

shall make an affray or assault upon another, or do the like thing tending to the breach of the peace the Justice of peace may command him by word to find Sureties for the peace.

11 H. 7. 9. Also if one shall demand this Surety against another, who is then in the presence of the Justice of peace, and will be sworn that he is afraid of him, the Justice may by word command the same party to find Sureties for the peace.

14 H. 7. 8. 9. And the Justice of peace in such cases may (by word only) command the Constable or any other known Officer (or his own servant) being then present, to arrest such party to find Sureties for the peace, (and to take the party into his or their custody, &c.) and if the party shall refuse to find such Sureties, then the Justice of peace may commit him to the Gaol.

But if the party (against whom this Surety of the peace is demanded) be absent, it is otherwise; for a Justice of peace cannot send for any man, or command any man to be arrested or brought before him, or to be imprisoned, who is not in his presence, by word only, but he must make his Warrant or Precept in writing. And Popham, Chief Justice, said, That the Justices of the King's-bench, when they send for any of the King's subjects, it is either by Writ, or by Warrant, or by a Tipstaff: But the Tipstaff (said he) is by prescription, except that the party be in Westminster-hall, &c. See the case between Woody versus Bokers & Read-head: Termino Mich. Ann. 2 Jac. Regis, Rotul. 480. in Banco Regis.

This Precept or Warrant then must be made in Writing, and under the Justice his seal; and must be directed to some Officer or other indifferent person, and must contain the Cause, and at whose Suit, to the intent the party to be bound may provide his Sureties, and take them with him. §. 2. By Writing

The form of which Precept, see postea, tit. Warrants, cap. 121.

Co. 5. 59. B. Peace, §. Balfr. part 3. p. 78. 7. 17. 7. 17. 7. 17. The Justice of peace may make his Warrant to bring the party before himself, (to find Surety for the peace) by the opinion of Wray, Chief Justice; for he that maketh the Warrant, for the most part, hath the best knowledge of the matter, and therefore he is the fittest to do Justice in such case. And yet the most usual manner is, to make such a Warrant to bring the party before the same Justice; or some other of the Justices of peace of the same County, &c. And Judge Finch's opinion was, That where a Justice of peace doth make any Warrant for the peace ex Officio, (sc. by force of the Commission, and not by virtue of a Supplicavit,) there the party may chuse to appear before him or any other Justice in that County: And that the party may have his Action of False Imprisonment against the Officer, if he do otherwise compel him. Otherwise it is in the execution of the Writ of Supplicavit, as you may see here postea, sub hoc titulo. §. 3. Before whom to be brought.

Who may serve this Warrant, and whether the Officer may make his Deputy; and whether they need shew their Warrant or no; and whether they may break open the doors, &c. See hereof tit. Warrants, postea.

Ed. 4. 13. Lamb. 92. Yet some Precedents are, Quod capiunt, &c. P.R. 20. 26. Cromp. 2. §. Br. F. imp. 18. The Constable (or other Officer) before he arrest the party upon such a Warrant, ought first to acquaint him with the matter, and withal to require or charge the party in the King's name; to go (with him) before the Justices to find and put in Sureties according to the Warrant: and if the party shall refuse to do this, sc. shall refuse either to go before the Justices or to find Sureties, then the Officer (by the words of the Warrant) may and ought forthwith to arrest him; by virtue of that Warrant, and may convey him to the Gaol without carrying him to any Justice, and there the party shall remain until he shall voluntarily offer and find Sureties: and then §. 4. How it shall be executed.