vessels, entering here, must enter into Bond, with Condition, That they will not depart this Colony,

Trans-
porta-
tion.

Oath.
Laws of
Virginia.
pag. 370.

Embar-
goes.

lony, when any Embargo is laid, during Continuance of such Embargo; and that they will observe and follow such Rules and Directions as shall be thought necessary to be given by this Government, for the making up of Fleets.

4 *Annæ, cap. 47.*

Bonds; for a Vessel	}	100 <i>l. Sterl.</i>
under 100 Tons		
100, and not 200 Tons		200
200 Tons, or more		500

When an Embargo is laid, Collector or Naval Officer must give Notice thereof, to all Masters in his District, and of the Time of its Continuance:

Sailors.
Laws of
Virginia,
pag. 197.

No Bond forfeited unless Breach made after Notice.

If an Ordinary-keeper sells Drink, upon Credit, to a Sailor in actual Pay, he shall not recover the Money.

4 *Annæ, cap. 40.*

And if he harbours, entertains, or sells Liquors to such Sailor, without the Captain's License, he forfeits Ten Shillings, to the Captain, recoverable before a Justice.

If an Ordinary-keeper, or any other Person, entertains, harbours, or conceals a Seaman, who does not prove himself to be about his lawful Business, the Offender forfeits 500 *lb.* Tobacco, to the Prosecutor: Failing to pay, or give Security, 20 Lashes. 9 *Annæ, cap. 5.*

pag. 326.

Like Penalty for harbouring or entertaining a Seaman, who does not produce a Certificate of Discharge, under his Captain's Hand and Seal. 8 *Geo. 1. cap. 6.*

Run-
aways.
pag. 239.

If a Seaman runs away, or absents himself unlawfully from the Vessel he belongs to, he may be taken up, by any Person, and brought before a Justice of Peace, who may, by his Warrant, commit him to the next Constable, to be conveyed from Constable to Constable, 'til put on Board his Vessel. 9 *Annæ, cap. 3.*

Consta-
ble's
Fee.

The Constable delivering him on Board, must take Receipt of the Master, or some Officer of the Vessel, and immediately carry such Receipt to the Naval Officer of the District where the Vessel rides, and before she is clear'd out, who is to pay his Reward, as under, and to be repaid by the Commander of the Vessel, *viz.*

If 10 Miles, or less	- - - -	5 s.
above 10 Miles	- - - -	10 s.

Reward
to the
Taker.

The Justice of Peace is to give a Certificate to the Taker of the Runaway, declaring what Ship or Vessel the Seaman belongs to, where taken, and if Ten Miles, or more, or less, from the Place where the Vessel rides, and that the Taker made Oath, before him, to the Place of Taking.

Upon

Upon producing such Certificate to the Naval Officer, Return-
before the Vessel clears, he is to pay the Taker's Reward, ed to the
and shall be repaid by the Captain, viz. Taker.

If 10 Miles, or more, - - - 20s.

under 10 Miles, - - - 10s.

If the Vessel to which the Runaway belongs, is failed,
before he is taken, or can be delivered on Board, then he
shall be convey'd to any of the King's Ships, and deliver'd
there, if the Captain will receive him, and pay the Re-
ward for Taking; and if he refuses, then to the Captain of
any Merchant Ship that will receive him, and pay the Re-
ward.

Constable suffering an Escape, or not delivering Receipt Escape.
to the Naval Officer, as by this Act directed, forfeits
500*lb.* Tobacco, to the King.

Warrant, for Conveying on Board a Runaway Seaman.

York sc. **A.** B. Gent. a Justice of Peace of the said
County, to C. D. Constable, and all other
Constables, to whom these Presents shall come, Greeting.
Whereas J. O. a Runaway Seaman belonging to the Ship
E. of London, F. G. Master, now or lately lying at
in the District of York River, was taken up by H. I.
of &c. at in this County, above Ten Miles distant
from the said Ship, and this Day brought before me: I
command you, that you receive the said J. O. into your
Custody, and him forthwith convey and deliver to the next (a) Or,
Constable, (a) and so from one Constable to another, 'til on Board
he shall be delivered on Board the said Ship, to the Mas- the said
ter, Mate, or some other Officer thereof, of whom you Ship.
shall take Receipt for your so doing, and deliver the same
forthwith to the Naval Officer of the District aforesaid.
Herein fail not. Given under my Hand, &c.

Receipt, to be endorsed upon the Back of the Warrant.

December 20, **R** Eceived on Board the Ship E. of C. D. Receipt.
1735. Constable, the Runaway Seaman with-
in-mentioned.

F. G. Master.

Certificate to the Taker.

York sc. **H.** I. of &c. this Day brought before me A. Certifi-
B. Gent. a Justice of Peace of the said cate.
County, One Runaway Seaman, named J. O. belonging to
the Ship E. of London, now or lately lying at in
the District of York River, and made Oath, That the
X 4 said

said Seaman was by him taken up at in this County; which is above Ten Miles from the said Ship. Certified under my Hand, this Day of

Absence. If a Seaman in Pay, goes on Shore, and absents himself, without Leave, he forfeits 5 s. for every Offence, recoverable before a Justice, by the Master of his Ship, or any of the Crew: Failing to pay, or give Security for Payment out of his Wages, 10 Lashes. 8 Geo. 1. cap. 6.

Disobedience, or Mutiny. And if he is sent out in Ship Service, but disobeys Command, 21 Lashes, by Order of a Justice.

If any Person hired in Ship Service, refuses to obey lawful Command, or lifts his Hand against his Captain, Master, or superior Officer, or threatens them with Bodily Hurt or Damage, or neglects his Duty, upon Complaint made to Two Justices, (One of the *Quorum*,) they may cause the Offender to be brought before them, and summon Witnesses on either Side, and thereupon hear and determine the Complaint: They may fine the Offender in any Sum, not exceeding Three Months Pay, and may award corporal Punishment; and upon Conviction, if the Offender refuses to pay the Fine, or give Security for Payment out of his Wages, and also for his Good-behaviour, and due Performance of the Voiage, he shall receive 39 Lashes, and be remanded to his Service on Board.

Discharge. If any Commander hires, receives, or entertains a Seaman belonging to another Vessel, without Certificate of Discharge, under Hand and Seal of his former Captain, he forfeits 10 l. to the Prosecutor.

Every Master, when he discharges a Seaman, must give him such Certificate, that he may be enabled to procure Entertainment elsewhere; the Master refusing, forfeits 5 l. to the Seaman grieved, recoverable before a Justice of Peace.

Warrant, against a disobedient Seaman.

To J. O. Constable.

2 Justices, one *Quorum*. York sc. **W**Hereas A. B. Master of the Ship C. of London, now riding at Anchor in the Port of York, has this Day made Complaint before us D. E. and E. F. Gentlemen, Two of His Majesty's of the Peace for the said County, (One whereof is of the *Quorum*,) That H. I. a Person hired to serve on Board the said Ship, has obstinately refused to obey the lawful Commands of his said Captain, and wilfully neglects his Duty on Board: Therefore we command you, that you cause the said H. I. to come

come before us, on Friday the 28th of this present Month, at *by Ten a Clock in the Forenoon, to answer the Premises; and that you be then there with this Precept. Herein fail not. Given, &c.*

No Seaman out of his Commander's Employ, shall travel without Certificate under Hand and Seal of his last Captain, that he has been by him discharged: Otherwise he may be taken up as a Runaway, and conveyed back to his Ship, as directed by the Act 9 *Annæ, cap. 13.*

Certificate of Discharge.

Certifi-
cate.

I A. B. Master of the Ship C. of London, certify, That the Bearer D. E. is by me discharged from his Service on Board my said Ship. Certified under my Hand and Seal, this Day of

Every Master of a Merchant Vessel must find Provisions and Accomodations for the Men under his Command, and for all Persons by him employed: If he neglects, or refuses, upon Complaint made to the next Justice, he may summon the Master, and order reasonable Satisfaction to the Party injured, according to his Discretion; and may award Execution against the Body or Goods of the Commander.

Duty of
Com-
manders.
Laws of
Virginia,
pag. 327.

To the Sheriff of York County.

York sc. *Whereas Complaint is made to me A. B. Gent. a Justice of Peace of the said County, by C. D. and E. F. Two Seamen belonging to the Ship G. of London, H. I. Master, That the said Master refuses to provide good and sufficient Victuals to the said C. D. and E. F. and other Seamen under his Command: Therefore I command you, in His Majesty's Name, That you require the said H. I. forthwith to appear before me, to answer the Premises, according to an Act of Assembly, in that Case made and provided, and that you make due Return how you have executed this Warrant. Given under my Hand, &c.*

Warrant.

If a Master immoderately beats, wounds, or maims any of his Men, he may be bound to his Good-Behaviour, by a Justice of Peace, and the Party grieved, may recover Damages for the Beating, Wounding, &c. by Action of Trespass.

And

Sick Sailors. And if any Master turns away a sick or disabled Sailor, without providing for his Maintenance and Cure, he forfeits 10*l.* to the Churchwardens of the Parish where such Sailor is put ashore; and is further liable to Action of the Churchwardens of that or any other Parish where the sick Person becomes chargeable, for the Charges of his Maintenance and Cure: No Act of Limitation pleadable in Bar. 1 *Geo. 2. cap. 7.*

Laws of Virginia, pag. 397. Duty of Masters and Persons on Board Ships coming from Places infected with the Plague. See *Tit. Quarantine.*

Tobacco. Every Master of a Vessel entring here must give Bond to the King, in 200*l. Sterling*, with Condition, That he will not crop, cut away the Bulge, draw the Staves, or otherwise abuse, or cause or suffer to be crompt, cut, drawn, or otherwise injured or abused, by his Knowledge, Privy, or Procurement, any Tobacco Cask freighted on Board his Ship, or Vessel, unless it be so agreed upon between the Freighters and the said Master. 9 *Annæ, cap. 8.*

He must likewise make Oath, to the same Effect.

Before such Bond given, and Oath made, Naval Officer may not grant Permit to load Tobacco, under Penalty of 200*l.*

If any Master or Mariner crops, cuts, or draws Staves, or injures any Tobacco Cask, ship'd upon Freight, or is aiding or assisting therein, the Offender forfeits 5*l. Sterl.* to the Informer, recoverable in any Court of Record, and may be held to special Bail: If several Offenders in the same Fact, each Person liable to the whole Penalty; and the Master must answer Damages to the Party grieved.

Any of the Ships Company may inform, or give Evidence, against Offenders: Such Informer, or Witness, discharged from Prosecution or Penalty, tho' accessory to the Fact.

Collector, Naval Officer, Searcher, and any Person who has Tobacco on Board, may enter a Ship in the Time of her Loading, to search, if any Offence is committed against this Act: Master or Mariner hindring Search, forfeits 10*l.* to the King and Informer.

Liquors. Master or Purser of every Vessel importing Liquors, liable to a Duty, must make Report, upon Oath, within 48 Hours after his Arrival here, before the Collector of the District where his Vessel lies, of the Burden, Contents, and Loading of his Vessel, and the Marks and Numbers of every Cask of Liquors on Board, to the best of his Knowledge, and in what Port they were ship'd, under Penalty of 100*l.* 5 & 6 *Geo. 2. cap. 2.*

Collectors, and their Deputies, may enter any Vessel, and bring on Shore Liquors liable to a Duty, and not entered within 10 Days after Entry of the Vessel; and may stay on Board 'till all such Liquors are delivered: But if Bond be offer'd, with good Security, for Paiment of the Duties, in 6 Months, Collector must accept it.

Before Liquors may be transported from one District to another, after landed, the Master of the Vessel wherein they are to be transported, must make Oath, before the Collector of that District from whence removed, or before a Justice of Peace, to the true Quantity of Liquors on Board, to be transported, and that he will not take, or suffer to be taken, on Board the said Ship, Boat, or other Vessel, any more Liquors liable to a Duty; he must also take Certificate from the Collector, of the Quantity of Liquors on Board, and that Oath has been made: Master of any Vessel transporting Liquors in other Manner, or landing Liquors in any other District than that where first entered, without producing Certificate to the Collector of that District where landed, and obtaining his Endorsement on the Back of such Certificate, specifying the Time when the same was produced to him, upon Conviction in any of the Premises, forfeits the Value of the Liquors. *See Tit. Customs.*

'Tis manifest, that building Ships, raising Seamen, and encouraging the Produce and Export of Naval Stores, are fundamental Principles of Trade and Navigation, and upon this depends, in a great Degree, the Increase of Numbers, Wealth, and Prosperity of any Nation, or People. Before the Conquest of *England*, by the *Romans* under *Julius Cæsar*, the *Britains*, tho' numerous, were poor and unciviliz'd, destitute of Trade and Shipping, so that they became a Prey to the *Roman* Invader, and after him to the *Saxons* and *Danes*, being harass'd with continual Wars, and intestine Factions above 1100 Years; 'til *William* the Conqueror, *Anno Dom.* 1066, with his *Normans*, invaded and subdued the *English* Monarchy, killing *Harold* the last King of the *Saxon* Race, which had continued 500 Years: The Conqueror introduced the *Norman* Laws, Fashions, and Language, and endeavoured to establish and promote Trade and Navigation among his new Subjects; hereupon ensued a new Face of Affairs, and *England* became more victorious Abroad, and refined at Home. The *English* now began, by their Converse with Foreigners Abroad, to civilize their Manners at Home; this introduced greater Decency in common Conversation, and antiquated the old Custom of intemperate Drinking, and instead

Advantages of
Trade,
Shipping,
& Navigation.

instead of Roughness, Excess, and Clamour, substituted Temperance, and implanted a generous Desire of Reputation and Honour: Hence ensued a Contempt of their little homely Cottages, in the Room of which, they built themselves stately Houses, provided with neat and good Furniture, and erected magnificent Churches, and sumptuous Public Edifices.

But no considerable Improvements were seen in Trade, 'til about 500 Years afterwards, in the Reign of Queen *Elizabeth*: This great Princess, the Glory of the *British* Annals, was blest with a wise Council, and an able Ministry; She was the Patroness of her Merchants, established and protected them in their Privileges and Trade, frequently honouring them with her Royal Presence among them; and under her Protection and Influence, her Subjects extended their Trade and Navigation to all Parts of the Globe: This enabled her not only to defend her own Kingdom against the whole Power of *Spain*, then the most potent Nation of the Christian World, but likewise to assist her oppressed Neighbours, who were by her rescued from the *Spanish* Yoke, and she became, in Effect, the Arbitress of Christendom. By these Means she laid the Foundation, and from hence we may date the first Rise of *Britain's* Prosperity and Grandeur.

Disco-
very of
Virginia.

'Twas in the Reign of this Maiden Queen, *A. D.* 1584, that Sir *Walter Raleigh*, a Gentleman of Probity, Learning, and an extensive Genius, in great Favour with the Queen, undertook an Expedition to make Discoveries on the Continent of *America*: To this Purpose he obtained the Queen's Commission, fitted out some Ships, provided with all Necessaries for his Design, and commanded the Expedition in Person: They arrived upon the North Coast of this Continent, and landed, and perceiving the Country well stored with navigable Rivers, blest with a fruitful Soil, and moderate Climate, they determined to fix a Settlement here, and Sir *Walter* thereupon took Possession, in the Name of the Queen and Crown of *England*, and in Honour of his Royal Mistress, named it *Virginia*.

Its Con-
venience,
and natu-
ral Ad-
vantages.

If we consider the Conveniency of our Situation for Trade, the great Number of our Harbours, navigable Rivers and Creeks; and the bountiful Liberality of Nature, in abundantly furnishing our Soil with Timber, Plank, Iron, Tar, Pitch, and other Materials for Shipping and Naval Stores; it may be thought Matter of Wonder and Astonishment, that we have hitherto seen only inconsiderable Improvements in Navigation among us, notwithstanding the repeated Assurances from *Great-Britain*, which

which leave us no Room to doubt of proper Encouragements there, in a Matter so serviceable and acceptable to the Crown, as well as beneficial to ourselves. Our Neighbours of *Pennsylvania*, *New-England*, *New-York*, and other Northern Settlements, tho' in the Gifts of Nature inferior to us in many Respects, and all of them seated since *Virginia*, yet nevertheless by their Application to Trade, and their Industry in promoting Shipping and Navigation, at present far exceed us in Wealth, Trade, Number of Inhabitants, Cities, and Towns: These are living Examples, and might have raised in us an Emulation to equal, at least, these our younger Brethren.

The great Advantages of Navigation and Naval Stores are too obvious to admit Dispute, or need Demonstration: Here is no Room to fear that too many Hands can be employed, or the Markets over-stock'd with Naval Stores, because the Navigation of *England*, as 'tis vast and extensive, requires a proportionable constant Supply; and to procure this, considerable Sums are remitted Annually to *Sweden*, *Norway*, and *Russia*, for Iron, Flax, Hemp, Plank, Masts, and other Stores: So much of these Commodities as can be furnish'd by us, will be saved to *England*, because produced within her Dominion, and by her own Subjects: and it will enure to our Benefit, by increasing our Export, and yielding us the Proceeds. This would prove an happy Expedient to our People, especially the Poor, to remedy that growing Evil, too sensibly felt among us, *viz.* the Decay of the Tobacco Trade, arising from too great a Number of Hands employed therein, and who have no other Dependance for the Support and Maintenance of themselves and Families; which produces so great an Augmentation of our annual Export, as must depreciate the Value, and render this Commodity a worthless Drug in Foreign Markets: And this must continue a just and unanswerable Cause of Complaint, constantly increasing with the Numbers of our People, and the Quantity of Lands by them manured, or tended; a Grievance not relievable by any Limitation of our Staple or Export, but only by substituting an equal, or greater, and more certain Reward for the Planter's Labour.

To demonstrate the Advantages of Shipping, I shall here mention only some few Instances, comprehensible by every Capacity. Our Tobacco is exported in *English* Ships, generally at 8*l.* per Ton Freight, but the Ship Owners complain, and perhaps not without Reason, that they are Losers by the Voyage; admitting 30000 Hogsheads Yearly to be exported, the Freight amounts to 60000*l.* *Sterling per Annum,*

Naval
Stores.Shipping,
& Navi-
gation.

Annum, a large Sum in the Purse of *Virginia*, which would be gain'd, if her own Ships and Sailors were employed: The Victualing and Outset of these Ships must considerably increase the Export of Bread, Pork, Beef, and all other Provisions; so much of these as is carried out, is clear Profits to this Colony; and the Sailors Wages will maintain them and their Families, much better than they can be supported by Planting, or Husbandry.

Many other unanswerable Reasons might be produced upon this Subject, but unnecessary here: The Difficulties seem to lie in the Want of sufficient Means to enable us to improve our natural Advantages; and it has been a received Opinion among us, that no practicable Methods can be found out, to answer this Purpose. But this is a Mistake, founded, perhaps too much, upon Prejudice, or Want of Consideration, since it may be made clearly apparent, that proper and well regulated Methods might be established here, successfully to improve a Staple of Naval Stores, and to promote Navigation: And it's not to be doubted but all true Lovers of their Country will impartially consider Proposals, whenever such appear, as tend to an Effect so desirable, whereof themselves, as well as their Posterity, will reap the Benefits. But this is a Matter too extensive to be farther treated of here.

S L A V E S.

Overseers. Free Negros. Mulattos. Insurrections. Unlawful Meetings.

WHO shall be accounted Slaves, and Penalties upon Persons importing Freemen, and selling such for Slaves. *See Tit. Servants.*

Penalties on Masters of Ships transporting a Slave, without his Owner's Consent. *See Tit. License.*

Trans-
porta-
tion of
Slaves.

Laws of
Virginia,
pag. 170.

If a Widow seized of Slaves, in Right of her Dower, permits any of them, or their Increase to be transported, without Consent of the Heir in Reversion, she forfeits such Slaves, and all her other Dower, to her Husband's Heir: If she marries, and her Husband permits or suffers such Transportation, he loses all the Estate he holds, as his Wife's Dower, and the Heir in Reversion may immediately enter, and hold such Estate, during the Husband's Life. 4 *Annæ*, cap. 23.

Punishment of Slaves convicted of Hog-stealing. *See this Title.*

And of such as are Millers, but fail in their Duty. *See Tit. Mills.*

All

All Slaves may be taken in Execution for Debt : But they are not liable to Escheat.

Slaves
liable for
Debt.

Notwithstanding Slaves are annexed to Lands and Tenements, in Fee Tail, yet they and their Increase may be taken in Execution, and sold, for satisfying Debts of the Tenant in Tail for the Time being. 1 Geo. 2. cap. 11.

Laws of
Virginia,
pag. 406.

But they are not liable for Debt of an Husband, who is seised of such Slaves, in Right of his Wife ; so as to bar her after his Death.

Owner of Slaves, not seised of other Real Estate, is not intitled to Vote at Public Elections. pag. 169.

Deeds of Sale, or Alienation of Slaves, shall enure and be effectual, tho' not recorded.

Aliena-
tion.

But by a late Act, all Bargains, Sales, Mortgages, Deeds and Conveiances of Slaves, or other Estate Real or Personal, shall be void, as to Creditors, and subsequent Purchasers, if not acknowledged, or proved, and recorded in the General Court, or in the County Court where the Estate lies, or the Parties live, within 8 Months : But shall stand valid between the Parties. 8 Geo. 2. cap. 6.

Slaves belonging to any Person who dies Intestate, descend to his Heir ; but must be inventoried and appraised, except the Widow's Dower, which is first to be set apart ; the Value of the Appraisement must be divided, in equal Proportion, among all the Children, and paid by the Heir.

Discent.
pag. 405.

If a Mother dies Intestate, possess'd of Slaves other than her Dower, her Heir shall be accountable to the other Children, for their proportionable Part of the Value.

Property of Slaves shall enure to the Party to whom they are sold, given, or bequeathed, in the same Manner as if such Slaves were Chattels ; and no Remainders of Slaves may be limited, by Deed or Will, otherwise than the Remainder of a Chattel Personal, at Common Law, except where Slaves are annexed to Lands and Tenements.

If Slaves are conveyed, given, bequeathed, or descend to a married Woman, the Property is vested in her Husband : And if a single Woman is possess'd of Slaves, in her own Right, they become her Husband's Property, when she marries.

By Deed, or Will, Slaves may be annexed to Lands and Tenements, in Fee Tail, or for Life, or Lives ; such Slaves, and their Increase, shall descend with the Lands and Tenements to which they are annexed, from Time to Time,

Tenant

Tenant in Fee Tail, General or Special, may in like Manner annex Slaves to his Estate in Tail, and under the like Limitations; which shall descend with the Lands, in the same Manner as if annex'd at the first Creation of the Estate.

An Infant, above 18, by Will in Writing, may bequeath Slaves whereof he is possessed.

No Slaves shall be forfeited, except in such Case only where Lands and Tenements are liable to Forfeiture.

Neither shall they be sold by any Executor, or Administrator, unless there be not sufficient personal Estate of the Testator, or Intestate, to pay Debts; and then only so much must be raised as the personal Estate falls short.

Laws of Virginia, Where any Person dies between 1 *March* and 25 *December*, in any Year, his Servants and Slaves must be continued upon his Plantations, 'til *December* 25, to make and finish the Crops, which shall be Assets, after necessary Charges deducted, 3 & 4 *Geo.* 2. *cap.* 8.

Penalties on Persons trading with a Slave. See *Tit. Servants.*

And for Marrying with Negros, or Mulattos. See *Marriages.*

Runaway Slaves. See *Runaways.*

Outlying. See *Proclamation.*

Har- boring Slaves. If any Master, or Overseer of a Family, or Plantation, permits any Slaves, besides his own, to stay upon his Plantation, above 4 Hours at a Time, without Leave of the Owner or Overseer of such Slave, he forfeits 150 *lb.* Tobacco, to the Informer, recoverable before a Justice. 4 *Annæ*, *cap.* 49.

pag. 341. And if he permits or suffers more than 5 Negros, besides his own, to be upon his Plantation, at one Time, he forfeits 5 *s.* or 50 *lb.* Tobacco, for every Slave above that Number, recoverable in like Manner. 9 *Geo.* 1. *cap.* 4.

If a Slave comes upon any Plantation, without Order or Leave, the Owner or Overseer of such Plantation may give him 10 Lashes.

But Masters may license their own Slaves to meet at any of their own Plantations; neither are Slaves to be restrained from meeting at Mills, or any other Places, about lawful Business, by License in Writing from their Master or Overseer, so as they do not meet on *Sundays*, or in the Night Time; they may also be permitted to go to Church to attend Divine Service.

If any white Person, free Negro, Mullatto, or Indian, be found in Company with Slaves, at an unlawful Meeting, or harbours, or entertains any Slave, without his Owner's Consent, he forfeits 15 s. or 150 lb. Tobacco, to the Informer, recoverable before a Justice :

Failing in present Paiment, 20 Lashes.

Every Slave assembled at an unlawful Meeting, shall be whip'd by a Justice's Order, not exceeding 39 Lashes. Unlaw-
ful Meet-
ings.

Any Justice of Peace, upon his own Knowledge of an unlawful Meeting of Slaves, or upon Information thereof to him made, within 10 Days, must forthwith issue his Warrant, commanding the Offenders to be apprehended, and brought before him or some other Justice ; And every Sheriff, Under-Sheriff, or Constable, upon his own Knowledge, or Information, of such Meeting, must immediately suppress it, apprehend the Offenders, and carry them before a Justice.

Justice of Peace, or Sheriff, failing to execute this Act, forfeits 50 s. or 500 lb. Tobacco, to the Informer, recoverable in any Court of Record.

Under-Sheriff, or Constable, failing in his Duty, forfeits 20 s. or 200 lb. Tobacco, to the Informer, recoverable before a Justice.

No Negro, Mulatto, or Indian whatsoever, may keep or carry Gun, Powder, Shot, Club, or other Weapon offensive or defensive : Any Person may seize Arms, Ammunition, and Weapons, found in their Hands, Custody, or Possession, and upon proving the Seizure before a Justice of Peace, the Arms, &c. are forfeited to the Seisor, and the Offender shall be whip'd, not exceeding 39 Lashes. Armour.
Laws of
Virginia,
pag. 342.
See Tit. Armour.

But free House-keepers, and such as are listed in the Militia may keep One Gun, Powder and Shot : And all Negros, Mulattos, and Indians, Slaves or Free, who live upon the Frontiers, may be licensed, by a Justice, to bear Arms and Armour.

No Slave shall go arm'd with Gun, Sword, Club, Staff, or other Weapon ; nor go from the Plantation and Land whereon he lives, without License in Writing from his Owner or Overseer ; if he does, any Person may apprehend and deliver him to the next Constable, who, without other Warrant, is to give him 20 Lashes. pag. 226.

If any Slaves, above Five in Number, shall meet to Insurrection, advise, or conspire Rebellion, or Insurrection, or plot or conspire Murder, such Meeting shall be adjudg'd Conspiracy, and the Offenders hang'd, without Benefit of Clergy. tion, and
Conspi-
racy.
pag. 342.

Method of Arraignment, Trial, and Valuation of Criminal Slaves. *See Tit. Criminals.*

Where any Slave shall be kill'd in dispersing unlawful Meeting, Rebellion, Inturrection, Conspiracy, or in seizing Arms, &c. unlawfully kept, or born, the Owner of such Slave may prove such Killing, before the Court of his County; who shall value the Slave, in Money, and certify the Valuation to the next Session of Assembly, for Allowance to the Owner.

Obstinate
Offen-
ders.

If a Slave notoriously offends by Night-walking, Running away, or Lying out, and cannot be reclaim'd by the common Methods of Punishment, but is convicted, upon his Owner's Complaint to the County Court, they may order him to be punished by Dismembring, or any other Way, not touching Life.

Homi-
cide of
Slaves.

And where any Slave dies by Means of such Dismembring, or is accidentally kill'd under Correction, by his Owner, or any other Person by his Order, the Party killing, and all Persons concerned in such accidental Homicide, shall not be liable to Prosecution or Penalty, unless the Fact, upon Examination before the County Court, appears to be Wilful Murder, proved upon Oath, by One credible Witness, at least: And if, upon an Indictment for Murder of a Slave, the Fact be found by the Jury to be only Manslaughter, the Party prosecuted shall be discharged, without Punishment or Forfeiture.

Yet this does not bar the Action of any Person whose Slave is killed by another, or dies thro' Neglect of a Surgeon or other Person undertaking his Dismembring, or Cure; but the Party grieved may recover his Damages, at common Law, for the Death of his Slave.

Slaves
may not
be freed,
without
License.

No Slave shall be freed by his or her Owner, but only for some meritorious Act, or Service, to be adjudged and allowed by the Governor and Council, and License thereupon obtained: If otherwise freed, the Churchwardens of the Parish where such freed Slave resides, the Space of One Month after being freed, may sell him, or her, at their next succeeding County Court, by Auction, to the highest Bidder, and apply the Money to the Use of their Parish.

Nor keep
Horses,
&c.

pag. 226.

Baptism
no Free-
dom.

Horses, Cattle, and Hogs, belonging to a Slave, or under any Slave's Mark, may be seized by the Churchwardens of the Parish where found, and sold for the Use of the Poor.

Baptism of Slaves is no Discharge from Slavery: All Children are free, or Servants, or Slaves, according to their Mother's Condition.

If

If Trespass is committed by any Slave living at a Quarter without a Christian Overseer, the Owner is liable for Damages, to the Party grieved.

Stealing any Negro, Mulatto, or Indian Slave, out of the Possession, or from the Custody of his Owner or Overseer, Felony. No Clergy. 5 & 6 Geo. 2. cap. 5.

If any Negro, Mulatto, or Indian, Free or Slave, lifts his Hand in Opposition against any Christian white Person, and is convicted by Oath of the Party, before a Justice of the County where the Offender lives, he shall have 30 Lashes.

All Negros, Mulattos, and Indians, Free or Slaves, above the Age of 16 Years, and all Wives of such, shall be accounted Tithables: But Tributary Indians are excepted.

They are disabled from Voting at an Election of Burgesses, or any other Public Election.

As likewise from being Witnesses in any Cause whatsoever, except upon Trials of Slaves for Capital Crimes.

They may not purchase or keep a Christian white Servant: And if any Person who has such Servant marries with a Negro, Mulatto, or Indian, the Servant is discharged.

Method of suppressing Insurrections of Slaves. See Tit. Militia.

STATUTES,

ARE Acts of Parliament, made from Time to Time, declaring the Laws, Constitution, and Customs of Great-Britain.

The Common Laws of *England* are so called, because by long Experience they have been found beneficial for the Common Good of the Nation: King *Edward*, the Confessor, *Anno Dom.* 1042, first caused a Body of the best and most wholesome Laws of other Nations to be collected and methodised, which about 30 Years afterwards, were revised, explain'd, and amended, by *William*, the Conqueror, who settled the Body and Practice of the Common Law of *England*, as it continues, in Effect, at this Day.

The Statute of *Magna Charta*, or, The Great Charter, and of *Charta Forestæ*, or, The Charter of Forests, were first granted by King *John*, *A. D.* 1215. This Prince being weak and passionate, unfortunate in his Wars, oppressing his Subjects, and alienating his Kingdom to the Pope; his Nobility and People entered into a Confederacy against him, and agreed upon a Petition to the King, That

Trespass by Slaves.

Stealing them, Felony.

Laws of Virginia, pag. 473.

Free Negros, Mulattos, &c.

pag. 226. pag. 343.

pag. 475.

pag. 220.

Common Law.

Magna Charta.

he would restore and confirm to them the Rights of the Kingdom, and Liberties of the Subject, contained in the Laws of his Predecessors, *Edward* the Confessor, and *William* 1; And they bound themselves to each other, by Oath, to levy War against the King, 'til he had given them Satisfaction: The King was constrained to grant his Subject's Demands, which he confirm'd by this Charter, swearing, That he would observe and keep all the Articles therein contained: But neither he, nor his Son, *Henry* 3, by whom it was Twice confirm'd, ever kept it. The Time of its Commencement is usually dated from this Third Confirmation, made by *Henry* 3, in the 20th Year of his Reign, *A. D.* 1236, because it was then solemnly confirm'd, and all Doubts of the Validity of the Two former Grants were thereby removed.

This is called the Great Charter, in Respect of the Dignity of the Matters therein contained, in few Words, being the Fountain of all the fundamental Laws of the Realm, a Confirmation and Restitution of the Common Law, and the great Security of the Lives, Liberties, and Properties of *English* Subjects: It hath been confirmed above 30 Times, which shews the valuable Esteem our Ancestors had for the Laws and Customs contained in it. By the Statute 25 *Ed.* 1. cap. 2, Judgments given against any Part of the Great Charter, or the Charter of Forests, are void; and so is any Statute made against either of these Charters, by 42 *Edw.* 3. cap. 3. In this King's Reign, these Charters were confirm'd no less than Twelve Times.

Force of Statutes. Where by any Statute made before the 4th Year of King *James* 1. the Benefit of Clergy is taken away from any Offence, the same shall be denied in like Offences committed here, as to Principals, Accessories, Standing Mute, or Challenging more than 20 of the Jury. 5 & 6 *Geo.* 2. cap. 7.

Laws of Virginia, pag. 474.

All Acts of Parliament made in *England*, expressly declaring, That they shall extend to *Virginia*, or to His Majesty's *American* Plantations, are of full Force in this Dominion, tho' not Enacted here.

Divers other Statutes are Enacted here, and Declared to be of Force in this Colony, by our Acts of Assembly.

And all Statutes of Jeofails, in Force and Use in *England*, *Apr.* 15, 1728, for so much as relates to any Mispleading, Jeofail, and Amendment, shall be of Force in this Dominion. 1 *Geo.* 2. cap. 3.

Statutes of Jeofails are Acts of Parliament, made from Time to Time for Amendment of the Law, and to cure Faults, Mistakes, Misprisions, and Oversight in Pleading.

Infor-

Informations, and Actions upon Penal Laws or Statutes, brought by Informers, are excepted out of the Statute of Jeofails. *Pr. Reg.* 392.

And so are Faults in Proceedings upon Indictments. *2 Saund.* 308.

STRAYS.

Waifs.

Whoever takes up any stray Horse, Mare, Cattle, or a Boat adrift, must publish a Description of the Marks, Stature, and Colour of the Beasts, or the Burden and Built of Boats, by Advertisement set up at each Church and Chapel of the County, Two *Sundays* successively, within one Month after Taking up, and if no Owner appears, then at the next County Court, set up and continued at the Court-house Door, one whole Court Day: The Party failing so to do, or making use of such Stray, forfeits 15 s. for every Beast, or Boat taken up, recoverable by the Informer, before a Justice of the County where the Offence is committed, and liable for double Damages to the Owner. *4 Annæ, cap.* 13.

Notice.
Laws of
Virginia,
pag. 149.

Penalty.

Reward for taking up, 5 s. *per* Beast, or Boat, to be paid by the Owner. Reward.

If no Owner appears to claim a Stray above 2 Years old, or Boat, so publish'd, within 12 Months after taken up, the Taker may have the Stray or Waift appraised, by Warrant from a Justice of Peace: This vests the Property in the Taker, but he is answerable to the Owner, for the Value of the Appraisement, deducting the Reward. Appraise-
ment.

SUSPICION.

When a Felony is committed, any Man may arrest suspicious Persons, and carry them before a Justice of Peace, who must examine the Person, Circumstances of the Fact, and Causes of Suspicion, and may thereupon commit the Party suspected, or take Recognisance for his Appearance before a Court to be held for his further Examination. *Dalt.* 414. Exam-
nation.

Common Fame is sufficient Cause of Suspicion; but then Felony must be actually committed and done, otherwise 'tis not. *Ibid.* Causes.

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 Party suspected; These are, by my Lord Coke, divided into,

Y 3

1. Violent;

1. Violent ; which he says amount to full Proof.
2. Probable ; which moveth a little.
3. Light ; of no Force at all. *Co. l. 6.*

Some Presumptions are so violent, that no Proof can be admitted to contradict them ; as if a Man be taken with his Hands, Sword, Knife, or Clothes bloody, upon a murder'd Person, or flying from the dead Body ; tho' none saw the Stroke actually given, yet there needs no further Proof.

If a Felon brought before a Justice of Peace accuseth others, it's sufficient Cause for the Justice to issue his Warrant for taking the Persons accused. *Dalt. 414.*

Or if a Criminal, led to his Execution, accuses another of Felony, it is Cause sufficient to apprehend him.

In secret Murders, Poisoning, Witchcraft, and the like Cases, where evident Proofs are seldom to be had, probable Presumptions are to be allow'd, and are sufficient for a Justice of Peace to commit the Party suspected. *Dalt. 415.*

T O B A C C O.

Seconds. Cask. Inspection. and Inspectors.

SINCE the first Settlement of this Colony, this Plant has been, and at this Day continues to be the Chief Staple of our Export : A Commodity of universal Consumption and Demand Abroad, but valuable, more or less, according to its Quality and Quantity.

Rise of
the To-
bacco
Trade.

It was first imported in *England*, *A. D.* 1585. by certain Persons left in *Virginia* by Sir *Walter Raleigh*, to plant a Colony there, but receiving no Supplies, which were then prevented by other Occurrences of State, they almost perish'd with Penury and Want, 'til Sir *Francis Drake*, in his Return from the *Spanish West-Indies*, passing by this Coast, accidentally found, and brought them Home. These Men brought with them an Indian Plant, called Tobacco, by the Natives used against Crudities of the Stomach ; from this Time forward it grew into Request, and was sold at a high Rate, its Use becoming every where a Fashion, so that Men, for Health or Wantonness, generally esteem'd it.

This being our chief and almost only Dependance for providing ourselves and Families with the necessary Conveniencies and Comforts of Human Life, but liable to frequent Changes and continual Vicissitudes ; and succeeding
Times

Times producing new Methods and Regulations of Trade, and consequently, Variety of Interests, which introduced a Necessity of new Laws, for the better Support of our Staple: It has therefore been the constant Care of the Legislature of this Colony and Government to establish proper Regulations, adapted to the Times and Circumstances of Trade, whereby to uphold the Value of this Commodity, so as to yield a Subsistence to the Planter. The Matter of greatest Moment, under Consideration of every Session of Assembly, has been the Staple of Tobacco; Amending, Altering, or Repealing, such Laws as are found inconsistent with its true Interest, and substituting others more beneficial; this will probably continue the Subject of their Debates, since it's impossible for Human Prudence to foresee all future Contingencies.

I have elsewhere hinted at proper Expedients for lessening the Quantity of Tobacco, without diminishing, but rather increasing our annual Exports: It cannot be denied but this, if practicable, must yield a proportionable Increase of our Substance; and therefore it's not to be doubted but Proposals for obtaining so desirable an Effect, necessary for the Trade and Prosperity of *Virginia*, will meet with favourable Reception from the Public, so far at least, as to be calmly and impartially considered.

I shall now select such Laws relating to Tobacco, as have been made from Time to Time, and continue in Force at this Day, tho' as to some Parts of them, the Execution stands suspended under the present Regulations.

Duties upon Tobacco exported, *viz.*

For every Hogshead, Box, Chest, Case,
and Barrel, and for every 500 *l.* in } 2 *s.* *Sterl.*
Bulk, and so proportionably,

To be paid by the Exporter, for all Tobacco ship'd here.
9 *Annæ, cap. 5.*

But no Duties demandable for Tobacco exported in Vessels belonging to *Virginia* Owners.

If Eight Persons, or more, shall assemble themselves, Riotous forcibly to cut up, or destroy Tobacco Plants, in Beds, or Meetings Hills, growing or curing; or Tobacco cured, pack'd or to destroy unpack'd; or to pull down, burn, or destroy any Tobacco Tobacco, House, or Place where Tobacco is kept; or to pull down, Treason, or break Fences or Inclosures of Tobacco Plants, with Intent to destroy Tobacco; and the Offenders, after Proclamation made by the Governor, a Councillor, or a Justice of Peace, in His Majesty's Name, commanding them to disperse themselves, and depart peaceably to their Habitations, shall disobey such Command, but continue assembled

Duties.
Laws of
Virginia,
pag. 242.

Treason.
pag. 88.

bled Four Hours, at or near the Place; every Person convicted of being wilfully so assembled, shall be adjudged a Traitor, and suffer as in Case of High-Treason. 36 *Car.* 2. *cap.* 2.

Marking, & weighing Tobacco. Laws of Virginia, pag. 48. Marking alone, without Weighing, transfers the Property of Tobacco, to the Party for whom mark'd; if not weigh'd within 10 Days after mark'd, upon Request of the Party paying it away, any Justice of the same County may weigh, or order it to be weigh'd; the Justice's Certificate, or Oath of the Person by him deputed to weigh the Tobacco, shall determine the Weight, to be allow'd by the Creditor. 20 *Car.* 2. *cap.* 7.

Foreign Importation prohibited. pag. 136. Tobacco imported from *Carolina*, or other Foreign Parts, to be here landed, sold, or ship'd, forfeited to the King and Informer. 4 *Annæ*, *cap.* 5.

But Inhabitants of this Colony may bring their own Tobacco, made here, round the Capes, by Permit from the Collector of the District where such Tobacco is put on Board for Transportation; Tobacco otherwise transported, forfeited.

pag. 372. Importer, Buyer, Seller, or Receiver, of Tobacco brought by Land or Water from *North-Carolina*, or the controverted Bounds, forfeits 10*l.* per Hogshead, Barrel, or Parcel imported, to the King and Informer. 12 *Geo.* 1. *cap.* 6.

Sheriff or Constable may seise such Tobacco found in his County, and make Information of the Seisure, to his County Court, who must order the Tobacco to be publicly sold: Monies arising by the Sale, after Charges deducted, shall be divided between the King and Seisor.

But when the Boundaries are settled between *Virginia* and *North-Carolina*, this Act shall not extend to Tobacco made within that Part which shall then belong to this Colony.

Second's. pag. 210. Whoever tends, or suffers the tending any Seconds, forfeits 500*l.* Tobacco for every Tithable employed upon the Plantation where the Seconds grow: Where the Plantation is under an Overseer, he shall be liable. 4 *Annæ*, *cap.* 46.

Penalties to the King, and Informer or Prosecutor. pag. 311. Further Penalties on Persons who shall weed, top, hill, succour, house, cure, strip, or pack Seconds, or suffer it to be done upon their Plantations, 500*lb.* Tobacco for every Person employed that Year upon the Plantation where the Offence is committed. 7 *Geo.* 1. *cap.* 5.

Every Owner of a Plantation must Annually cause to be cut up and destroyed all Stalks, Roots, and Suckers, upon his Land, within 20 Days after a Tobacco Plant has been cut from the Stalk, or he forfeits 200*lb.* Tobacco for every

ry Person above 7 Years of Age living upon the Plantation where they are not cut up.

But in both Cases the Overseer is liable for Offences, committed upon a Plantation under his Care.

The Penalties are divided between the King, and the Prosecutor or Informer; recoverable in any Court of Record.

Constables Duty, Oath, and Reward, in executing the Act. 3 & 4 Geo. 2. cap. 1.

Laws of
Virginia,
pag. 417.

Against tending Seconds. See *Tit. Constables*.

If any Constable refuses or fails to take the Oath, as by this Act directed, or knowingly permits any Person in his Precinct to tend Seconds, Slips, or Suckers, he forfeits 1000 lb. Tobacco to the Parish, where the Offence is committed, and to the Prosecutor and Informer; recoverable in any Court of Record.

Upon Information made by the Constable, to his County Court, pursuant to this Act, against any Person for Breach of this, or any other Act of Assembly made against tending Slips or Seconds, the Court is to direct the King's Attorney to bring Suit against the Offender.

Tobacco Cask must be made of dry well season'd Timber, provided 3 Months at least, before set up, strongly hoop'd, the Stave 48 Inches long, and no more, one Third of an Inch thick on the thinnest Edge, and the Inside of the Head 30 Inches Diameter, and no more. 4 *Annæ, cap. 46.*

Cask.

pag. 212.

Every Cooper and Person intending to set up Tobacco Cask, must go before a Justice of his County, and make Oath, that he shall not willingly or wittingly set up any Tobacco Hogsheds of a larger Size than is herein directed; and that he will tare, or cause to be tared, with a marking Iron, or branding Iron, every Tobacco Hogshed that shall be by him set up, with the true Weight thereof, on the Bulge and Head of the Hogshed, together with the first Letters of his proper Name, and Sirname; and he must obtain Certificate from the Justice, that such Oath was made before him.

If Casks are set up by a Servant, Negro, or Mulatto, his Master or Emploier must make Oath, *That he will not willingly or wittingly suffer or permit any Tobacco Hogshed to be set up for him, of a larger Size than is herein directed, but will use his utmost Endeavours to prevent the same; and that what Hogsheds by such Negro, Mulatto, or other Servant shall be made, or set up for him, shall be tared, and the Two first Letters of his Proper Name and Sir-name set thereon, in Manner aforesaid.*

He

He must also obtain the Justice's Certificate of such Oath made.

Cooper or Person setting up, and Payer, Seller, or Exporter of Tobacco, in Cask of larger Size, or less season'd Timber, thinner Staves, or not so tared, or tared before Oath made and Certificate obtained, forfeits 500*lb.* Tobacco *per* Hogshead, to the King and Informer, or Prosecutor.

But any Person may ship his own Tobacco in Cask of lawful Size, tho not tared.

Penalties laid by the Act 9 *Annæ*, *cap.* 8. made Perpetual by 1 *Geo.* 1. *cap.* 5. on Persons who crop, cut away the Bulge, draw the Stave, or otherwise injure Tobacco Cask shipp'd for Exportation. See *Tit. Ships.*

Burning. Malicious burning a Tobacco House, or any other House,
Laws of Felony. No Clergy. 3 & 4 *Geo.* 2. *cap.* 8.
Virginia, Tho' the Act of 4 *Annæ*, *cap.* 46. be not expressly re-
pag. 437. pealed, yet, by the Laws now in Force, the Execution of that Act stands suspended, for so much thereof as relates

1. To the Tare of Tobacco Cask.
2. Paying Tobacco false pack'd.
3. Making Tender of a Tobacco Debt.
4. The Allowance demandable for Cask.

All these are now otherwise provided for, by the Acts under-mentioned, *viz.*

1. The Act, 3 & 4 *Geo.* 2. *cap.* 3.
2. - - - 5 & 6 - - - *cap.* 9.
3. - - - 8 - - - - - *cap.* 1.

A summary Abstract of these Acts is necessary to be inserted here.

Inspection.

All Tobacco for Sale or Exportation must be brought to some Public Warehouse, there inspected, and if found good and merchantable, by the Inspectors Judgment, passed, weigh'd, stamp'd, secured and fitted for Exportation, and from thence deliver'd to Shipping, to be directly carried on Board, without being relanded.

Trash, unsound, or stem'd Tobacco not laid strait; and all Tobacco not well condition'd, and clear of Sand and Dirt, is declared unmerchantable, and must be burnt.

Crop Tobacco brought for Exportation in Hogsheads above 48 Inches long, in the Stave, or more than 30 Inches broad in the Head within the Crows, and 2 Inches more allow'd for the prising Head, must be repack'd in Cask of lawful Size.

Shipping.

None to be taken on Board for Exportation, except pack'd in Hogshead, Cask, or Case, duly stamp'd, under Penalty of 20*l.* *per* Hogshead, to be paid by the Master of

of the Vessel wherein it's found ; and the Tobacco is forfeited.

Bulk, or Parcel Tobacco, found in any Vessel employed in carrying Tobacco to or from the Warehouses, may be seized by any Person ; the Skipper of the Vessel forfeits treble Value, recoverable before a Justice of the *Quorum*, in the County where the Seizure is made ; and every other Person on Board, who connives at, or conceals Bulk or Parcel Tobacco, shall have 39 Lashes, by the Justice's Order ; like Punishment on the Skipper, if he fails to pay the treble Value : And if he is convicted of a Second Offence, the Party by whom he is employed must pay the treble Value, besides 5 s. *per* Day, for employing such Skipper afterwards, recoverable before a Justice of the *Quorum*, in the County where the Emploier lives. Forfeitures to the Informer.

But Tobacco pack'd in Hoghead, Cask, or Case, may be transported by Water, before carried to the Warehouse.

And Bulk or Parcel Tobacco, for Paiment of Levies, or Debt, may be transported to the Warehouse, by Water-carriage.

If Bulk or Parcel Tobacco is found on Board any Ship or Vessel outward bound, it may be seized, and the Master forfeits 20 s. *per* Cent. to the Informer, recoverable before Two Justices of any County near the Ship, if not above 5 l. if more, by Action of Debt in any Court of Record.

In Case of Suspicion, any Justice may grant his Warrant, directed to the Sheriff, or a Constable, requiring them to enter and go on Board such Ship or Vessel, to search for, seize, and bring on Shore, all Bulk or Parcel Tobacco found on Board : Upon Seizure made, it must be brought before a Justice, by him weigh'd, and then burnt by the Officer who made the Seizure.

Master, or commanding Officer on Board, resisting Execution of this Warrant, forfeits 50 l. Sailor, or any other Person, 10 l. to the King and Informer.

After Tobacco is put on Board any Boat, or Vessel, to be carried to or from a Warehouse, if it's landed at any other Place, or taken out and put on Board any other Vessel ; or if a Hoghead be opened, and Tobacco taken out before or after it's deliver'd at or from a Warehouse, it's Felony.

But in Case of bad Weather, or Leakage, it may be landed, if absolutely necessary for Preservation of the Tobacco.

And if it receives Damage in carrying from the Warehouse to the Ship, and is refused to be taken on Board, it may

may be landed at the next Warehouse there to be repack'd, and then view'd, and stamp'd by the Inspectors, without any Fee or Charge.

Inspe-
ctors.

No Tobacco may be carried by Water, to be inspected, but only within the District where made, on Penalty of Forfeiture of the Tobacco, by the Owner, and 20 s. per Hogshead by the Inspectors passing such.

At every Public Warehouse, 2 Persons skilful in Tobacco, appointed by the Governor in Council, shall be Inspectors.

Every Inspector, before he executes his Office, must make Oath, before the Governor, *Carefully to view and examine all Tobacco brought to any Public Warehouse, whereof he is appointed an Inspector; and to the best of his Skill and Judgment, not to receive any Tobacco prohibited by this Act, or that is not sound, well-condition'd, and in his Judgment, clear of Trash, Sand, and Dirt; and faithfully to discharge the Duty of his Office, according to the Directions of the same, without Favour, Affection, Partiality, or other By-Respect.*

And he must give Bond, with good Security, in 1000 l. with Condition, for the true and faithful Discharge of his Office and Trust.

Inspectors must break all Tobacco brought in Cask, and view the Tobacco; if it appears to them good, sound, and merchantable, they must weigh, repack, and secure it, and stamp upon every Cask, the Nett Weight and Tare; they are answerable for the safe Keeping, and must deliver the same Tobacco to the Owner, or his Order, upon Demand.

If Tobacco is by them refused, they may require the Owner to pick it, and to separate the Good from the Bad, for which he is to have 1 Month's Time allow'd; if not then pick'd, Inspectors may burn it, except the Tobacco be in a Sweat, or the Weather has prevented its being handled.

If the Owner will not pick his Tobacco, after refused to be pass'd by the Inspectors, they must burn it immediately: And all Trash Tobacco, by them condemn'd or refused, must be burnt the same Day, or they forfeit 5 s. for every Failure, recoverable before a Justice.

Tobacco refused may not be carried back, but must be pick'd in the Warehouse: And they must allow the Use of their Prises, for pressing Tobacco pick'd and repack'd.

The Overseer liable for all Tobacco refused and burnt out of his Crop.

All Transfer Tobacco, brought to a Warehouse, in Parcels, or light Hogsheads, for Payment of Public or Private Debts, must be press'd by the Inspectors, in shipable Hogsheads, containing at least 800 l. Nett,

And

And they must press crop Hogsheads, under 800, so as to make that Weight, if required by the Owner; but he must pay the same Fee for that, and make the same Allowance for the Tobacco added to his Hoghead, as for Transfer Tobacco.

Owner of Transfer Notes may at any Time demand and receive his Tobacco; May take Crop Notes for it, paying 2 s. 6 d. down, for pressing and Nails, and 3 s. more for the Inspection Fee, when delivered from the Warehouse.

Inspectors may not convert, to their own Use, any Samples of Freight Tobacco, on Penalty of 20 s. for every Draught taken away, recoverable before a Justice of Peace.

They must permit the Assignee of Crop Notes to alter the Marks of his Tobacco, if he thinks fit.

Must allow 4 *per Cent.* on all Transfer Tobacco brought in good Cask, and received by them; so as not to exceed 30 *lb.* Tobacco *per* Hoghead.

Must give Promissory Notes for all Transfer Tobacco by them received, payable upon Demand; if they refuse to pay their Notes, when demanded, they forfeit double the Sum of the Note refused, to the Party injured; recoverable in any Court of Record: But if the Forfeiture does not exceed 200 *lb.* Tobacco, it must be recovered before a Justice of the County wherein the Warehouse is, where such Note was payable.

And they must give Receipts for Crop Tobacco, brought in shipping Hogsheads, and stamp'd.

For Tobacco brought by an Overseer, the Notes or Receipts must be payable to the Owner, and not to the Overseer.

Upon Delivery of Tobacco for Exportation, they must give the Skipper a List, containing the Mark, Number, and Weight of every Hoghead to him delivered, and by whom ship'd: The Skipper must give this to his Commander, to be by him produced to the Naval Officer, upon his Clearing out.

They must enter in Books, by them to be kept for that Purpose, the Marks, Numbers, and Weights, of all Tobacco stamp'd at their Warehouse, and deliver'd for Exportation; and they must Annually deliver to the Naval Officer of that District, a Manifest of all Tobacco exported from their Warehouse; to be by him transmitted to the Commissioners of the Customs in *Great-Britain*.

They must constantly attend their Warehouses, from 10 November to 30 June, Annually, except *Sundays*, and *Christmas*, *Easter*, and *Whitsun* Holidays: No Tobacco to be received after 30 June; but they must deliver Tobacco received before, when demanded, and for that Purpose, one of them must constantly attend 'til September Court held for that County. All

All Transfer Tobacco then remaining in their Hands, must be by them sold at that Court, by Auction to the highest Bidder ; and they must pay the Money to the Proprietors of their Notes, upon Demand, in Lieu of Tobacco.

They must account with the Treasurer, Annually, upon Oath, for all Monies by them received or due for Tobacco exported, and pay the Overplus, after their Salaries, Warehouse Rent, and necessary Charges deducted : If their Receipts are not sufficient to defray the Charges of the Warehouses, Deficiencies shall be paid by the Treasury.

They may not buy or receive Tobacco, for themselves or any other Person ; only they may receive their own Tobacco Debts.

Their own Crop Tobacco must be viewed by one of the Inspectors of the next adjacent Warehouse, and so pass'd and stamp'd, or burnt.

If the Inspectors of any Warehouse disagree in Judgment concerning the Quality of Tobacco brought to their Inspection, One of the next Warehouse Inspectors must be sent for, to determine the Difference.

They must, if required, open every Hogshead of Tobacco by them paid in Discharge of their Notes ; if the Party, to whom it's due, refuses to receive it, he may complain to Three Justices, not related to the Parties, nor concerned in Interest : These Justices being sworn, before some other Justice, *Carefully to view and examine the said Tobacco, and to the best of their Skill and Judgment, not to pass any Tobacco that is not sound, well-conditioned, and merchantable, according to the Directions of this Act, and clear of Trash, Sand, and Dirt ; and that they will therein do their Duty, according to their Judgment and Conscience, without Favour, Affection, Partiality, or other By-Respects* : They may then repair to the Warehouse, to view and examine the Tobacco tendred by the Inspectors, but refused ; and if Two of them judge it unmerchantable, burn it immediately.

Justice's Fee, 5 s. each, to be paid by the Inspectors, if condemn'd, but by Complaint if the Tobacco, is pass'd by the Justices.

Upon such Tender and Refusal, the Inspectors may not afterwards tender other Tobacco ; but the Party refusing must mark the Tobacco tendred : If the Inspectors tender other Tobacco, in Lieu of that refused, before it's view'd by the Justices, or do not produce the same Tobacco mark'd by the Complainant, this shall be a Conviction, and the Inspectors liable.

Crop Tobacco subject to like View, under like Penalties.

If any Inspector takes or accepts Gratuity, Fee, or Reward, besides the legal Allowance, he forfeits 50*l.* to the Informer, or Prosecutor; and is disabled from being an Inspector: The Party offering such unlawful Bribe, Gratuity, or Reward, forfeits 10*l.* to the Inspector refusing the Bribe, and the Informer.

Charges of Inspection, to be allowed and paid by the Exporter, *viz.*

For Transfer Tobacco.

Two *per Cent.* to be allowed for Shrinkage, for the First Day, or Two Months; One *per Cent.* *per* Month, after the First Two Months.

But the whole Allowance must not exceed Six *per Cent.*

30*lb.* Tobacco, for Cask.

s. d.

And for Inspection, Pressing, and Nails, }
per Hoghead, - - - - - } 5 6

Must be paid by Inspectors in Hogheads not less than 800*lb.* Nett, at least.

Crop Tobacco.

For Inspection, and Stamping, *per* Hoghead, 3 0

Owner of Crop Tobacco must find Nails.

All Inspectors Notes must express the Quantity and Sort by them received, whether Sweet-Scented, or Aro-noko, Stem'd or Leaf; and shall be paid in the same Specie: Shall be current in all Tobacco Payments of Public or Private Debts; may be assign'd, and must be paid upon Demand.

Notes.

In Case a Note is lost, or mislaid, the Proprietor may, before a Justice of the County where it was payable, make Oath, *to the Number or Date, to whom and where payable, and for how much, and that it is lost, mislaid, or destroyed, and that he, at the Time such Note was lost, mislaid, or destroyed, was lawfully entitled, and how, to receive the Tobacco therein mentioned*: Certificate hereof being granted by the Justice, and produced to the Inspectors by whom the Note was issued, and lodged with them, entitles the Party to the Tobacco due thereon, if not paid before.

Upon Conviction of a false Oath, or forged Certificate, the Offender forfeits 20*s.* *per Cent.* for the Tobacco recovered thereby, and liable to Corporal Punishment, at the Discretion of the Court before whom convicted, and to the Penalties of Perjury.

Counterfeiting Inspector's Note, Receipt, or Stamp; Knowingly tendring such in Payment, or demanding Tobacco

bacco thereon ; Exporting Tobacco under a forged Stamp ; Putting more Tobacco into any Cask or Package after it's stamp'd ; Drawing Stave, Plank, or Heading out of a Cask stamp'd, and fixing it in another, Felony.

Quit-Rents, and all other Public or Private Tobacco-Debts must be paid in Inspector's Notes : No Tender lawful, if not made in them.

Uninspected Tobacco may not be bought, or sold, under Penalty of 10 s. *per Cent.* on Buyer and Seller.

Ware-
houses.

Public Warehouses must be built and kept in Repair, with good Wharfs and Presses, at the Places appointed ; the Owner of the Land shall have a Yearly Rent : But if he refuses to build, Commissioners may authorise any other Person, and direct the Building.

If any Public Warehouse shall be accidentally burnt, Proprietors of Tobacco burnt in it are to be indemnified by the next General Assembly ; but the Inspectors shall not be liable to Suit or Claim for such Tobacco.

Weights.

County Courts shall Annually appoint Two Justices to examine the Warehouse Scales and Weights, and try them by the County Standard : If by them found wrong or defective, they must be immediately mended, at the County Charge.

Inquiry,
by Three
Justices.

Three Justices, (Two being of the *Quorum*,) not Inspectors, may receive Complaints against any Inspectors in their County, for Misbehaviour or Neglect in his Office, and take Depositions of Witnesses produced by the Parties on either Side : They may also visit the Warehouses, when they think fit, and if they discover Negligence or Mismanagement in the Inspectors, that they do not well secure or stow the Tobacco, or do not attend constantly, or have not a sufficient Number of Hands to dispatch Business, or are guilty of Misbehaviour in their Office ; the Justices are to make a Report of their Proceedings, to the Governor and Council, where the Inspectors shall be compel'd to answer ; and if found Guilty, removed, and for ever disabled to execute this Office.

Clan-
destine
Export.

If Tobacco is exported, by Land or Water, to *Maryland*, or *North-Carolina*, without Permit from the proper Officer, the Owner forfeits 10 s. *per Cent.* to the Informer, recoverable before a Justice, if under 25 s. otherwise in any Court of Record, Prosecution in Two Years.

Any Justice of Peace, upon his own Knowledge, or Information made upon Oath, of Tobacco pack'd for clandestine Exportation, may himself enter, or by his Warrant command a Constable to enter, any suspected House, by Day or Night, and may break open Doors, to search for, seise,

seize, weigh, and destroy all Tobacco there found press'd in any Package whatsoever under 200 *lb.* Nett: The Party in whose Possession found, forfeits 10 *s.* *per Cent.* recoverable by the Informer, as directed in the Case preceeding.

Justice or Constable sued, for any Thing done, in Execution of this Act, may plead the General Issue, and give this Act in Evidence; if Plaintiff is Nonsuit, or Judgment be given against him, upon Verdict, or Demurrer, Defendant recovers double Costs.

The Intent and Policy of this Law appears to be,

Intenti-
on of the
Tobacco
Law.

1. To improve the Quality of our Staple, and by that Means to establish the Credit and Reputation of *Virginia* Tobacco in Foreign Markets, which cannot fail of being attended with a proportionable Advance of its Value: This is certainly the best Method to preserve our Superiority in this Trade, over our Neighbours of *Maryland*, being founded upon an uncontroverted Maxim, in all Merchandise whatsoever, That the best Commodity will always command the best Price, and most Purchasers.
2. To diminish the Quantity; by prohibiting the Exportation of Trash, from whence always proceeds a double Injury to Trade, *viz.* It clogs the Market, and depreciates the Value.
3. To prevent Frauds in the Seller here, thereby to encourage Buyers and Foreign Purchasers, who will be induced to give the Planter a better Price, when they are satisfied they shall have what they pay for, good Tobacco, and just Weight: And in the Merchant Abroad, by disabling him to defraud the King of his Customs, and then under selling the fair Trader, which must sink the Value of the whole Stock. All Frauds are of pernicious Consequence to Trade.

To answer these Purposes, the present Law is admirably well calculated, in most of its Parts, as far as Human Prudence can direct, or the Circumstances of our People will admit; and notwithstanding all Objections and Clamours to the contrary, it must be acknowledged, that it immediately produced a good Effect, and considerable Advance of the Market, both Here, and Abroad, seen and experienc'd as well by the Planter, as Freighter: This can't be denied by any unprejudic'd Person, who considers and compares the State of the Tobacco Trade, as it stood in the Year 1731, before the Law, and as it appear'd afterwards in 1732, and 1733, when the Law took Effect.

State of
the Tobacco
Trade.

Tobacco continued to be in 1731, as it had been divers Years before, in a declining Condition, which was confirm'd by repeated Advices from *England*; 'twas then a difficult Matter to sell Tobacco here for Money, 10 or 11 *s. per Cent.* was the most that could be got, and it must be Tobacco of extraordinary Goodness and Weight, if it yielded 12 *s.* or 12 *s. 6 d.* Cash; the Price was proportionable in Goods: But in 1732, from 14 to 18 *s. per Cent.* Cash, and in 1733, 20, 21 *s.* for Leaf, 25 *s.* for Stem'd, was currently given in Money, and proportionably more, in Goods. This is undeniable Matter of Fact, demonstrated then by innumerable Instances.

In the Accounts from *Great-Britain*, appeared a yet greater Degree of Variation; for Tobacco exported in 1730, and 1731, the Nett Proceeds yielded from 20 to 40 *s. per Hoghead*, many under 20, but very few above 40; and if all the Accounts could be collected, and an exact Estimate made, they would not clear 40 *s. per Hoghead*, one with another: I have had Opportunities of seeing many Accounts of these 2 Years, and they, at an Average, do not amount to 35 *s. per Hoghead*, *York River Tobacco*, from whence it may be reasonably concluded, that others fared no better.

But Tobacco ship'd in 1732, the first Year of the Inspection, and the next to it, few Accounts can be produced, where the Nett Proceeds is less than 6 *l. per Hoghead*, but, generally, from thence upwards, to 9 and 10 *l.* and some have had more.

Perhaps it may not be an unacceptable Service to the Public, here to present them with a State of the Tobacco Trade, as it stood before the present Law, and must have continued, according to all Probability, rather declining than advancing, had not the Law intervened, and immediately chang'd the Face of Affairs: But to make my Calculation less liable to Cavil, or Objection, I will here allow the highest Price of 1731, as a Medium, against the lowest of the Two succeeding Years, and then the Account will stand thus:

27618 Hogsheads, exported in 1732.	<i>l. Sterling.</i>
30313 - - - - - 1733.	
57931. were sold at 6 <i>l. per Hoghead</i> , is	347586
But without the Inspection Law, they	} 115862
could have yielded only 40 <i>s. per</i>	
Hoghead, which amounts to	
Profits of these 2 Years	221724.

By this appears the Advantage accruing to *Virginia*.

It ought not to be objected, That notwithstanding this Objection, the Price of Tobacco is likely to decline, and therefore the further Continuance of the Law will be chargeable, and useless: If Tobacco falls, during the present Regulations, that must be occasioned by the excessive Quantities exported; but certainly no reasonable Person will pretend, that this Law contributes to any Increase of the Quantity, since the contrary manifestly appears to every one, by the many Examples of Trash Tobacco daily burnt and destroyed; so that this Objection rightly considered, is a strong Argument for the further Continuance of the Inspection, and proves its Necessity, by this undeniable Consequence, *viz.* If the Value of Tobacco cannot be supported, notwithstanding the Quantity is restrained, and the Quality improved, by preventing the Exportation of Trash; doubtless when these Restraints are removed, and a Door open'd for Fraud and Corruption, this Commodity must sink, so as to be worth nothing at all.

The most material Objection seems to be, The Charge of executing the Inspection; but this, throughly and impartially consider'd, will appear equally frivolous and absurd.

Supposing this to be a real Public Charge, yet it's more than sufficiently recompens'd by the Advantages procured thereby, as has been already proved: In Respect of Private Persons, the Charge is just, and equitably laid; the poor Planter, and every other Person selling his Tobacco here, is entirely exempted from all Paiments or Allowances whatsoever: These must be born and defray'd by the Exporter, upon this just Ground, because he reaps the Benefit of a better Price for his Tobacco Abroad; it would be thought unreasonable, in other Cases, if a Merchant or Trader, was to declare, That he is desirous of a certain considerable Profit, or Advantage, but will contribute nothing towards attaining or securing it: Besides, the whole Charge upon Exporters in general, deducting the former usual Expences, is so trifling and inconsiderable, as not to be worth mentioning.

But in Regard to the Public, the Charge of executing the Tobacco Law, neither has been, is, nor can be, any real Loss at all. This perhaps, may seem a Paradox, but is nevertheless a certain Truth, which will manifestly appear, if we distinguish an Impost, Duty, or other Foreign Charge, payable Abroad, from a Custom, Duty, Salary, or Fee, payable here; so much of any Impost, Duty, or Charge, as is carried out in Money, or remitted by Bills of Exchange, or deducted out of the Nett Proceeds Abroad, is a Loss, by diminishing the Public Stock, which

must consequently be worth so much less : And this likewise holds good in Trade, where Merchandise imported exceeds, in its first Cost and Purchase, the Value of Goods exported to that Place from whence such Merchandise is brought, the Ballance of such Trade is lost out of the Public Stock.

But Salaries or Fees payable from Subject to Subject, are not carried out, in Money, nor remitted Abroad by Bills of Exchange, neither do they lessen the Nett Proceeds of our Exports, in Foreign Parts : The Money is indeed paid here, but then it only changes Masters, and passes from Hand to Hand, the Public Stock is not lessen'd One Farthing, and therefore this cannot possibly be any Public Loss. The like may be observed of Customs, Duties, and Impositions upon Merchandises imported, and appropriated for defraying the Public Expence : These are so far from occasioning any Loss or Diminution of the Public Stock, that they are, in Reality, a Means to increase it, by encouraging the Importation of Money, for Payment of these Duties ; and they are further beneficial in other Respects, by creating a Circulation of Money, and lessening the Public Levy. Nothing can be a Public Loss, unless it occasions a Diminution of the General Stock of the whole Country, in Money, or Bills of Exchange.

I hope the Reader will not think this an impertinent Digression, since it may help to set in its true Light a Matter of great Importance to every Inhabitant of this Colony : We ought carefully to avoid all Prepossession, or Prejudice, to Men or Things, but to consider impartially the Reasons offer'd to our Consideration, and examine their Nature, Force, and Consequence, by which we shall be enabled to form a true Judgment ; Men are too often deceived by false Appearances, and as frequently by an implicit Faith in the Opinion of others, for whom they have an Esteem, it's no Wonder then if they are misled : But in Matters of Moment, where not only our own Interest, but that of our Posterity is principally depending, we cannot be too cautious, because an Error here may prove of fatal Consequence.

I'm not insensible that in a Matter where so many different Interests are concerned, it's impossible to reconcile all Parties ; few Men will be perswaded to relish Reasons which interfere with their present Views, or to prefer a distant Public Interest, to a present Private Advantage : This must always produce Variety of Opinions, and create Opposition ; but whoever considers the true Interest of the Tobacco Trade, abstracted from Private Views, as I have
here

here done, without Regard to any Thing but the Public Prosperity only, will be convinced that the present Law is founded upon solid and substantial Reasons, tho' in some Parts relating to the Execution, it may perhaps be amendable.

As to Limitation of the Quantity; I have already hinted at proper Expedients to effect that, without needing any Penal Restraints, and without diminishing the Value of our Annual Exports: If this be practicable, I presume no Body will deny but it's far preferable to a forced Stint or Limitation of the Number of Tobacco Plants.

The Present Number and Increase of our People is too great to be supported by one Staple only, tho' in its full Extent, but much less if that be restrain'd, and no other Employment substituted in its Stead; we may easily foresee, that many industrious Men must want Work, and by Consequence must want necessary Provision for themselves and Families, which will put them under an unavoidable Necessity to seek Subsistence in other Countries.

To this it may be objected, That a Limitation will raise the Price of Tobacco, and therefore, tho' the Quantity of our Export be lessened, yet the Proceeds will be of equal or greater Value than a larger Exportation would produce.

This Expectation is become almost universal among us, and has obtained Credit with many substantial well-meaning People, who will hardly be persuaded to hear any Reason against it; and I am at a Loss to determine whether this proceeds from want of Consideration, or an impatient Desire of Novelty, perhaps both: But, few Arguments will serve to shew the Absurdity of this Notion.

We need only remember, that *Virginia* is not the only Country where Tobacco is made; *Maryland* alone can supply the World, tho' we should not make any at all; they would rejoice, if instead of a Law to restrain our Export of this Commodity, they could procure, tho' at the Charge of a considerable Sum, An Act to prohibit the making Tobacco in *Virginia*: By this we may plainly perceive, that it's not in our Power to lessen the Quantity of Tobacco, so, as by that Means to force an Advance of the Value in Foreign Markets, proportionable to the Loss which must fall upon our People by a Diminution and Decay of their Staple; and we might continue lessening the Quantity, 'til we had reduced it to nothing, and excluded our selves from a valuable Staple, and beneficial Trade, in Pursuit of this extravagant Hope; for we may rest assured, that the less is made here, so much the more will be attempted to be made in *Maryland*, and perhaps not a

little by our own People, who will remove to seek a Subsistence there, when they are restrain'd from procuring it here. If any reasonable Person will give himself Leave to reflect upon this, he will need no further Demonstration to prove, that the Consequence of a Limitation is pernicious, and the Advantage but a Dream.

The only solid and effectual Method to preserve the Value and Superiority of our Staple, must arise from the Superior Goodness of our Manufacture: Experience has furnish'd us with repeated Examples, that good Tobacco has been sold, in the worst and lowest Times, at a considerable Rate, far above the current Prices: But to pretend, that, by any Limitation, we can force a good Price for Trash Tobacco, in Foreign Markets, is a ridiculous and absurd Assertion.

Having consider'd the Improbability of any Advantage, I will now proceed to shew, in few Words, some of the ill Effects attending a Limitation of the Labour and Industry of our People: These are,

1. Diminution of our Export; whereby the Value of our Yearly Income must be proportionably lessen'd.
2. Decay of Trade; we can have only the Effects produced by our Stock, and no more.
3. Removal and Loss of our People; for Want of Employment, whereby to subsist.
4. Impoverishing our Posterity; an unavoidable Conclusion of the Premises.

I have been the more particular upon this Subject, because it's a Matter of great Weight; and as I have consider'd it with Candour and Impartiality, without other View but the Public Benefit only, I hope my Plainness and Sincerity will not be misinterpreted: Where every Man's Interest is concerned, every one has a Right to judge for himself; and in this Case, the Reader is at Liberty to follow his own Opinion, if he is displeas'd with mine.

Duty.

Duty of 1 *d.* per *lb.* upon all Tobacco exported to any of the *British* Plantations in *America*. Exporter to make Oath to the Quantity. 8 *Geo.* 2. *cap.* 15. See *Tit. Customs*.

T R E A S O N.

Misprision of Treason.

Nature
of the
Crime.

THIS is a Crime of such transcendent Malignity, in its Nature and Consequences, that it is, by the Law, distinguish'd for its Superior Guilt, and therefore punishable in the most base and ignominious Manner: Other Offences are
injurious

injurious to Private Persons only, but this is a Public Mischief, and often strikes at the Root of all Civil Government.

The Statute of 25 *Edw. 3. cap. 2.* is the Standard of Treason, at this Day, and declares what shall be,

1. High Treason, or
2. Petit Treason.

High Treason may be committed several Ways, as

High
Treason.

1. By Compassing or Imagining the Death of the King, or Queen, or Prince and Heir Apparent of the Crown; and by Declaring such Design by some open Act, or by Words, or Writing.

By Killing the Chancellor, Treasurer, Judges, Justices of Assize, or of Oyer and Terminer, sitting in Judgment, or in Execution of their Office.

2. By Violating, or Carnally Knowing the Queen, or the King's eldest Daughter unmarried, or the Prince's Wife; if they consent, it's likewise Treason in them: Because it destroys the Certainty of the King's Issue, and by Consequence raises Contests about the Succession to the Crown.

3. By Levying War; raising Forces without legal Commission, tho' for any Public End, or Purpose, or under any Pretence whatever; or Meeting and Consulting to Levy War, tho' not put in Execution, nor War actually levied.

4. By Adhering to the King's Enemies; Aiding, Assisting, Comforting, or Corresponding with such, either Foreign Enemies, or Rebellious Subjects.

5. By Counterfeiting the Great Seal, or the King's Privy Seal.

6. By Counterfeiting the King's Coin, or Importing Counterfeit Money. *H. P. C. 13, &c. pag. 342.* *Laws of Virginia, pag. 402.* Or Coining, Counterfeiting, Falsifying, or Debasifying any of the Current Coin of this Dominion; or Aiding, Consenting, or Counseling therein. *1 Geo. 2. cap. 19.*

7. By an Assembly of Eight Persons, or more, forcibly Cutting or Destroying Tobacco, or Plants, Pulling down Fences, or Inclosures of Plants, or Burning or Destroying Tobacco-Houses. *pag. 89*

8. And by a late Statute, maliciously, advisedly, or directly Maintaining, Declaring, or Affirming by Writing, Printing, Preaching, Teaching, or advised Speaking, That the King is not lawful King; Or that the pretended Prince of *Wales* has any Title to the Crown, or that any other Person has a Right otherwise than by the Act of Settlement;

ment ; 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 the Realm of *Great-Britain*, is High Treason. But for Words spoken, Information must be made, upon Oath, before One or more Justices of Peace, within Three Days after the Words spoken ; and Prosecution must be within Three Months after Information.

Laws of The only Instance of Trial and Conviction of Treason, *Virginia,* hitherto extant upon our Records, is that of *Nathaniel Bacon,* Junior, and his Accomplices, who were attainted, executed, and their Estates forfeited, for Rebellion, and Treason, *A. D.* 1676. The Principal Traitor, *Bacon,* escaped legal Sentence and Execution, by a natural Death, but was attainted by Act of Assembly, pass'd under the Great Seal of *England.* 32 *Car.* 2. *cap.* 1.

Intent. Treason may be by Words only. 1 *Lev.* 57. An Intention of Treason, if plainly prov'd by Circumstances, is Treason, in the Eye of the Law ; And it is to shew the Odiousness and Greatness of the Offence, by punishing the very Intentions of it, which are not punishable in other Offences Criminal. *Pr. Reg.* 612.

Conviction. Conviction of Treason must be by Two credible Witnesses, at least, who must both prove the same open Act of Treason, or different Acts, but of the same Treason ; Where distinct Treasons, of divers Kinds, shall be alledged in One Indictment, One Witness to One Species of Treason, and another Witness to another Treason, shall not be sufficient to convict the Party ; And no Evidence shall be given of an Act of Treason, unless such Act be expressly laid in the Indictment. *Stat.* 7 *W.* 3. *cap.* 3.

Accessories. In High Treason there are no Accessories, but all are Principals : That which will make a Man Accessory to Felony, before the Fact, will make him a Principal in High Treason. *C. P. C.*

Judgment. If a Man be arraign'd for High Treason, and stands Mute, or will not answer directly to the Indictment, Judgment shall be given upon him, as upon a Traitor Convict. *Dyer* 102.

Punishment. The Punishment of this Offence is adapted to the Greatness of the Crime, *viz.* The Offender shall be drawn upon a Hurdle, backward, with his Head downward, from the Prison to the Gallows, and there hang'd, then cut down alive, his Privy Members cut off, and his Entrails taken out and burnt, his Head cut off, his Body quartered, and his Head and Quarters hang'd up : All his Lands

Lands, Goods, and Chattels are forfeited, and his Blood corrupted. *St. P. C. l. 3. cap. 19.*

But in Counterfeiting, &c. of Current Coin, there is no Corruption of Blood, or Loss of Dower. *18 El. cap. 1.*

And if a Woman be convicted of High Treason, or Petit Treason, the Judgment is, To be drawn to the Gallows, and there burnt. *Dyer 230. b.*

Because all Treasons are against the Peace of the King and Realm, therefore upon Complaint made to a Justice, or upon his own Knowledge, he ought to cause such Offenders to be apprehended, and to join with some other Justice in taking the Examinations of the Prisoner, and Witnesses; and must bind over the Informers, and such Witnesses as prove any Thing material, to appear and give Evidence for the King. *Dalt. 336.*

Process.

Justices of Peace ought not to receive Informations of Treason, but upon Oath of Two credible Witnesses; and then they may issue their Warrants to apprehend the Offender, and they may also by their Warrant cause Witnesses to appear before them.

Every Witness who proves any Thing material, before the Justice, or Justices, must be bound in a separate Recognizance to appear before the Court to be held for further Examination of the Prisoner.

Such Court must be summoned, and further Proceedings had, as by Law directed in other Criminal Cases.

Warrant, upon an Information of High Treason.

To the Sheriff of *Hanover* County, and to all other his Majesty's Officers within the said County.

Hanover *sc.* **W**Hereas A. B. and C. D. of, &c. this Warrant. Day came before me N. M. Gent. a Justice of Peace of the said County, and upon their Oaths exhibited an Information of High Treason against E. F. of &c. Therefore, in His Majesty's Name, I hereby charge and command you, and every of you to whom these Presents shall come, forthwith to apprehend the said E. F. and to bring him before me, or some other Justice of this County, to be examined concerning the Premises wherewith he is charged. Hereof fail not, at your Peril. Given under my Hand and Seal, &c.

Upon this Warrant the Officer may break open Doors, to take the Party.

This

Treason.

This Offence is notailable by Justices of Peace; but the Offender being taken and examined before One or more Justices, must be committed.

To the Sheriff, or Keeper of the Goal of *Hanover* County.

Mittimus. Hanover *sc.* I send you herewith the Body of E. F. late of, &c. who was this Day brought before me, and stands charged with High *Treason*; and I command you, in His Majesty's Name, to receive the said E. F. into your Goal and Custody, and him there safely to keep, until he shall be thence discharged by due Course of Law. Given under my Hand and Seal, &c.

To discharge or suffer a Prisoner for *Treason* to escape, is *Treason*.

Petit *Treason.* *Treason.* Petit *Treason*, by the Statute 25 *Ed.* 3, extends to Three Particulars.

1. Where the Servant kills the Master or Mistress; or where he procures another to do it, and it is done in his Presence: Tho' the Servant be an Infant, or but 13 Years of Age.

If a Servant hath Malice against his Master, whilst in his Service, then departs, and afterwards being out of Service, he kills his former Master, 'tis Petit *Treason*. *H. P. C.* 23.

2. Where the Wife kills her Husband, or joins in the Killing, or procures another to do it, and she is present in the House, tho' not in the same Room where the Fact is committed.

If she intends to poison or murder a Stranger, but kills her Husband, it's Petit *Treason*.

3. Where an Ecclesiastical Person kills his Ordinary. Aiders, Abettors, and Procurers, are Principals within this Act.

The Son killing his Father or Mother, is guilty of Petit *Treason*, if he receives Meat, Drink, or Wages. *Dalt.* 91.

Whatsoever will make a Man Guilty, or Principal, in Murder, will make him Guilty or Principal, in Petit *Treason*. *Crompt.* 18.

But if the Servant kills his Master, upon a sudden Falling out, it's not Petit *Treason*, but Manslaughter. *Dalt.* 91.

Judg.
ment.

The Judgment for a Man, convicted of Petit *Treason*, is, to be drawn and hang'd: Besides Forfeiture of his Fee-simple Lands for a Year and a Day, entail'd Lands during

during his Life, and he loses all his Goods and Chattels.
H. P. C. 24.

This Offence is cognisable before Justices of Peace, in like Manner as High Treason, and the Proceedings herein the same as in other Capital Offences: The Party charged with Petit Treason may not be admitted to Bail before Justices of Peace.

Misprision of Treason, is, a Concealing of any Treason which a Man knoweth: But it must be a bare Knowledge only, for if the Concealer consents to the Treason, he is a Principal Traitor. *H. P. C. 127.* Misprision.

He that receives and comforts a Traitor, be it a Counterfeiter of Coin, or any other, knowing him to be such, is a Principal Traitor himself, and not guilty of Misprision only. *C. P. C. cap. 64.*

Therefore, the safest Way is, to discover forthwith the Treason, and the Traitor, to some Magistrate: For if the Discovery be made to a Person who hath not Authority to take an Examination, it may be questioned, Whether such Discovery will acquit the Party from an Indictment for Misprision of Treason. *Keel. 22.*

This Offence is punishable by Imprisonment during Life, Forfeiture of Goods, and of Lands during Life: But it's not cognisable before a Justice of Peace. Punishment.

T R E S P A S S.

Fences. Inclosures.

FOR Prevention of Trespases by unruly Horses, Cattle, Sheep, Hogs, or Goats, the Act of Assembly, *Laws of Virginia, pag. 152.*
4 Annæ, cap. 15, declares,

A lawful Fence must be $4\frac{1}{2}$ Foot high, and so close that such Beasts cannot creep through.

Or an Inclosure with a Ditch, 3 Foot deep, and 3 Foot broad, and thereon a Hedge 2 Foot high, or a Rail Fence of $2\frac{1}{2}$ Foot.

Owner of Beasts breaking such Fence or Inclosure, forfeits, for the first Offence, the Value of the Damage done, to the Party injured, recoverable by him, with Costs, in any Court of Record; and for every Offence after the first, double Damages.

But in Case of a Third Offence, by Breach of such Inclosure, and barking Fruit Trees, the Party injured may either sue for his Damages, or destroy the Beasts.

The Party grieved may complain to a Justice, who is thereupon forthwith, to order Three honest House-keepers of

Trespass. Vagrants.

of the Neighbourhood, not related to the Parties, nor interested, to view the Fence where the Trespass is complain'd of, and to take Memorandums: Their Deposition shall be good Evidence to the Jury, as to the lawfulness of the Fence.

Order for a View.

View. Caroline sc. **A.** B. Gent. a Justice of Peace, To C. D. E. F. and G. H. of the said County, Planters, Greeting. Whereas J. O. has complained to me, That certain Horses, belonging to I. K. and other Persons unknown, did lately break into the Corn Field of the said J. O. inclosed with a lawful Fence, and that he has thereby suffer'd Damage to the Value of Five Pounds: I therefore require you forthwith to repair to the Plantation of the said J. O. and diligently to view the Fence where the Trespass aforesaid has been committed, and that you take a Memorandum, in Writing, whether you find the same a lawful Fence, according to the Act of Assembly in that Case made and provided. Given under my Hand, &c.

If Horses, Cattle, Sheep, Hogs, or Goats, do any Damage where there is not a lawful Fence, the Party grieved may not hurt or destroy the Beasts, under Penalty of paying double Damages to the Owner: If the Damage be under 20 s. the Penalty must be recovered before Two Justices, One being of the *Quorum*; if more, by Action of Trespass.

Owner of Beasts, known to have bark'd Fruit Trees, must keep such Beasts within his own Inclosure: Any Person may take up such Beasts going at large, and deliver them to the Owner, who must pay for every Beast 100 lb. Tobacco, to the Party by whom taken up and delivered, recoverable before a Justice. But the Taker must make Oath, if required, 'That no Means were by himself, or any other Person that he knows of, used to set the same at large.' If he refuses to take the Oath, he loses the Reward.

VAGRANTS.

Beggars. Rogues. Vagabonds.

Laws of
Virginia,
pag. 57.

BY the Act of Assembly, 24 Car. 2. cap. 7. Justices of Peace are required to execute the Laws of England, against vagrant, idle, and dissolute Persons.

And County Courts are to place the Children of such poor Parents as are unable to bring them up, in Service, by

by binding them Apprentices, the Males to Tradesmen, 'til they are 21; the Females to Employment, 'til 18 Years of Age.

Churchwardens are to give Account, to the Orphan's Court, Annually, of all such Children in their Parish.

The Statute, 39 *Eliz. cap. 1.* Is hereby Enacted, Descrip-
tion of
Vagrants.
which declares, That all Scholars, Seafaring Men, and all other wandring Persons, who beg, or use unlawful Games, or pretend to have Skill in telling Fortunes, Physiognomy, Palmestry, and the like; such as are, or pretend to be Collectors for Goals, Hospitals, &c. All Fencers, Bearwards, Stage-Players, Fiddlers, and Minstrels, Juglers, Tinkers, Pedlars, and Petty Chapmen, wandring abroad; All able bodied Persons who wander, and refuse to work for reasonable Wages, having no Living otherwise to maintain themselves; Poor Prisoners deliver'd out of Goal, and begging for their Fees; Persons pretending Loss by Fire, or otherwise, and wandring abroad begging; And all such as pretend to be *Egyptians*, and are found wandring, or pretending to tell Fortunes, are declared to be Rogues, Vagabonds, and sturdy Beggars.

If any such are taken begging, wandring, or misbehaving themselves, and brought before a Justice of Peace, he is to order him or her to be whip'd, naked from the Middle upwards, and then forthwith to be conveyed to the Place of their Birth; and if that cannot be known, then to the Parish where they last dwelt by the Space of one whole Year; and if it cannot be discovered where they were born, or last dwelt, then to the House of Correction, or the County Goal, to be employed in Work, or placed in Service, and so to continue the Space of One Year.

Any Person who falls under any of the Descriptions before-mentioned, being found wandering, begging, or misordering himself, any Officer or Inhabitant may apprehend him, and carry him before a Justice of Peace: If a Constable neglects or refuses to apprehend such, 'tis a Neglect of his Duty, for which he may be indicted and fined. *Dalt.* 205.

The Justice before whom a Vagrant is brought, may examine him, upon Oath, or any other Person who can give Information of the Vagrant's Place of Birth, or last legal Residence: Such Examinations must be subscribed by the Persons examined, and returned to the County Court. *Nels.* 595.

Exami-
nation.

If the Vagrant refuses to be examined upon Oath, or makes insufficient or false Answer, he shall be deemed an incorrigible

incorrigible Rogue, and punish'd by Whipping. 39 Eliz. cap. 4.

Punish-
ment.

Any Justice of Peace may order all Rogues and Vagabonds taken begging, wandering, or misordering themselves, to be stript naked, from the Middle upwards, and whip'd 'til their Body be bloody : After which he is to give the Vagrant a Testimonial, under his Hand and Seal, certifying the Punishment, the Place to which the Vagrant is to be conveyed, and limiting the Time of passing thither. *Delt.* 205.

Testimonial, or Pass, for a Vagrant.

Pafs. Amelia, *sc.* A. B. a Vagrant, of middle Stature, aged about Thirty Years, was this Day taken wandering and misordering himself, (b) at in the County aforesaid, and brought before me C. D. Gent. a Justice of Peace of the said County, and by my Appointment was punish'd, according to the Form of the Statute, and the Act of Assembly in that Case made and provided : And whereas the said A. B. upon his Examination hath confessed before me, That he was born in the Parish of in the County of Henrico ; I hereby require all Constables to whom these Presents shall come, forthwith to convey the said A. B. from hence, the next streight Way, from Parish to Parish, 'til he shall come to the Parish of in the County of Henrico aforesaid, and to deliver him to the Churchwardens thereof, to be employed in Work, or placed in Service, as the Law requires : And he is limited to pass thither within Days, now next ensuing. Given under my Hand and Seal, this &c.

(b) Or as the Case is.

If the Place of Birth is not discovered, say,

----- as before, unto----- And whereas it is not known where the said Vagrant was born, but by the Examinations taken before me, it appears, That he was last legally settled in the Parish of in the County of I require, &c.

And if neither the Place of Birth, nor last Abode, can be known, he must be committed to the House of Correction, or the County Goal.

To the Sheriff, or Keeper of the Goal of Amelia County.

Amelia, *sc.* W Hereas, &c.----- as before, unto----- And whereas it is not known where the said Vagrant was born, or last legally settled, I hereby require all

all Constables to whom these Presents shall come, forthwith to convey the said Vagrant the next streight Way from hence to the Common Goal of this County, and him to deliver to the Keeper thereof: And I command you the said Keeper to receive the said A. B. into your Custody, and him safely to keep, until the next Court to be holden for your said County; And, in the mean Time, that you hold him to Work and Labour, yieding him for his Maintenance only so much as he shall deserve or earn by his Work: And if he shall refuse to labour, or shall be of leud or disorderly Behaviour, that you punish him by moderate Whipping, and by putting Fetters or Givies upon him, as in good Discretion you shall see Cause: And that you have the said A. B. before His Majesty's Justices of the Peace, at the next Court to be held for your said County, and have then there this Warrant. And the said A. B. is limited to pass to the Goal aforesaid within Two Days, now next ensuing. Given under my Hand and Seal, this 25th Day of March, 1736.

If a Vagrant or Beggar offends by disorderly Behaviour, or Resistance, any Constable may put him in the Stock, or otherwise secure him. *Rast.* 29.

And if he, by his own Default, exceeds the Time limited for his Passage, he shall be punished by Whipping, from Time to Time, for every Offence. *39 Eliz. cap. 4. 1 Jac. 1. cap. 7.*

No Child under the Age of Seven Years shall be adjudged a Rogue, or Vagrant, but must be sent to and placed with the Father, or Mother, or Mother's Husband, in the Parish where they dwell. **Children.**

But Children above Seven Years, going abroad vagrant or begging, shall be punish'd as Rogues, and sent to the Place of their Birth. *Dalt.* 208.

The Wife must be sent to her Husband, tho' he be a Servant in another Parish. *Ibid.*

By the Statute, *7 Jac. 1. cap. 7.* All Persons able to labour, who runs away, and leave Wife or Children, chargeable upon the Parish, shall be deemed incorrigible Rogues, and by Warrant of Two Justices, committed to the House of Correction, or County Goal, 'til the next County Court, and then, in open Court, branded with a hot Iron, on the left Shoulder, whipp'd, and sent to their last Place of Dwelling. **Rogues.**

So likewise, if such Persons threaten to run away, upon Conviction thereof, before Two Justices, by Two Witnesses, upon Oath, they must find sufficient Sureties to indemnify

nify the Parish, otherwise the Justices may commit them, 'til the next Court, and if they cannot then find Sureties, they shall be dealt with and punish'd as incorrigible Rogues. *Dalt.* 207.

Such as have been punish'd for Vagrancy, and sent to their Place of Birth, &c. but afterwards become Vagrants again; Those, who upon their Examination before a Justice, shall be found to give a false Account of their Place of Birth, or last Settlement; And all able bodied sturdy Vagrants, who by Violence, Threats, or leud Behaviour, shall appear dangerous to the People, are to be punish'd as incorrigible Rogues. *Ibid.* 210.

Penal-
ties, for
Breach of
the Sta-
ture 39
Eliz. c. 4.

If any Inhabitant charged by a Justice, or other legal Authority, refuses or neglects to apprehend a Vagrant, he forfeits 10 s. to the Poor of the Parish where such Offence is committed, recoverable upon Conviction by One Witness, before One Justice, and leviable by Distress.

Constable, or other Parish Officer, failing in his Duty apprehending or conveying Rogues or Vagabonds, or suffering them to escape, and any other Person disturbing him in the Execution of his Office, or assisting in a Refcous, or Escape, forfeits 20 s. leviable by Distress and Sale of the Offenders Goods. Conviction by View of a Justice, or Oath of One Witness.

The Constable, or some Person by him to be procured, must execute the Punishment of Whipping, under Penalty of 20 s. *Dalt.* 211.

VERDICT.

See Tit. Juries.

Rules. **I**N Capital Cases, the Jury cannot be discharged before they have given their Verdict, and it must be given in open Court, for no Privy Verdict is allowable in such Cases. *H. P. C.* 267.

No Privy Verdict can be given in Criminal Cases which concern Life, because the Jury are commanded to look upon the Prisoner at the Bar, when they give their Verdict, and so the Prisoner is to be there present at the same Time: But in Criminal Cases, where the Defendant is not required to be present in Person, at the Time of the Verdict, a Privy Verdict may be given. *Raym.* 193.

The Verdict must be perfect, and a conditional Verdict is void: But the Jury may find Matter Specialy; as upon an Indictment of Murder, they may find the Defendant Guilty of Manslaughter, Chance-Medley, or Self-Defence, but

but then they must find in what Manner, that the Court may judge of the Law arising upon the Fact. *Yel.* 15.

There is no Necessity of finding the Value of any Thing, as 'tis laid in the Indictment; more they cannot find, but less they may.

UTLAWRY, or, OUTLAWRY.

THIS is a Punishment for such who being called in Law, and lawfully sought, contemptuously refuse to appear. He that is sued must be called at Five County Courts, to answer the Law, and if he appear not within that Time, he shall be held an Out-law'd Person, refusing to obey either his Prince, or the Law, and therefore he shall lose the Benefit of a Subject, which is, the Protection of his King, and the Laws of his Country. *C. P. C.* 18. What it is.

It seems to be derived from the old *British* Priests, call'd *Druids*, who in antient Times sat as Judges of the Land, and if any Person made Default in appearing before them, when called, he was forbid their Sacrifices, which was, in Effect, excluding him from Human Society, for then no Man would speak to him, or come near him, for Fear of being infected; and besides, he was to have no Benefit of the Law. *Seld.* Its Original, & Effects.

So great was this Punishment, that, in after Ages, no Man was Out-law'd but for Felony only, and then he was said to carry his Judgment in his Face, and might be kill'd as a Wolf, by any Person: This so continued 'til the Reign of *Edw.* 3. when it was made lawful for the Sheriff only to kill him, but not without a Warrant for so doing.

The Law is now changed in this Respect, and Outlawries are become frequent in Personal Actions; the Party so Out-law'd, forfeits his Goods and Chattels to the King.

And if he be Out-law'd for Felony, he is thereupon attainted, his Lands, Goods, and Chattels are forfeited, and his Body at the King's Disposal.

Altho' a Man be Out-law'd for Felony, yet he is subject to be taken in Execution at the Suit of a Creditor; but the Sheriff may choose whether he will serve such Execution, or not. If the Law were otherwise, the Party might take Advantage of his own Fault, by suffering himself to be Out-law'd, and then getting a Pardon, and so deceive all his Creditors. *Moor* 379.

The Party Out-law'd, may reverse the Outlawry by Writ of Error: But the Court will not reverse an Outlawry, altho' both the Parties consent to it, *viz.* the Party Out-law'd, and the Party at whose Suit he is Out-law'd, Rever-
A 2 except

except there be Error assign'd. For Matters of Record are not to be destroyed without sufficient Cause, and the Outlawry also concerns the King, as well as the Parties, and therefore not to be overthrown without Cause shewn. *Pr. Reg.* 438.

Virginia Prosecution to Out-lawry not within the Jurisdiction of
Laws, County Courts, but in the General Court only. *9 Annæ,*
pag. 250. *cap.* 11.

WARRANTS.

Mittimus. Precept.

Warrant. **T**Hese are Orders in Writing, issued by Justices of Peace, under their Hands and Seals, directed to a proper Officer, or other Person specially named, to execute.

But, in some Cases, the Command of a Justice of Peace, by Word, without Writing, is as effectual as his Precept in Writing; as in Riot, Affray, Assault, Threatning, or any other Breach of the Peace in his Presence, he may command any Officer, or his own Servant, or any other Person present, to arrest the Offender. *Dalt.* 439.

But where the Offence is not committed in View and Presence of the Justice, he must issue his Precept or Warrant in Writing, to apprehend the Offender.

Every Warrant ought to express the Cause for which the Party is to be arrested, or summoned, and therefore a General Warrant to cause any Person to appear and answer such Matters as shall be objected against him, without mentioning any particular Matter, is not good. *Co. 2. Inst.* 591.

But in some special Cases of Treason, Felony, or any Capital Offence where the King is Party, the Warrant needs not contain the special Cause or Matter at large, but may express generally, the Nature of the Offence, and to answer such Matters as shall be objected against the Defendant on his Majesty's Behalf. *Dalt.* 440.

In Criminal Matters, especially in Cases Capital, it ought to be under Seal of the Justice, expressing the true Date and Place when and where issued, and the Cause: But in Matters of Debt, Trespass, and the like Complaints between Subject and Subject, a Warrant under the Justice's Hand is good, tho' not seal'd.

A Justice of Peace ought not to grant a blank Warrant, for this is finable: Nor a Warrant to apprehend any Person for Felony, or upon Suspicion, without examining, upon Oath, the Party who requires it, and binding him over to give Evidence. *Crompt.* 34. A

A Warrant may be directed to the Sheriff, Under-Sheriff, Officers Constable, or other Officer, or any other indifferent Person, tho' no Officer, as the Circumstances of the Case may require, and this is discretionary in the Justice; but the safest Way is, to direct it to a sworn Officer. *Dalt.* 443.

If it's directed to the Sheriff, he may, by Word, command his Under-Sheriff, or Bailiff, to execute it; but if he commands a Stranger to serve it, he must deliver him a Precept in Writing. *Br. Ex. Impr.* 43.

If directed to the Under-Sheriff, Bailiff, Constable, the Justice's Servant, or a Stranger, these must personally execute it, for in this Case none of them can appoint a Deputy, by Word or Writing. *Ibid.*

The Officer, or Person, to whom a Warrant or Precept is directed must with Speed and Secresie execute it forthwith, if the Party against whom it's granted, can be found; and if it be for the Peace, Good-behaviour, or any Criminal Offence, and generally in all Cases where the King is Party, he may break open Doors, if Enterance is denied after Demand by him made, in the King's Name, and the Cause of his Coming declared.

A sworn Officer need not shew his Warrant, it's sufficient if he declares the Contents, and if he is resisted, or assaulted, he may justify the Beating and Wounding: But a Person who is not a sworn Officer must produce his Warrant to the Defendant, if required, or the Party may resist, and refuse to obey it. *Dalt.* 444.

If after an Arrest the Officer suffers his Prisoner to go at large, upon Promise that he will appear, he cannot afterwards retake him upon the First Warrant, because it was executed, and must be so return'd at his Peril: But if the Prisoner escape, the Officer may re-take him, upon fresh Pursuit, without other Warrant. *Nels.* 616.

If after Arrest the Officer procures a Warrant, having none before, this is false Imprisonment, and the Officer liable to the Action of the Party grieved. *43 Eliz. cap. 6.*

Where there be Two Persons of the same Name, and Addition, and a Warrant is granted against One of them, the Officer ought to make diligent Inquiry, which of them is the Offender, that he may not arrest the wrong Person, and so become liable for false Imprisonment. *Nels.* 616.

Every Officer must pursue the Effect of his Warrant, and make a true Return thereof: If a Justice of Peace issues his Warrant, or Precept, for any Matter within his Jurisdiction, and legally cognisable before him, tho' he commit a Mistake, yet the Officer must not dispute, but obey, and shall be justified by his Warrant: But where a Magistrate

exceeds his Authority, or issues his Precept in a Matter not legally within his Jurisdiction, or Cognizance, such Precept is void, and the Officer liable to the Suit of the Party grieved, for executing it. *Cro. 105. Plow. 394. b.*

Appear-
ance.

Upon a Warrant, generally, to bring the Party before the Justice who issued it, or any other Justice, it's in the Election of the Officer to appoint an Appearance before such Magistrate as he thinks fit: Because the Law presumes him to be an indifferent Person, and he is sworn to execute his Office duly, and therefore 'tis reasonable the Election should be in him. *5 Rep.*

But if it be specially limited to appear before the Justice himself, or before any other particular Justice or Justices, or at a certain Day, and Place appointed, the Officer is bound to obey: For it must be presumed, that he who grants the Warrant, or hath taken Examinations, sees Cause for commanding such special Appearance.

Con-
tempt.

If any Person abuses the Justice's Warrant, by Throwing it under Foot, Treading it in the Dirt, or by any other Public Contempt, he may be bound to Good-behaviour, indicted, and fined, because it is the King's Process. *Dalt. 445.*

And if the Officer, or other Person to whom a legal Warrant is directed, refuses to execute it, he may be indicted and fined for his Contempt. *Ibid.*

Mittimus.

Every *Mittimus* whereby the Body of any Person is committed to Prison, must be,

1. To the Common Goal.
2. Under Seal of the Justice.
3. Containing and plainly expressing the Cause of Commitment.
4. With an apt Conclusion, *viz.* there to remain 'til deliver'd by due Course of Law; or else the *Mittimus* is void.

The Cause of Commitment is necessary to be expressed, that it may appear whether the Person is bailable or not: For if no Cause of Commitment is expressed, other Justices may bail him, tho' it's not adviseable so to do without the Privy of the Justice who committed the Offender.

Justifica-
tion.

By the Statute 7 *Jac. 1. cap. 5.* made Perpetual by 21 *Jac. 1. cap. 12.* If any Action shall be brought against a Justice of Peace, or any Officer, or against any other Person acting by their Command, or in their Aid or Assistance, for any Thing by them done in Execution, and by Virtue of their respective Offices, the Defendant may plead the General Issue, and give the Special Matter in Evidence; and upon a Nonsuit, Discontinuance, or Verdict for the Defendant, he shall have double Costs.

The

The Action must be laid in the proper County where the Fact was done, and not elsewhere.

But it may be questioned, Whether this Act extends to this Colony; and therefore the safest Way is, to plead the General Issue in such Cases only where by particular Acts of Assembly it is expressly allow'd.

By the Common Law, if an Action of false Imprisonment be brought against any Officer, he must plead the Special Matter, and justify himself by his Authority, or Warrant.

A Constable may make a Deputy, but he must be answerable for him. *Moor* 845. 3 *Bulstr.* 77.

WEIGHTS and MEASURES.

AFTER 10 June 1736, no Goods may be bought or sold in this Colony, by other Weights or Measures than the *English* Standard only, on Penalty of 20 s. for every Offence, to the Poor of the Parish, to be forfeited by the Buyer, Seller, or Keeper of other Weights or Measures; recoverable before any One Justice of the County where the Offence is committed, and leviable by Distress and Sale of the Offender's Goods. Conviction by Oath of One Witness. If no Distress the Offender to be committed, without Bail, 'til Forfeiture paid.

Laws of
Virginia,
8 Geo. 2.
cap. 9.
Penalties.

Every County Court must provide, at the County Charge, Brass Weights of Half-hundreds, Quarterns, Half-quarterns, 7 Pounds, 4 Pounds, 2 Pounds, and One Pound Weight; Bushel, Half-bushel, Peck, and Half-peck, dry Measure; Gallon, Pottle, Quart, and Pint, Wine Measure; with proper Scales for the Weights; All according to the Standard of the Exchequer in *England*: If any County is unprovided, after 4 April, 1736, every Justice in Commission there forfeits 5 s. per Month, so long as such Weights and Measures are wanting, to the King and Informer; recoverable by Action of Debt, or Information, in any Court of Record.

County
Stand-
ards.

These Weights, Scales, and Measures, are to be kept, from Time to Time, by some Person in every County, appointed by each Court respectively; All Persons must resort thither, to have their Weights and Measures tried by the County Standard, and stamp'd with a Seal, to be in like Manner provided at the County Charge. Tried Steelyards may be used in Buying and Selling, where both Parties consent.

Fee for Trying and Sealing, viz.

	s.	d.	Fees.
For every Steelyard, and Certificate thereof,	1	0	
Every other Weight,			
and every Measure, } when Seal'd,	0	4	
To be paid by the Party for whom the Service is done.			

Weights and Measures.

Warrant, for selling by Weight, or Measure, unseal'd.
To R. O. Constable.

Warrant. New-Kent sc. (i) Or, as the Case is. *W*Hereas A. B. has this Day made Complaint before me, That C. D. of &c. did lately sell Corn, by unlawful Measure, (i) within the Limits of the said County, contrary to the Form of the Act of Assembly in that Case made and provided: I therefore command you forthwith to cause the said C. D. to come before me, or some other Justice of this County, to be examined concerning the Premises with which he is charged. Hereof fail not, and make Return how you have executed this Precept. Given under my Hand, this 16th Day of April, 1736.

To levy the Penalty.

To I. N. Constable.

*Distress. New-Kent sc. W*Hereas it was this Day duly proved before me G. W. Gent. one of His Majesty's Justices of the Peace of the said County, That C. D. of the Parish of St. Peter, in the said County, Planter, did lately sell Corn by unlawful Measure, within the Limits of the County aforesaid, contrary to the Form of the Act of Assembly in that Case made and provided, whereby he has forfeited the Sum of Twenty Shillings: Therefore I command you forthwith to levy the said Twenty Shillings, by Distress and Sale of the Goods and Chattels of the said C. D. rendring him the Overplus, if any; and that you pay the said Twenty Shillings to the Churchwardens of the Parish of St. Peter aforesaid, for the Use of the Poor thereof, and make Return how you have executed this Warrant. Given under my Hand and Seal, &c.

Mittimus, for Want of Distress.

To I. N. Constable; and to the Sheriff, or Keeper of the Goal of New-Kent County.

*Mittimus. New-Kent sc. W*Hereas C. D. of &c. was lawfully convicted, before me G. W. Gent. a Justice of Peace of the said County, of selling Corn, by Measure not stamp'd or seal'd, as by Law required, whereby he hath forfeited the Sum of Twenty Shillings, to the Poor of the Parish aforesaid, where the said Offence was committed; and thereupon I directed my Warrant to you the said Constable, commanding you to levy the said Forfeiture of the Goods and Chattels of the said C. D. for the Use

Use of the Poor aforesaid: And whereas you have made Return, That the said C. D. hath no Goods or Chattels within your Precinct, whereof you can make the Sum aforesaid, Therefore, in His Majesty's Name, I command you to take the Body of the said C. D. if he be found within your Parish, and him convey to the Common Goal of this County, and deliver to the Sheriff, or to the Keeper of the said Goal: And I require you the said Sheriff, or Keeper, to receive the said C. D. into your Goal and Custody, and him there safely to keep, until he shall pay the said Twenty Shillings to the Churchwardens of the aforesaid Parish of St. Peter, for the Use of the Poor thereof, or until he shall be discharged by due Course of Law. Given under my Hand and Seal, &c.

The English Standard,
Has Two Sorts of Weights, viz.

Troy Weight.

24 Grains, make 1 Penny-weight.

20 Penny-weight, 1 Ounce.

12 Ounces, 1 Pound.

By this, are weigh'd Gold, Silver, Pearl, Jewels, Silks, Bread, and Wheat.

Averdupois Weight.

16 Drams, make 1 Ounce.

16 Ounces, 1 Pound.

28 Pounds, 1 Quartern.

4 Quarterns, 1 Hundred.

20 Hundreds, 1 Ton.

Hereby are weigh'd Butter, Cheese, Flesh, Flax, Drugs, Grocery, Hemp, Iron, Steel, Lead, Tin, Tallow, Tobacco, Wax, Wool, and all Commodities which are garbled, or of which any Refuse is made; to every Hundred there is an Allowance of 12 Pounds, and so in Proportion.

Of Measures there are divers Kinds, viz.

Wine Measure.

2 Pints, make 1 Quart.

2 Quarts, 1 Pottle.

2 Pottles, 1 Gallon.

63 Gallons, 1 Hogshead.

2 Hogsheads, 1 Pipe.

2 Pipes, or 2

252 Gallons, 1 Ton.

Wine, Oil, Spirits, and all Liquors, except Beer and Ale, are thus measured. 23 H. 8. cap. 4.

Ale Measure.

8 Gallons, make 1 Firkin.

A a 4

2 Firkins,

The
Standard
Weights.
Troy.

Averdu-
pois.

Measures,
Wine.

Ale.

Weights and Measures.

2 Firkins, make 1 Kilderkin.

2 Kilderkins, or } 1 Barrel.

32 Gallons,

If Butter, or Soap, are sold by Measure, it must be as Ale.

Beer.

Beer Measure.

36 Gallons, make 1 Barrel.

Smaller Cask in Proportion.

Dry.

Dry Measure.

2 Gallons, make 1 Peck.

4 Pecks, 1 Bushel.

8 Bushels, 1 Quarter.

Corn, Pease, Beans, Salt, and all other dry Goods which are sold by Measure, must be thus accounted, and it must be strike Measure, and not heap'd. 11 H. 7. cap. 4. &c.

Cloth.

Cloth Measure.

4 Nails, make 1 Quarter.

4 Quarters, or } 1 Yard.

36 Inches,

5 Quarters, or } 1 Ell.

45 Inches,

Wrought Silks, Linen, Woolen, and all Commodities whatsoever, which are sold by long Measure, must be by these Contents.

Land,
&c.

Land Measure.

3 Barley Corns, make 1 Inch.

12 Inches, 1 Foot.

16½ Feet, 1 Pole, Perch, or Rod.

40 Poles, 1 Furlong.

8 Furlongs, or

1760 Yards, or } 1 Mile.

5280 Feet,

An Ox-gang, is 13 Acres.

A Yard Land, 20, 24, or 30 Acres.

Plough-Land, or } was 100 Acres formerly,

Hide of Land, } now 80 Acres.

1 Handful, or 1 Hand high, is 4 Inches.

1 Fathom, is 7 Foot.

Paper, 24 Sheets, make 1 Quire.

20 Quires 1 Ream.

10 Reams, 1 Bale.

Parchment, 50 Skins, or } 1 Roll.

5 Dozen,

Hides, 10 Hides, 1 Dicker.

20 Dickers, 1 Last.

Herrings, 32 Gallons, 1 Barrel.

10000 - - - 1 Last.

Timber hew'd and squared, 50 Foot 1 Load.

All

All our Weights have their first Composition from the ancient Penny *Sterling*, which ought to weigh 32 Wheat Corns, of a middle Sort, Twenty of which Pence make an Ounce, and Twelve such Ounces a Pound Troy, or Trone. *Fleta lib. 2. cap. 12.*

WITCHCRAFT.

THE Existence of Witches, or Persons of either Sex, who have real Correspondence and familiar Conversation with Evil Spirits, has been a Subject of Controversy among learned Men; and latter Ages have produced very few Instances of Convictions of Witchcraft: But nevertheless, 'tis a Capital Offence, and, by the Common Law, such Offenders were to be burnt.

By the Statute, 1 *Jac. 1. cap. 12*, now in Force, this Crime is thus describ'd, *viz.* Conjuration, &c.

1. By Conjuring, Consulting, or Covenanting with any Evil Spirit; Entertaining, or Employing, Feeding, or Rewarding any such.

Taking up dead Bodies, or any Part thereof, to be employed in Witchcraft, or Charms.

Any Manner of Witchcraft, Enchantment, Charm, or Sorcery, whereby any Person shall be kill'd, or any Part of his Body wasted, lamed, or destroyed.

Those who shall be convicted of any of these Offences, both Principals are Felons, without Benefit of Clergy.

2. By Witchcraft, or Charms, to find hidden Treasure.
To tell where Goods lost may be found.

To provoke unlawful Love.

To attempt to destroy any Person's Body, tho' it be not effected.

To destroy, or impair the Cattle or Goods of another.

Upon Conviction of doing, or attempting to do any of these Things, the Punishment, is, for the first Offence, 1 Year's Imprisonment, without Bail, to stand in the Pillory every Quarter of that Year, and there publicly to confess his Offence. Second Offence, Felony, without Clergy.

But Information of Witchcraft ought not to be received by Justices of Peace, nor Prosecution awarded thereupon, without strong and apparent Cause, proved by sufficient Witnesses, upon Oath: If Process is found necessary, the Proceedings must be as in other Capital Offences. *See Tit. Criminals.*

Plain and direct Evidence is not to be expected in these Works of Darkness, where no Witnesses are admitted, and there-

therefore we can have only, either the Confession of the Offender, or pregnant and convincing Circumstances, whereupon to found an Indictment, or Conviction. *Dalt.* 384.

W O L V E S.

Reward. **F**OR every Wolf destroyed, the Killer shall receive a Reward of 200 *lb.* Tobacco; to be levied for him in the County where the Wolf was kill'd, and repaid by the Public. 7 *Geo.* 1. *cap.* 6.
Laws of Virginia, *pag.* 312, *pag.* 492.

But for a Wolf not exceeding 6 Months old, only 100 *lb.* Tobacco: The Age to be determined by the Justice, before whom the Head shall be brought. 5 & 6 *Geo.* 2. *cap.* 11.

Before the Party can be entitled to these Rewards, he must produce the whole Head of every Wolf, for which he claims the *Præmium*, before a Justice of the County wherein the Wolf was kill'd, and must take this Oath, *viz.*

Oath. **I** *A. B.* do solemnly swear, *That this Head by me now produced, is the Head of a Wolf, (or if more than One Head, That these Heads by me now produced, are the Heads of Wolves,) first taken and kill'd, within the County of in Virginia; And that I have not wittingly or willingly spared the Life of any Bitch Wolf in my Power to kill, since the making the Act of Assembly, intituled, An Act for lessening the Reward for killing young Wolves, and for preventing Frauds in obtaining Certificates for Wolves Heads.*
 So help me God.

Quaker must take his solemn Affirmation to the same Effect.

If the Party be an Infant, under the Age of 14 Years, or a Tributary Indian, or a Mulatto, or Negro, he must not be sworn, but produce such other Evidence, or Circumstantial Proof, as in the Justices Discretion appears to be convincing.

The Party who takes a false Oath, or Affirmation, shall be punish'd, as for wilful Perjury, and forfeits 1000 *lb.* Tobacco, to the King, and the Informer or Prosecutor, recoverable in any Court of Record.

After Oath, Affirmation, or Proof duly made, the Justice is to grant the Party a Certificate, *viz.*

Certificates. *Prince-George se.* **A.** *B. of this County, Planter, this Day brought before me, one Wolf's Head, and took the Oath by Law required. Certified under my Hand, this 26th Day of April, 1736.*

or,

ONE Head of a young Wolf, not exceeding 6 Months old, &c.

or,

A. B. an Infant, under the Age of 14 Years, (or a Tributary Indian, or a Mulatto, or Negro, as the Case is,) this Day brought before me, &c. and duly proved by sufficient Evidence, That the same was killed in this County. Certified, &c.

Such Certificate, produced in Court at the next laying the County Levy, entitles the Party to the Reward, which must be levied to his Use, and paid by the Collector of the County Levy.

But if the Justice see Cause to suspect the Truth of the Oath, or Affirmation, he may delay granting Certificate, 'til his next County Court, where he is to shew his Reasons, in Presence of the Party suspected, if he will appear in his own Defence: The Court is thereupon to determine the Matter, and the Justice to proceed accordingly.

All Heads produced, must be destroyed immediately, in Presence of the Justice.

No Reward or Certificate for any Scalp.

Excep-

Foreign Indians, not Tributary to this Government, are tions. not entitled to any Rewards given by this Act.

WRECK'D SHIPS, GOODS, &c.

Hitherto no Provision is made, by Act of Assembly, for the Preservation of Wrecks; but by a Temporary Statute, 12 *Annæ*, *Ses. 2. cap. 18.* 'twas Enacted, That all Justices of Peace, Sheriffs, Officers of the Customs, and all other Officers, upon Application of the Commander of any Vessel in Danger, shall command the Constables to summon and raise as many Men as shall be thought necessary for Defence and Preservation of the Vessel and Cargo. Assist-
anco.

Ships of War, Merchant Ships, lying near the Place, are to furnish Assistance of Boats and Hands, all they can spare, if required by the Civil Officers, on Penalty of 100 *l.* for Refusal; recoverable by the Master of the Vessel in Distress.

But the Officers and Commanders, giving Assistance, shall be paid a reasonable Reward, for Salvage, within 30 Days, by the Master of the Vessel saved; or the Vessel, or Cargo, may be detain'd by the Officer of the Customs, 'til Charges paid, or Security given. Salvage.

If the Rate of Salvage cannot be adjusted between the Parties, then the Master of the Vessel saved, or Merchant interested

interested in her Cargo, or the Officer of the Customs of the nearest Port, or his Deputy, may nominate 3. neighbouring Justices, whose Determination shall be binding, and recoverable by Action.

Goods
saved.

If no Person appears to claim Goods saved, the Chief Officer of the Customs in that Port must apply to the 3 nearest Justices, who shall take an Account of the Goods, sign'd by such Officer, and put him, or some other responsible Person, in Possession thereof; if not claim'd in 12 Months after, they shall be publicly sold, but perishable Goods must be sold presently: Monies arising by Sale, after Charges deducted, must be lodg'd in the Exchequer, with an Account of the whole Matter, and if the Owner afterwards appears, and proves his Property, he may receive it.

Imbez-
zlement.
&c.

If any Person, not employed by the King's Officers, enters such Vessel, without Leave of the Master, or hinders the saving Ship or Goods, or after Goods are saved, defaces the Marks, before entred in Books to be provided by the Commander and the Officer of the Customs, the Offender shall pay double Damages, to the Party grieved, within 20 Days after such Offence committed; to be adjudged by the next 2 Justices: Or if he fails, must be committed to hard Labour in the House of Correction, the Space of 12 Months.

Persons attempting to enter such Vessel, without Leave, may be repel'd by Force.

Goods stol'n, or carry'd off from such Ship, must be immediately delivered to the Owner, on Penalty of Forfeiture of treble Value.

Making Holes in such Vessel, stealing the Pump, or doing any Act tending to immediate Loss of the Vessel, Felony, no Clergy.

Officers of the Customs abusing their Trust in the Premises, forfeit treble Damages, and disabled in Office.

T H E T A B L E.

A.				
A	Accessories,	page 1	Burning of Houses,	page 67
	Acknowledgment,	3	or Ships,	68
	Addition,	4	Burying Places,	74
	Adultery,	5		
	Affray,	5	C.	
	Agreement,	10	C Asual Death,	178
	Appeals,	11	Certificate,	216
	Appearance,	30	Certiorari,	69
	Apprentices,	74	Caveat,	216
	Armour,	12	Challenge,	196
	Arms, and Ammunition,	222	Champerty,	218
	Arrest,	14	Chance-Medley,	176
	Affault,	16	Cheats,	166
	Assembly General,	17	Churches,	72
	unlawful,	272	Churchwardens,	71
	Attachment,	22	Clergy,	80
	Attainder,	29	Coin,	83
	Attaint,	197	Coining,	84
B.			College <i>Will. & Mary</i> ,	104
B	Ail,	30	Collectors,	212, 309
	Battery,	16	Common Law,	195, 323
	Batteries,	226	Common-Prayer,	87
	Barretry,	38	Confiscation,	162
	Bastardy,	42	Conjuration,	} 361
	Beef,	253	<i>See Witchcraft.</i>	
	Beggars. <i>See Vagrants.</i>	348	Conspiracy,	88, 321
	Behaviour,	49	Constable,	89
	Bigamy,	60	Conviction,	29
	Billa vera. <i>See Furies.</i>	192	Coroner,	97
	Births. <i>See Marriages.</i>	219	Corporation,	104
	Blasphemy,	61	Counterfeits,	105
	Bridges,	173	Counties,	106
	Buggery,	62	Courts, and their Juris-	} 106
	Burglary,	63	diction,	
	Burgeses,	18	Court-Martial,	223
			Criminals,	109
			Curfing,	134
			Customs,	

The T A B L E.

Customs,	page 115	Forfeitures,	page 162
Cutting out Tongues.	{ 217	Forgery,	163
See <i>Maihem</i> .		Fornication,	5
		Freeholders,	18

D.

D Eaths,	220
Debt,	120
Dedimus,	138
Deer,	126
Deodand,	128
Departure out of this Colony,	{ 216
Detainer,	
Disseisin,	154
Dissenters,	130
Distress,	141
Divine Service,	128
Draw-back,	119
Drunkenness,	134
Duties,	115, 306

E.

E lections,	19
Embargos,	309
Embracery,	218
Enclosures. See <i>Trespafs</i> .	347
Engrossers,	164
Escape,	169
Evidence,	135
Examination,	138
Execution,	140
Expresfes,	153
Extortion,	142

F.

F Afts,	73
Fees,	143
Felonies,	144
Felo de fe,	237
Feme Covert,	151
Sole,	219
Fences. See <i>Trespafs</i> .	347
Ferries,	152
Fines Military. See <i>Militia</i> .	{ 221
Forcible Entry,	
Forestallers,	154
	164

G.

G Aming,	165
Glebes,	76
Goal, and	{ 168
Goaler,	
Goal Delivery,	203

H.

H Edges,	278
Hemp,	254
High Treason. See <i>Treason</i> .	342
Highways,	172
Hogstealing,	174
Holidays,	73
Homicide,	175
of Slaves,	322
Horses,	178
Houfes,	180
Burning them,	67
Hue and Cry,	181
Hunting,	183

I.

I gnoramus. See <i>Juries</i> .	192
Imbezzlement,	226
Impeachment,	229
Impressment,	224
Imprifonment,	16, 168
Indians,	183
Indictment,	186
Infant,	176
Infancy,	188
Indentures,	289
Information, & Informers,	189
Insolvent Debtors,	190
Infurrections of Slaves,	321
Invasions and Infurrections,	224
Iron-Works,	228
Issues on Jurors,	200
Judgment,	192
Juries,	192
Jurors,	193

Justices

The TABLE.

Justices of Peace,	page 200	Orphans,	page 252
L.		Outlawry. <i>See Utlawry.</i>	353
L Arceny,	208	Overseers. <i>See Slaves.</i>	318
Leather,	211	P.	
Levies,	211	Pardon,	245
Libelers,	213	Pafs,	216
License,	216, 219	Peace,	49
Lifts of Tithables,	212	Perjury,	241
Lookouts,	225	Perquisites,	220
M.		Petty Larceny,	247
Magna Charta,	323	Petit Treason. <i>See Treason.</i>	342
Maihem,	217	Pick-pocket,	210, 247
Mainprize,	30	Pillory,	248
Maintenance,	217	Piracy,	248
Malice,	232	Pitch,	253
Mansion-Houses,	64	Poor,	77, 250
Manlaughter,	175	Pork,	253
Mariners,	312	Posse Comitatus,	252
Marriages,	219	Præmium,	254
Mensuration of Ships,	307	Præmunire,	256
Militia,	221	Presentments,	78
Mills, and Millers,	226	Prison, and Prisoner,	168
Mill-Dams,	228	Prison Breach,	169
Mines,	228	Process,	257
Ministers,	73	Proclamation,	257
Misdemeanor,	229	Provocations,	235
Misprision,	230	Precept. <i>See Warrants.</i>	354
Mittimus. <i>See Warrants.</i>	354	Public Landings,	279
Money imported,	256	Q.	
Mulattos. <i>See Slaves.</i>	318	Quakers,	131
Murder,	231	Quarentine,	259
Musters,	222	Quit-Rents,	260
Mute,	238	R.	
N.		Rape,	261
Naval Officer,	308	Readers,	73
Necessity,	176	Recognisance,	263
Negros Free. <i>See Slaves.</i>	318	Recusant Convict,	133, 265
Non Compos Mentis,	176	Register,	75
Nufance,	238	Regrators,	164
O.		Religion,	268
Oaths,	239	Removal of Poor,	250
Onus Probandi,	241	Rents,	269
Ordinaries,	242	Rescous,	169
		Restitution,	271
		Retailers	

100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
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