

For the first, some hold that the Justice of peace may grant his Warrant to attach persons suspected of Felony: for that it seemeth by the first *Assignavimus* in the Commission; and by the Statute of 5 Ed. 3. 14. that any one Justice of peace may cause the Constables to arrest and imprison Offenders suspected of Felony. &c. and how shall the Justice of peace cause this to be done, but by his Warrant or Commandment?

Again, if a Felony be done, there is no doubt but that every private Man without a Warrant may arrest whomsoever he suspecteth of it, being a Man of evil Fame, &c. See hereof *tit. Arrest*. But if the Offender being pursued shall resist, *quare* who shall be aiding to a private Man, whose Goods are stollens and who suspected another to have stollen them, either to search for his Goods, or to apprehend the party suspected, if the Justice of peace (by his Warrant) shall not command the Constable to aid him therein? If it be objected, that the Constable may do all this of his own authority, (upon request to him made by the party robbed:) be it true; yet we find by common experience that the Constables, without the Justices Warrant therein, are for the most part both very fearful, and also remiss herein, as neither knowing their own authority, nor the danger.

See ante
tit. Exan.
& 2 H. 7.
15, 16 pro
& contra.

Besides, this is no new thing, for there is such a precedent in the old Book of Justices of Peace, *impress. 1561. fol. 41. a.* yea, it is the common practice at this day, and it seemeth to be very serviceable; and of two evils the less is to be chosen, *sc.* that an Offender or suspected Person, should be imprisoned for a time, (though sometimes wrongfully) rather than one which hath committed Felony should escape unpunished.

Lamb. 193

And yet by the Opinion of the Court 14 H. 8. a Justice of peace cannot make a Warrant to arrest a Felon, unless he be indicted of Felony, (or that the Justice himself hath suspicion of the Felon.) But if the Constable, or other Officer, shall serve such a Warrant, he shall justify the same, though the Justice, did err in the awarding thereof. See 24 E. 3. 9.

14 H. 8. 16.
Br. Peaces
Br. Faux.
Imp. 8 & 9.
Co. 10. 76.

Next, for the Justices of peace to bind over, or to grant a Warrant against Offenders upon any penal Statute, to appear at the Sessions to answer to their Offence or Fault, though such Statute be within the power of the Justice of peace, yet such Warrant or binding over of such Offenders may seem not warranted, unless it be specially so appointed in the Statute, as it is by the Statutes of: 5 El. c. 4. 23 El. 10. 39 El. 11. 33 H. 8. 1. See *antea tit. Counterfeiters, Dying, Labourers and Sacraments.*

Lamb. 191
Crom. 197
The inconvenience thereof.
See Lamb. 197.

But such Offenders ought first to be indicted, and thereupon Process from the Sessions is to be awarded against them until they come in, &c.

No one or more Justices of peace can make a Warrant upon a bare surmise to break any Mans House to search for a Felon, or for stollen Goods; for they are constituted by Acts of Parliament, which Acts give them no such Authority. It would be inconvenient if they might so do. But if a Man be indicted for Felony, the Sheriff upon Process may demand him; and if he render not himself, may break the House, Co. 4. Inst. p. 176.

And yet there be sundry Precedents of Attachments made from one Justice of peace against Labourers and Servants that shall refuse to serve, or that shall depart out of their Service, contrary to the Statute,

Crom. 238
Lamb. 191