

her Appeal against *Nichols*, he was still detained in Prison, the Writs of Suit: after the Gaoler suffered *Nichols* voluntarily to go at large, and to escape, by the opinion of *M^r Plenden*, this was felony in the Gaoler, although *N.* the Prisoner were now no Felon to the Queen, in regard he had obtained his Pardon. *Plow. 476.*

P. Co. 430,
& 431.
P. R. 150.

A Prisoner found guilty of Petty Larceny is adjudged to be imprisoned by the space of a month, (for his punishment) and after the month he breaketh Prison, and escapeth: *quare* what this is in the Prisoner, and what in the Gaoler. It is holden that the Gaoler shall be charged with this escape. But if the Prisoner be discharged (by Judgment) paying his Fees, if he escape, here the Gaoler is not chargeable. The difference is this: Prisoner in the first case was by Judgment committed to Prison, and in the last case he is adjudged to be acquit of his Imprisonment, paying his Fees, and yet he is a Prisoner until he hath paid his Fees. *2 H. 7. 17. Br. Escape 16. Plow. 465.*

11 H. 4. 12.
Plow. 258.
263 & 401
Br. Esc. 17

Notes that a voluntary escape is not Felony, if the act done were not felony at the time of the escape made. As if *A.* do strike *B.* and hurt him mortally, whereupon the Constables do arrest *A.* and after willingly suffer him to escape, and after *B.* dieth of that stroke: this escape is not felony, either in the Constable or in the Prisoner; yet the Constables shall make a great Fine, yea, shall (or may, at the discretion of the Judges) be fined to the value of their Goods (as it seemeth) by *11 H. 4. 12.* and *Stat. 25. li.* because this escape was voluntary.

If a Man be wounded, and the percussor is voluntarily slain, or at large by the Gaoler, and after death of such of his hurts, yet this is not felonious escape in the Gaoler. *11 H. 4. 12. Br. 38.*

Crom. 39.

The voluntary suffering him to escape who hath killed another, *se defendo*, or by misadventure, or of him that hath committed Petty Larceny, seemeth not to be felony; for that these Offences are no Felony of Death, but he that suffereth such an escape shall be fined only. *Cromp. 39.* Yet *Quere*, for they that suffered this escape, are not to judge whether these Offences be felony or no. See hereof *postea tit. Evidence against Felons*.

A Man was taken for suspicion of felony, and was delivered to the Constable of *G.* and after escaped for want of good keeping, and the Constable was therefore taken and arraigned; and pleaded, That forasmuch as the Felon was not taken with the manner, nor at the Suit of the party, nor indicted of felony, therefore it was no escape, &c. And so was the Opinion of the Court then; See *42 Aff. P. 5. Br. Escape 39.*

But the contrary was after holden in case where the escape was voluntary, although the Prisoner were taken only upon suspicion. *44 Aff. p. 12. Br. Escape 31. & Dyer 99.* that is felony, although the Prisoner were not indicted of felony.

4 Ed. 104.
P. Escape 2
Stamf. 35.

Note also, where one is a Prisoner by Arrest only, and he doth escape, there the escape shall be presented before the Justices of Peace, or other Justices having Authority to enquire of the escape, before he that suffered the escape shall answer it, *sc.* before any thing shall be taken or levied by the Sheriff or other Officer. *Vide Co. 11. 64. 65. & Stat. Westm. cap. 4.*

11 H. 7. 7.
Cromp. 40
P. R. 151.
152.
Cro. 34.

Notes also, if a Man be arrested for suspicion of felony by the Constable or other person, and after they shall have intelligence that there was no such felony committed; here they may set the party arrested at liberty again, and they shall not be charged with the escape; for there can be no Felon where there is no felony committed.

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