

is Felony, as well in the Justices, as in the Sheriff, or Officer which shall hang him: For that the Justices of Peace had no Authority therein, but it was *Coram non Judice*. *Lecture, M. Cook*: See also *Ga. 110. fol. 76.*

If the Justices of Peace shall arraign a Man of Felony, upon an Indictment of Trespas, whereupon he is hanged. This is Felony in the Justices, but not in the Sheriff or Officer. *Lecture M. Cook*. The difference between these two Cases, appeareth in my *Lord Cooks Reports, lib. 10. f. 76. sc.* For that in this last case, the Justices of Peace had Jurisdiction of the Cause; and therefore, although they proceeded *inverso ordine*, or erroneously, yet the Officer is excusable.

Sometimes also the Justice of the Law tolerateth and suffereth a Man to be slain, *sc.* for the necessary execution and advancement of Justice, which otherwise should be left undone: And in such case, the Law of the Land imputeth not it as any fault to him that shall so kill a Man, but freely dischargeth him thereof, without the Kings Pardon. *Tolerateth*

*F. Cor. 262*  
*Stamf. 12.* As a Sheriff, Bailiff, or any other Person who hath a lawful Warrant to arrest a Man indicted of Felony, may well justify the killing of him; if he will not suffer himself to be arrested, and yield himself, and that they cannot otherwise take him. See *22 Ass. 55. & Fitz. Cor. 288 & 328.*

*F. Cor. 363*  
*Stamf. 13.* And so every person whatsoever, without any Warrant, may apprehend a Felon upon Hue-and-Cry, or otherwise. And if he will not yield to be arrested, but shall resist or flie, the pursuer may kill him without blame. See *Fitz. Coron. 328. & Co. 5. 109. b.*

Herewith also agreeth the *Doctor and Student, lib. 2. cap. 41.* saying, If any person that is an Officer would arrest a Man that is Outlawed, Abjured, or Attainted of Murther or any other Felony, and such offender shall disobey the arrest, and by reason of that disobedience he is slain, the other shall not be impeached for his death; for it is lawful unto every Man to arrest and take such persons, and to bring them forth, that they may be ordered according to the Law.

*F. Cor. 288*  
*R. 328.* An offender in Felony is led towards the Gaol, and breaketh away from those that conduct him, and maketh resistance or flie; his Conductors may justify to kill him, if they cannot otherwise take him again.

*22 Ass. 35.* A Prisoner in the Gaol attempteth to escape, and having broken his Irons, striketh the Gaoler (coming in the night to see his Prisoners) and the Gaoler slayeth such a Prisoner. This is no Felony.

*Pro. 24. 61*  
*30. 154.* Riotors, and such as shall make any Forcible Entry or Detainer, against the Statutes, if they shall resist the Justices of Peace or other the Kings Officer, or shall not yield themselves, but shall stand at their defence, when the Justices of Peace, or other Officer, shall come to arrest or remove them, if any of them happen to be slain. This is no Felony in the Justice of Peace or Officer, or in any of their Company that killeth such Riotors, &c. *Lamb. 310.*

*Stam. pr. 2.*  
*rog. fol. 46*  
*Cor. 24. 30*  
*133. b.*  
*Stamf. 13.*  
*6, 6, 8.* The Sheriff, Bailiff or other Officer cometh (by virtue of the Kings Process) to arrest another for Debt or Trespas, who maketh resistance, and thereupon is slain by such Officer or any of his Company; this hath been taken to be no Felony, *id est in quart.* what the Law is at this day: For although the Sheriff (being the Kings Officer) ought to see the Kings Commandment to be executed, yet that must be understood to be executed by all lawful means and ways.

But in all these former Cases, there must be an inevitable necessity; *sc.* That the offender could not be taken, &c. without killing of him.

Also