

of another without Offence of the Law, is one of the Kings Royal Prerogatives, and only annexed to the Crown.

P. Accus. 1. 5 E. 3. c. 9. Also by the Statute *Magna Charta*, made 9 H. 3. c. 29. no Free-man shall be taken or imprisoned, &c. but by the lawful judgment of his Equals, (sc. upon his Conviction (for some offence) by the Verdict of a Jury of 12 good and lawful Men) or by the Law of the Realm. See *Petition Anno 3 Caroli Regis, & Stat. 5 Ed. 3. cap. 9.*

Co. 10. 74. And by the Statute of *Magna Charta*, every Arrest or Imprisonment, and every Oppression against the Law of the Land, is forbidden; and if any Judge, Officer or other Person, against the Law, shall usurp any Jurisdiction, and by colour thereof shall arrest, imprison or oppress any Man, it is punishable by the Statute. See *Co. 10. 75.*

This Grand-Charter is a Declaration of the antient Common Law, Co. 10. 48. And the Statute of *Magna Charta, & Charta Foresta*, for their excellency have since been confirmed by the authority of above 30 several Parliaments. See *Co. Prefac. to the 8 Report.*

Note, That all Jurisdiction ought to be either by Charter or Prescription, Co. 11. 99.

Also by the Statutes of 25 E. 3. c. 4. 28 E. 3. c. 3. & 42 E. 3. c. 3. no person shall be taken or imprisoned, nor put to answer, unless it be by Indictment or Presentment (of a Jury) before Justices, or by matter of Record, or by due Process made by Writ Original at the Common Law. See *P. Accusation 1. & 42 Aff. 5.* And *Br. Faux Imprif. 30. 2 H. 4.* the Body of a Man shall not be taken but by Process out of a Court of Record.

A Commission to arrest or take a Man (and his Goods) was holden to be against Law, for that this ought to be either upon Indictment, or suit of the party, or other due Process of Law, *Br. 15, 16. & Faux Imprif. 9. & Indictment 38. 42 Aff. 5. 12. 24 E. 3. 9. Co. 5. 64. Et les Commissions de Oyer & Terminer poent prendre tiel Commission del party, & rem. ceo al Connseil le Roy, car est encontre Ley.*

And so note, that no Man shall be arrested for Debt, Detinue, Trespass, or other cause of Action, but only by virtue of a Precept or Commandment out of some Court of Record.

Neither shall any Man commit another to prison, except he be Judge of Record, Co. 10. 103.

See Co. 3. 11. 2. But yet for misdemeanors done against the Kings Peace, (as for Treason, Felony, or breaking of the Peace, &c.) the Offenders as well by the Common Law, as by divers Statutes, may be arrested and imprisoned by the Officers of Justice, and sometimes by private persons (as hereunder followeth) without either Presentment, Process, Precept, Warrant, or other Commandment. And these being by the Law of the Realm, are warranted by the aforesaid Statute of *Magna Charta.*

And Mr. *Bracton* (l. 3. in fine) saith thus; *In criminalibus causis, ubi sequi debet capitale iudicium, uita uis. vel mutilatio membrorum, non sequitur Attachamentum aliquod, sed corpus tale (quisunque fuerit ille) ab omnibus arrestatur qui sunt ad fidem Domini Regis, sive inde Præceptum habuerint, sive non habuerint.*

And yet you must obserue, that for arresting of the Body of a Man in such cases there must be some just cause, or some lawful and just suspicion at the least. And therefore where a Man is indicted of Felony; that is a good cause for any Man to arrest him. But if an Appeal of Felony be commenced against another, that is no sufficient cause, for it is but a private suspicion, &c.

Also

§. 4.
Jurisdiction.

§. 5.
By a private Man.