

Comp. 30

If any Forester, Park-keeper or Warrener or any in their Company, shall kill an offender in their Forest, Park or Warren, which (after Hue and Cry levied to keep the Peace, and to obey the Law) will not yield themselves, but will flee, or defend themselves by violence; this is no Felony: Yet *quere*, if there were any former malice, in such Keeper. But if any such Keeper by reason of any former malice, will lay to any Mans charge, that he came to do hurt, whereas he did not, neither was found wandering nor offending, and so kill him; this is Felony in such Keeper.

And so in the former Cases, where a Man is slain for the execution of Justice, when the Offender shall disobey the Arrest, resisteth or flieth, and so is slain; As also where any Man shall be slain by an Officer or other Person, in keeping or preserving the Peace; yet if such Man slaughter or killing of such an Offender, be committed wittingly, willingly, and of purpose, under colour of execution of Justice or keeping of the Peace; this is Felony. See the Statute of 1 Jac. c. 8.

Burglary. CHAP. CLI. V. 99.

**B**urglary is composed of two French words, *Burg* (a Village or a Farm-house,) and *Larron* a (Thief;) and so in the natural signification, is nothing but the robbing of a House: But in our Law it is taken to be, when one or more in the night time, do break or enter into anothers Dwelling-house feloniously, wherein some person is, or a Church, or the Walls or Gates of a City or walled Town, with an intent to rob or to do any other Felony, although he or they do not execute the same, or do take or carry away nothing, yet it is Felony of Death, and the offenders shall not have the benefit of their Clergy, *Dyer 99. Stat. 30. Fitz. Coron. 185, 264.*

§. 1. Definition.

And if the intent or fact of this Offender be to steal; this is like Robbery: If to murder, it differeth not much from Murder, and so of other Felonies. *Wells.*

**F**irst for the time: Burglary cannot be committed in the day time, but only in the night, for all Indictments of Burglary be, *Quod nocturno tempore*: And the night (to this purpose) beginneth at the Sun-setting, and continueth to the Sun-rising: And therefore to break a House, &c. after the Sun-setting, and before it be dark; or after day-light in Summer, and before the Sun-riseth, is Burglary.

§. 2. The time.

**N**ext for the manner: It is holden (by some good opinions) That if a Man break the House to do felony, and yet entereth not, it is no Burglary; and that the Indictment must be, *Fregit & intravit*. And yet by the opinion of *Shard*, 27 *Ass.* 28. And by the opinions of *Sir Anth. Brown*, *Sir Edw. Montague*, and *Sir Rob. Brook* late Chief Justices of the Common Pleas, and others, (as *Mr. Crompton* reporteth) if a Man do but attempt or enterprize to break or enter into a Dwelling-house by night, to the intent to rob, or kill any person there, though he make no actual Entry, yet it is a full and compleat Burglary. For in such Cases *Voluntas reputabitur pro facto*.

§. 3. The manner.

As to put back the Leaf of a Window with his Dagger.  
To draw the Latch of the Door.  
To turn but the Key, being on the inner side of the Door.  
So to break the Glass window, and to draw out any Goods there with an Hook, &c. 26 *El.* at *Staff. Ass.*

So.

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St. Cor. 185.

Stamf. 130. Co. 11. 36.

21 H. 7. See the title of the Watch

Stamf. 304. Dyer 99.

St. Cor. 166.

Comp. 21. 32. 33.

Ed. 1. H. 11.

And part 1. P. 114.