

44 Aff. 18. to go at liberty; (though this be no breaking of Prison, yet) this is felony  
 Br. Esc. 31 in the Gaoler, Constable, or him that letteth such Prisoner escape, but it is  
 Stamf. 31. no felony in the Prisoner; but if such a Prisoner shall escape by the negli-  
 gence of his Keeper, then the felony resteth in the Prisoner only, and not  
 in the Gaoler, &c.

If any Man Arrest another, and after voluntarily lets him go at large,  
 if the Arrest were for felony, it is felony in him that so lets his Prisoner  
 go; if the Arrest were for Treason, it is Treason, and if for Trespas it is  
 Trespas; & sic de similibus.

If the Gaoler or Keeper shall marry a Felon which is in his Gaol, this is  
 an escape: but *quere*, whether it be felony in the Gaoler or no.

If a Gaoler shall let a Felon to Mainprise which is not mainpertable  
 or bailable, *dicunt* that this is no felony, but sinable: for although it were  
 voluntary, yet it was *per ignorance del Ley*. But *quere* hereof, for that  
 the Gaoler hath no Authority to let any Prisoner to bail, and the Prison-  
 er being in for felony, the Sheriff at this day hath no Authority to bail  
 such a Prisoner, except it be by virtue of the Kings Writ, &c.

If the Constable (or other Officer) shall voluntarily suffer a Thief, be-  
 ing in his custody, to go into the Water to drown himself, this escape  
 is felony in the Constable, and the drowning is felony in the Thief, *quia*  
*Felo de se*.

Otherwise, if the Thief shall suddenly (without the assent of the Con-  
 stable) kill, hang or drown himself, this is but a negligent escape in the  
 Constable.

The voluntary letting of a Felon to escape who is not arrested for fe-  
 lony, though he knoweth of the felony, yet it is no felony; neither can  
 it be an escape without an Arrest: and yet such an Offender (being an Of-  
 ficer) may for such his negligence or default be indicted and fined, as it  
 seemeth by the words of the Commission. *Quere* if he be not accessory to  
 the felony. See *Br. Escape* 43.

Note, that a Man is always said to be in Prison, so long as he is within the  
 sight of the Gaoler, or of him that hath him in custody, though he do  
 break away or escape.

For an escape is properly, when a Prisoner shall escape or get out of the  
 view of his Gaoler or Keeper, and shall be taken again by fresh suit.

And if a Prisoner shall make an escape, (of his own wrong, and with-  
 out the consent of the Gaoler, or other person that hath him in custody)  
 though he escape out of their sight, and into another County, yet if he be  
 taken again upon fresh suit, before the Gaoler, &c. be sued, or hath fined  
 for the escape (though it be seven years after) yet this is no escape, as it  
 seemeth, for which the Officer shall be charged; for there is no prejudice  
 to the King by the escape, though it be felony in the Prisoner as aforesaid,  
 and a breaking of Prison in him. *Co.* 3. 44 & 52. accordeth in case of a  
 Prisoner taken in Execution, that shall make an escape of his own wrong.

If a Gaoler, or other Officer, &c. shall licence his Prisoner to go abroad  
 for a time, and to come again; this is an escape, because the Prisoner  
 is found out of the bounds of his Prison, though the Prisoner return again,  
 according as he shall be prescribed; and so is it, if the Officer shall suffer  
 his Prisoner to go abroad for a time by Bail or Baston, this is an escape:  
 yet they are holden in both cases to be but negligent escapes in the Officer,  
 and so but fitable. But *quere*, for the Gaoler, and other Officers, ought  
 to keep their Prisoners in *Salva & arcta custodia*. *Vide post. tit. Imprison-*  
*ment.*

Note,

Dyer 99.

E. 3. 17.  
R. 147.

Ed. 3. 1.  
Stamf. 31.

P. R. 149.  
150.  
9 H. 4. 1.  
Stamf. 32.

Dyer 440.

Stamf. 33.  
Br. Esc. 4.  
& 35.

13 E. 4. 9.

H. 7. 6.  
Ed. 3. 17.  
Dyer 99.

H. 4. 1.  
Co. 333.  
aml. 33.

H. 7. 6.

Co. 3. 44.  
Stamf. 33.

R. 147.  
9.

Fitz. Cor.  
243 & 431