

*frangentibus Prisonam. Fitz. Coron. 248. Escape non adjudicabitur vers. ipsum qui commiss. est pro transgress.*

Now every one who is under Arrest for felony is a Prisoner, and that as well without the Prison as within, (or in the Stocks in the High-street, or in the possession of any that hath arrested him, or that hath the keeping of him being arrested for felony. *Vide libro 2. M. Finch.* Dyer 99.

§. 2. And therefore if any person who is under Arrest for felony, or suspicion thereof, (whether he be in the Gaol or out, or but in the Stocks, or but in the possession of any that hath arrested him) if he shall make an escape, this is a breaking of Prison in such Prisoner, and is felony. *Escape.*

And yet one committed to the Constable (by the Justice) for suspicion of felony, making an escape from the Constable, was after taken again, and Indicted and Arraigned for that felony; and by the Jury of Life and Death was found not guilty of that felony, and after was indicted for the escape: But here, considering the Prisoner was found not guilty for the first felony, therefore his escape from the Constable was holden not to be felony; and so I have known the Jury directed by the Judge of Assize. *E. 3. 17. P. R. 147.*

§. 3. Before the Statute of 1 Ed. 2. if it had not been the Kings Prison which had been broken, it had been no felony, as it appeareth by *Brit. fol. 17.* And with him also agreeth the Book called the *Mirror of Justice, lib. 2.* who saith thus, *Gaole nest unter chose que common Prison, & nul avera tiels forsq; le Roy: Private Prison est danter, dont a chesteun list de scaper que poet, si non que il face trespass que escape.* *Gaol.*

But note, that at this day there is no difference whole Prison the Offender doth break, whether it be the Kings Prison, the Lords of a Franchise, or any other persons; for the Letter of the Statute is, *Prisonam frangentibus*, and not *Prisonam nostram*: so that whose Prison soever it be which is broken, it is within the compass of this Statute, *Stamf. 31.* *2 Ed. 3. 4. Stamf. 31. d.*

Also whether it be a common Gaol, or a private Gaol or Prison, yea or but the Constables House, or the House of any other person who hath the custody of him for felony, there is no difference; for these are Prisons for the time, and so within both the words and meaning of this Statute.

Also by this Statute the breaking of Prison is felony in the Prisoner himself. And yet if the Prison shall be on fire by casualty, and they within shall break the Prison for saving of themselves; this is no Felony, but excusable by the Law of Nature. *Plow. fol. 13. b. 14 Hen. 7. 29. Read 15 H. 7. 2.*

§. 4. And if a Stranger doth break the Prison, or open the Stocks, or make a Rescous, whereby one Imprisoned or Arrested for felony escapeth; this is felony both in the Prisoner and in the Stranger, although the Prisoner was never indicted of the felony. *Rescous by a Stranger. H. 7. 6. 1 Ed. 3. 17. Dyer 99.*

By some Opinions, if a Stranger shall disturb the Arresting of a Felon, it is no felony, except the Felon were taken and Arrested, and after Rescued: Yet *Fitz. Just. P. fol. 114.* saith, That such disturbance before Arrest is felony. *H. 4. 1. F. Co. 333. Stamf. 33.*

If a Prisoner be rescued at the Gallows, or as he is going to Execution, this is a breaking of Prison, and felony within the Statute: And yet note this difference: *sc.* That if a Felon, in going to his Execution, &c. be rescued from the Sheriff, this is felony, if it be presented before the Justices, &c. and so found by Enquest: but otherwise it is, if it cometh in by the Return of the Sheriff, there is no felony. *H. 7. fol. 6. Fitz. Indictment 30.* *H. 7. 6.*

*Escape.* If a Goaler, a Constable, or any other which hath a Prisoner under Arrest for felony; or suspicion thereof, voluntarily letteth or suffereth him to *P. R. 147. 149.*