

the Constable ought to arrest and carry the Offenders to the Gaol, (or to a Justice of Peace) to the end they may find Sureties to appear at the next Gaol-delivery; and the Constable may justify the beating, &c. of such an Offender, if he will not obey the Arrest, but make resistance, or slich.

§. 4. Note, that it is properly no Affray unless there be some Weapons drawn, or some stroke given, or offered to be given, or other attempt to such purpose; for if men shall contend only in hot words, this is no Affray: neither may the Constable for words only lay hands upon them, unless they shall threaten to kill, beat, or hurt one another, and then may the Constable arrest such person, (to go before some Justice of Peace, to find Sureties for the keeping of the Peace;) and yet such threatenings is no Affray.

§. 5. Pursuit. If the Affray be in an house, and the doors shut, the Constable may break into the house, to see the Peace kept, though none of the Parties have taken any hurt.

If the Affrayers flie into another mans house, the Constable (in fresh suit) may break into the house, and apprehend the Affrayers, 7 E. 3. 19.

If the Affrayers flie into another County, the Constable (or Justice of Peace) seeing this, may in fresh suit pursue, or cause them to be pursued, and to be taken there; but they can then meddle no farther but (as every private person may do) to carry them before some Justice of Peace of the County where they are taken, to cause them to find Surety for the Peace.

But if the Affrayers flie into a Franchise within the same County, the Constable (or Justice of Peace) seeing this, may in fresh suit pursue and take them out of such Franchise.

After the Affray (it seemeth) the Constable, without a Warrant, cannot arrest the Affrayers, except some person be in peril of Death by some hurt there received.

§. 6. The Justice. Every Justice of Peace may do that which every Constable or private man may do by the Common Law herein.

Besides, every Justice of Peace (within his limits) may presently after the Affray commit the Offenders, until they have found Surety for the Peace, if the Affray were in his presence. And if the Affray were not in his presence, yet upon complaint, or upon his own discretion he may after make his Warrant to take or commit such Offenders, until they have found Surety for the Peace. *Vide tit. Peace & Surety for the Peace.*

If an Affray be made in the presence of a Justice of Peace, he may lay hands upon and arrest the Offenders to find Sureties for the Peace, and may take away their Weapons, 21 H. 7. 22. b. *Moor.*

And yet by the same Opinions, the Justice of Peace in cases of an Affray, to some purposes, hath no farther Authority than every private man hath: for though the Justices of Peace (sitting in their Sessions, or out of their Sessions) may command a man to be attached, who shall make an Affray in their presence, (and of such things done in their presence they make a Record, and certify the same, which shall be a Conviction of the Offender) and the Justice of Peace may presently upon the fact command or send such Offenders to the Gaol; yet the Justices cannot themselves attach or arrest any man (say they) for an Affray, or other thing done in their presence, (no more than a stranger or private person may do;) but after the Affray they may make or grant out their Warrant to attach or arrest the Offenders, and may then commit them to the Gaol, except they shall find Sureties for the Peace.

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