

But Mr. Finch (*lib. 2.*) describeth Burglary to be the breaking and entry of a House in the night, with a felonious intent to kill or steal, although no Man be killed, nor any thing stolen.

Now concerning the place, it may be either publick or private; publick, as the Church or Walls, or Gates of a City, or a walled Town; private, as a Dwelling-house: And here commonly it is no Burglary, unless some person be at that time within the House.

S. 4.
The place.

And. part
1. P. 302.

And yet *An. 36 Eliz. Termino Pasche*, at an Assembly of all the Justices at *Serjeants-Inn* it was resolved, That the breaking of an House in the night, with an intent to commit Felony, is Burglary, although that no person be within the House; for the Law is, That every Man ought to be in security or safety in the night; as well for their Goods, as for their Persons; and that the ancient Presidents are, *Quod domum noctanter felonice & burg. fregit*, without saying *Domum mansionalium*, or that any person was in the House; and that the reason why of late times these words have been put into the Indictment (*sc.* that some person was in the House) was, for that in such cases the benefit of Clergy was taken away: But now by the Statute 18 *Eliz. 6.* Clergy is taken away in all cases of Burglary; and therefore the Judges then all agreed from thenceforth to put the same in execution accordingly. I have seen this thus reported out of a Book of *Pophams*, late Lord Chief Justice of the Kings Bench.

Co. 4. 40.

And if a Man hath a Dwelling-house, and he and all his Family (upon some occasion) are part of the night out of the House, and in the mean time one cometh and breaketh the House to commit Felony; this is Burglary.

Ibid.

So if a Man hath two Dwelling-houses, and sometimes dwelleth in the one, and sometimes at the other, and hath a Family of Servants in both; and in the night, when his Servants are out of the House, the House is broken by Thieves; This is Burglary. Adjudged 38 *Eliz.*

I have also seen a report of Judge *Pophams*, that *Terminis Trin. 36 Eliz.* it was resolved by the Judges, that if a Man had two Houses, and dwelt sometimes in one, and sometimes in the other; if that House wherein he neither then was, nor had any Servants, were broken, &c. That this was Burglary, although no person then dwelt or were therein.

Crompt. 33

If one breaketh a Chamber in *Lincolns-Inn*, (or in any other House of Court or *Chancery*, or in any Colledge in *Cambridge* or *Oxford*, &c.) in the night, to the intent to commit Felony there, this is Burglary, although there were no person in the same Chamber: For the Colledges and Houses of Court and *Chancery* be intire Houses, whereof such Chamber is parcel; so that if any person shall be in any other Chamber within the same House or Colledge at the same time, it is Burglary.

One *P.* was arraigned of Burglary, 22 *Eliz.* for that he assaulted one of his Companions, of the *Inner-Temple*, *London*, in his Chamber, there to have killed him in the Evening, &c. But had his pardon.

Crompt. 32
2 E. 6.

A Servant who lieth continually within his Masters House, openeth the Doors of his Masters House in the night to rob him; this is Burglary, *Let. Mr. Cook, tempore H. 8.* See *hic antea.*

A Man cometh as a Guest to eat and drink in the day time, and there stayeth till night, and in the night time breaketh his Chamber, or any part of the House to rob his Host, this is Burglary. *Ibid.*

A Guest cometh to a common Inn, &c. and the Host appointeth him his Chamber, and in the night the Host breaketh into his Guests Chamber to rob him; this is Burglary. *Ibid.*