

though the prisoner can clear himself, yet the Justices must either commit him or bail him. *Vide antea tit. Felony by Statute.*

2. Petty
Larceny.

Secondly, he that is taken (or indicted) for petty Larceny, (that amounteth not to 12 *d.* (or above the value of 12 *d.*) if he were not guilty of some Larceny before, he isailable. P. Maln. 2. Fitz. 250. 6.

3. Persons
indicted
by Inquest
of Office.

Thirdly, such as be indicted of Larceny by Inquest of Office before the Sheriff, or before Coroners or Bailiffs, &c. or in any base Court, they shall be set at liberty upon sufficient Surety. P. Maln. 2.

And yet they shall not be bailed, if they be not also of good Fame; but if they be of good Fame they are to be bailed, although they be indicted as aforesaid (before Sheriffs, Bailiffs, Coroners, or before any other such Officers, by their Office, or in any base Court:) yet *quare* if the Justices of peace out of their Sessions may safely bail such persons; for being indicted; they are more than vehemently suspected, &c. *Vide pag. sequent.* Stamf. 74. Fitz. 247. & 250. C. B. Maln. 97.

One that was indicted before the Coroner, that he had killed another *se defendendo*, was (by the Justices of Gaol-delivery) bailed till the next Assizes to purchase his pardon; 26 *El. Cromp.* 153. See *antea tit. Misadventure.*

One that is indicted before the Sheriff, for stealing of a Horse (which seemeth to have been in his Torn) may be bailed by the Sheriff (if he be of good Fame) by the Writ *de Manuptione*, *F.N.B.* 249. g.

Also one that was indicted of Burglary, as principal, pleaded Not Guilty, and was after bailed, 29 *Lib. Ass. Fitz. Mainpr.* 9. See *infra.*

Another that was indicted of Robbery was bailed, 41 *Lib. Ass.* 30. *Br. Mainp.* 61.

If any Murtherer being indicted, and after arraigned at the Kings Suit, shall be thereof acquitted within the year and day, the Justices before whom he is acquitted shall not suffer him to go at large, but either shall remit him again to prison, or else may bail him (at their discretion) till that the year and day be passed, to the end that the Wife, or next Heir to the party murthered, may have their Appeal of the same Murther within the year and day after the same Murther done, &c. 3 *H. 7. c. 1. Fitz.* 251. g.

Persons
Attaint or
Convict.

But such as are attainted or convicted of Felony are notailable. For although it doth not appear by any words of the said Statute of *West. 1.* that it doth prohibit the Bailment of such as be attainted by Verdict, yet it is to be intended, that the Statute doth as well prohibit the Bailment of those attainted by Verdict, as it doth of them who are attainted by Outlawry: and therefore if a Prisoner, after he hath pleaded Not Guilty, be attainted by Verdict, That he killed a Man *se defendendo*, or by misfortune, yet shall he not be bailed by the Justice of peace. *Tamen vide antea tit. Felonies by Casualty, & Stamf. 15. c. F.N.B. 246. c. 'Que il ferra bail per les Justices (de Gaol-delivery) devant queux il ferra try, &c.* Stamf. 74. d. F. Cor. 297, 354.

And if a Man that is arraigned of Homicide doth plead Not Guilty, and is found guilty, and doth pray his Clergy, and is reprieved without judgment, he is notailable: for being convicted of the Felony, he is more now than vehemently suspected, and the intendment of the Law in cases of Bailment is, that it resteth indifferent whether he be guilty or not, until Trial. Dyer 179. See Br. Maln. 94.

The same reason seemeth to hold, if a Man be found guilty of Homicide before the Coroner: yet see 22 *Ass. 7. 94. Br. Cor.* 90. that such areailable as are found (before the Coroner) but suspicious.

' One