

Next, it followeth that I shew what persons beailable, and what not.

§. 8. It appears by the Statute of *Westm. 1. cap. 15.* that in these four cases following a man was notailable at the Common Law. *Br. Mainp. 47. F. N. B. 66. e.*

P. Main. 11  
Stamf. 72.

1. No person taken for the death of a man, *sc.* for Murther, or any other Homicide, wasailable by the Common Law.

And yet the Justices of the Kings Bench do use to bail them; yea, although it be for Murther, *Br. Mainp. 60, 63, 78, 47.* See the Statute *3 H. 7. c. 1.*

B. Mainp.  
11, 47, 57,  
60, 63, 68,  
F. Cor. 361  
P. Just. 107  
Lamb. 336

Also the Stat. *1 & 2 P. & M. cap. 13.* seemeth to admit that for Man-slaughter, and all other Homicides (except Murther only) the Slayer may be bailed by the Justices of the Peace; which also I take to be the common practice at this day. But let the Justices of peace be sparing and well advised herein, *viz.* that the Offence be but Man-slaughter, and not Murther.

Also it seemeth the Justices of Peace cannot bail him that hath committed Man-slaughter, if either he hath confessed the Offence upon the Examination, (*vide postea, tit. Bailment:*)

P. Main. 1.

Or that he be taken with the manner:

Or that it be apparently known that he killed the other. *Vide pag. sequent.*

He that hath dangerously hurt another, may go under Bail, &c. See before, *& Stat. 3 H. 7. cap. 1.*

2. Secondly, no person taken by the Kings Commandment wasailable by the Common Law: but this must be intended of the Kings Commandment by his own mouth, (when upon his meer motion he commandeth a man to prison) or by his Privy Council, which are incorporate to him. See *Stamf. 72. e. Br. Mainp. 37. 47.*

3. Thirdly, no person taken by the Commandment of the Kings Justices wasailable by the Common Law: but this must be intended of their absolute Commandment: as if the Justice commands one to prison without shewing cause why he doth so command, or for Misdemeanour done in his presences or for some other cause which lieth in the discretion of the Justice, (more than is ordinary power, &c.) and that such Imprisonment be for a punishment.

Stamf. 73.

See pag. preced.

And therefore if the Lord Chancellor of *England*, or Lord Keeper of the great Seal, (who have power to commit one to prison wheresoever they are in *England*) shall command or commit one to prison (by such their absolute Authority) such person shall not be bailed.

And so if the Justices of the Kings Bench shall command one to prison.

And so if the Justices of the Court of Common Pleas sitting in their Court.

Or Justices of Assize in their places; if these shall commit any to prison, they are notailable.

But wheres any Justice or Justices shall commit one rather to be safely kept, than for a punishment, such Commitment may be said to be an ordinary Commandment; and the party so committed isailable. *Terms de Ley.*

4. Fourthly, Trespassers in the Forest were notailable by the Common Law: but that was remedied by the Stat. *1 E. 3. c. 8. & 7 R. 2. cap. 4. F. N. B. 67. c.*

By Statute. But now, for that by the Statute *1 & 2 Ph. & M. c. 13.* it is provided, that

P. Just. 107

that