

Also the breaking (in the night) of a Stable, Barn, or other Out-house adjoining to, or parcel of, or near to the Dwelling-house, to the intent to steal, is Burglary, though he take nothing. *Fi. lib. 2.*

At Summer Assizes at Cambridge, *An. Dom. 1616.* two Men were arraigned and condemned for Burglary before Sir James Altham Knight, for robbing a Back-house of Robert Castle Esquire, in the night; which Back-house was some eight or nine yards distant from his Dwelling house, and only a pale reaching between them: So that although this offence be not committed in the very body of the Dwelling-house, but in some other House near unto it, and being parcel of or belonging to the Dwelling-house, it is Burglary. *Co. 11. 37.*

But a Booth or Tent in a Fair or Market, are not esteemed in Law for a Dwelling house, nor the breaking thereof in the night time to be Burglary; although the robbing of them be made as penal as Burglary, if the Owner, his Wife, Children or Servants were within the same. *22 Aff. 91. Stamf. 30. 126. Co. 11. 41.*

§. 5. Lastly, (to make it Burglary) the purpose and intent for which the offender cometh, must of necessity be to kill or rob some person, (or to commit some other Felony) otherwise it is neither Burglary nor Felony. *The intent.*

And therefore to break a House in the night, to the intent to kill any person therein, it is Burglary, although he never touched him. *13 H. 4. 7. Fitz. Cor. 267.*

So it is, if the purpose were to rob, although the offender taketh away nothing. *Fitz. Cor. 185 & 264. Stamf. 16. Co. 11. 15.*

But if a Man break and enter an House by night, of purpose only to beat a Man, this is but Trespass. *Abr. d' Ass. 75.*

Rape, See after here cap. 107.

And if the intent were to commit a Rape, which some think to be no Felony by the Common Law, but only a Trespass, then there is some doubt, *Lamb. 260. Cromp. 33.*

saith Mr. Lambert, And Mr. Crompton, saith, That if a Man breaketh another Mans House in the night, and ravisheth a Woman there, this is no Burglary; for (saith he) Ravishment is no Felony by the Common Law, as Burglary is, although it be Felony at this day by the Statute: But it may seem by Mr. *Stamf. 21; 22, 23.*

Rape.

Bracton, Glanville and Stamford, That by the ancient Common Law it was Felony: The words of Mr. Bracton, *lib. 2.* are thus, *Olim quidem corruptores virginitatis & castitatis suspendebantur, &c. modernis tamen temporibus aliter observatur, quia pro corruptione virginis amittuntur membra, &c.* And a little after, *Adelstanus; Raptus mulierum ne fiat, defendit tam lex humana quam divina: Et sic fuit antiquitus observatum, quod si quis obvaverit solam, cum pace dimittat eam, &c. Si autem contra voluntatem suam, &c. jactat eam ad terram, foris faciat gratiam suam, &c. Quod si concubuerit cum ea, de vita & membris suis incurrat damnum, &c.* And with this Mr. Glanville also agreeth, *fol. 112. & Co. L. sect. 190.* Note, That the words, *De vita & membris suis incurrat damnum,* do imply the offence to have been Felony of Death, *Br. Cor. 204. Vide Co. L. 391.*

Felony.

Also amongst the Laws of S. Edmond, sometimes King of this Realm, you shall find this Law, *Qui cum Nunna vel sanctimoniali fornicetur, emendetur sicut homicida: A multo fortiori,* then saith Mr. Stamford, shall he be punished if he had ravished her. So as Rape at the first, (saith Stamford) was grievously punished, until the time of King Edward the First, who seemed to mitigate the pain thereof by the Statute of *West. 1. cap. 13.* which gave two years imprisonment and fine; but spying the mischiefs ensuing upon the said Law, at his next Parliament holden at Westminster, called *West. 2. cap. 34.* he made the offence of Rape to be Felony again, *Br. Coron. 204.* *Westm. 21. P. Rape 11.*

Note also by Britton, *fol. 17.* It is no Burglary in an Infant under fourteen years of age, nor in poor persons, that upon hunger shall enter a house for *Cromp. 33. See Pl. 19.*