

shew cause, why the peace granted against such a one shall be continued, that he speak, &c. And if no person cometh to demand the peace against him, or to shew cause why it should be continued, then the Court may discharge him. But if a Man be bound as aforesaid, and especially to keep the peace towards *A.* there, though *A.* cometh not in to desire that the peace may be continued, yet the Court by their discretion shall do well to bind him over till the next Sessions, and that may be to keep the peace against *A.* only, if they shall think good: For it may be that *A.* who first craved the peace is sick, or otherwise letted, so as he cannot come to that Sessions to demand the continuance of the peace further; and in some places in such case, they ordinarily use to bind him over for two or three Sessions together, by order among themselves.

Lamb. 12.

And yet by the course of the *Common Pleas*, one that was imprisoned for the peace (being removed thither by a Writ of Priviledge) was there discharged, for that he which demanded the peace, came not at the day (of the Return of the Writ) to pray continuance thereof. See more *antea sub hoc tit.*

2 H. 7. 4.

Br. Surety

13.

If the Justice of peace shall not certifie the Recognisance to the Sessions, yet the party ought to appear, and to record his appearance. See such a matter of a Sheriff, who took Bond of one to appear in the Common Bench, at a certain day, &c. although the Sheriff return not his Writ, &c. yet the party must appear to save his Bond. *Vide* 18 *Ed.* 4. 18. for this last case.

Cromp. 69.

If the party that is bound to appear, be so sick that he cannot appear, nor by any means travel at the day, yet it seemeth his Recognisance in strictness of Law is forfeit, and so it is by the course of the Courts at *Westminster*, *ut dicitur*; yet in this case, upon the due proof of such his sickness, I have known the Justices of peace (in their discretion) have forbore to certifie or record such forfeiture or default; and that they have taken Sureties for the peace of some Friends of his present in Court, until the next Sessions; for that the principal intent of the Recognisance was but the preservation of the peace. But *quare*, how this is warrantable by their Oath; besides, the party so bound, might (by a *Cerciorari*) have removed his Recognisance into the *Chancery* or *King's Bench*, before the day of his appearance, and then he should not have needed to appear at the Sessions, for that the Justices there should have no record whereupon to call him.

Cromp.

143.

§. 3.
Appear-
ance

But the Civil Law in such Cases is more favourable; for with them the Rule is, *Citatus ad locum non tutum, non arctatur comparere*: As if the Plague shall be hot in the place or Town where the party is to appear, or where their Court is held. This is a good excuse in their Law, *ut dicitur*.

So if there shall be any other inevitable accident, whereby the party shall be hindred, as by any great Snow, inundation of Waters, or by any fall, or other hurt or sickness, whereby the party is in danger of death: In these and the like cases, the Civil Law doth dispence with default, referring these things *Arbitrio Judicis*.

See Mr. *Brook tit. Saver de Default* 17, 28, 45, & 48. 'and divers other Books, shewing, That the Common Law doth allow divers Cases to save a default of not appearing in Court, the same being pleaded and proved, as imprisonment, inundation of Waters, Tempest, and Sicknes. *Vide lib. Intr.*

If the Husband be bound, that he and his Wife shall appear at such Sessions, and that they shall keep the peace in the mean time, &c. and at the day the Husband doth appear, but not his Wife. Here Mr. *Crompton* saith, the

§. 4.
Baron &
Fines.

Cromp. 144.

B b 2

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