

## C H A P. CXVII. V. 68.

*For whom and against whom this Surety for the Peace shall be granted.*

**T**HE Law hath conceived such an opinion of the peaceable disposition of Noblemen, that it hath been thought enough to take one of their Promises, upon his Honour, that he would not break the Peace against a man, *Br. Contempts* 6. 24 *E.* 3. 3. and 17 *E.* 4. 4.

And therefore if a man shall have cause to have the Surety of the peace against a Lord of the Parliament, or such great and noble personage, he shall not have a Warrant from the Justices of Peace to that purpose; nor yet have a *Supplicavit* out of the *Chancery* directed to the Justice of Peace therefore: but if there be cause, he may have a *Subpœna* out of the *Chancery* (of common right, as it seemeth) and there such Lord or Nobleman shall be bound to the peace. And yet if such Lord will not appear upon the *Subpœna* served, *quære*, if an Attachment will lie against him upon such his default, *McCrompf.* 134. *b.* saith that it was holden in the case of the Lord *Cromwell*, in the *Chancery*, about 18 *El.* That an Attachment lieth not against a Lord where he maketh default upon a *Subpœna* against him out of the *Chancery*, *Dyer* 315. seemeth to accord.

But though it be true that the person of a Baron (who is a Peer of the Parliament) shall not be arrested (for, or in cases of Debt or Trespass, &c.) by his body; first, in respect of their Dignity; secondly, in respect that the Law presumeth that they have sufficient Lands and Tenements whereby they may be distrained; yet in cases of contempt, it seemeth, they may be arrested by *Capias*; or *Attachment*, &c. *Vide* 27 *H.* 8. f. 22. *b.*

Or else (it seemeth) that the party may crave the Peace in the *Chancery* against such Lord or Peer (*sc.* to have a *Supplicavit* directed to the Sheriff) and then the Sheriff may and ought to execute the same: and if the Sheriff shall not do his office therein, an *Alias*, *Plur.* and Attachment lieth against him. And if the Sheriff shall return, That such Lord is so puissant, that he cannot arrest him; upon such Return the Sheriff shall be grievously amerced (for he might have taken *Posse comitatus*, *scil.* he might have levied 300 men by his discretion, if there had been need, to have aided him in such case.) And if such Lord or Peer, who is by the Sheriff so arrested, shall refuse to obey the Arrest, and shall make a *Rescous*, whereupon the Sheriff shall return a *Rescous*, hereupon shall there be an Attachment granted out against such Lord, to arrest and take his body for such his contempt.

The same Law and Remedy seemeth to be where a man hath cause to have the Surety of the peace against a Dutches, Countess or Baroness; for they are Peers of the Realm, and shall be tried by their Peers, though in respect of their sex they cannot sit in Parliament: and they are in the same degree (as concerning their Nobility and the Priviledges incident to their Dignities) with Dukes, Earls and Barons. But here note this diversity, *sc.* if such Woman, being a Countess or Baroness, &c. by marriage only, shall marry again under the degree of Nobility, she hath thereby lost her name of Dignity (together with the Priviledges of her said Nobility also, as it seemeth) for in such a case, *Si mulier nobilis nupsert ignobili, desinit esse nobilis*, and that which was gotten by marriage may also be lost by marriage; for, *Eodem modo quo quid constituitur, dissolvitur*; But if she be Noble by Birth or Descent, whomsoever she shall marry, yet she remaineth noble: for Birth-right *est Character indelebilis*. *Vide* *Dyer* 79. & *Br. Nosme de Dignity* 31. & 69. & *C. l.* 168.