

Note, that the Sheriff of every County, shall have the keeping of, and shall be chargeable and charged with the Common Gaol and Prison of the same County, and with all the Prisoners therein; and must put in such Gaolers or Keepers for whom they will answer, as appeareth by the Statutes, 14 E. 3. c. 10. & 19 H. 7. c. 10. which also seemeth to have been the Common Law before, as you may see by the Preamble of the Statutes of 14 Ed. 3. & Co. 4. 34. And therefore the High Sheriff himself shall be answerable for an escape of a Felon, suffered by his Gaoler, and may be indicted for the same, (see the Precedents in *Lambert, West, Crampson*.) And so the High Sheriff, as he hath an Office of great Antiquity, and of great Trust and Authority, (for the time) so withal it is a place of great peril and charge; and if the rigour of the Law should be laid upon them, then should they have a warm Office, and be well rewarded. But in such cases I have observed the favourable expolition and dealing of the Learned and Reverend Judges. First, you shall find in *Sir Edward Cooke's Reports lib. 9. f. 98.* that the Gaolers who have the actual possession shall be answerable for escapes, if they have wherewith; also *Popham* Chief Justice did cause one *Staver* (a Gaoler at *Cambridge*) to be indicted, arraigned, hanged, for an escape of a Felon suffered by him.

In the *Doct. & Stud. cap. 42.* this difference is taken: *sc.* that if the escape were by default (*sc.* a negligent escape) of the Gaoler, that the King may charge the Gaoler if he will, or the Sheriff may be charged by reason of the Statute 14 E. 3. c. 9.

But if it be a wilful escape in the Gaoler (which is felony in him) the Sheriff shall not be bound to answer to the Felony. (See there *fol. 135. & 137.*) But there the Sheriff may be fined to the value of his Goods. *Stamsf. 35. h.*

Now an escape is of two sorts: voluntary and negligent.

§. 6.  
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Voluntary escape is, where one doth arrest or hath imprisoned another for felony (or other Offence,) and after voluntarily letteth him go at liberty where he will.

Negligent escape is, when the party arrested or imprisoned doth escape against his will of him that arrested or imprisoned him, and is not freshly pursued and taken again before he hath lost the sight of him which escaped; the penalty whereof seemeth to be only a Fine at the discretion of the Judges or Justices: Yet see *Stamsf. 35. k.* a difference of the Fine: where the Prisoner is attainted, *le Fine ferrā C l.* where but indicted *C. s.* and where only taken upon suspicion, *semble dispunishable. Quere & vide F. Coron. 224, 316, 454, & hic infra,* that in case of a Trespass a negligent escape is finable.

But for voluntary escape, if the Arrest or Imprisonment were for felony, it shall be adjudged felony in him which did voluntarily suffer the Prisoner to escape; and if the Arrest, &c. were for Treason, it shall be adjudged Treason; and if the Arrest or Imprisonment were for a Trespass, it shall be adjudged a Trespass; And yet see *Fitz. Coron. 248. & escape, non adjudicabitur pro transgr.* And in case of felony there is no difference, whether the Felon be arrested by an Officer, or by another. See *Br. Cor.*

Also in case of a Trespass, or other Offence of what kind soever, (being neither Treason, nor Felony) there seemeth no difference, whether the escape suffered by the Officer be voluntary, or negligent; but that the Officer in both cases shall be fined for such an escape, according to the quantity of his fault, by the discretion of those that shall be Judges of it.

One *Nichols* assaulted *Cholmly* to rob him, and killed him; after *Q. El.* granted *Nichols* his Pardon: but *Cholmly* his Wife having commenced her