

Lamb. 317  
501.

Also in other cases, and by some other Statutes, this Authority of making out Process (against Offenders) by the Justices of peace out of their Sessions seemeth to be implied of congruence, or rather of necessity: as where any Statute doth give Power or Authority to the Justices or Justice of peace out of their Sessions to inquire, hear and determine, (as *hic tit. Riots, tit. Transportation, tit. Tyle, & tit. Weights;*) in these and in all other such cases, where the Justices may inquire, hear and determine there, after Indictment or Presentment of the Offence, the said Justices may make out Process against such Offenders, to cause the Offenders to come and answer; for unless the Offenders do come in, either *gratis* or by Process, the Justices cannot proceed to hear and determine. Again, in the former cases of Transportation, Tyle and Weights, as also in all other cases where any Statute doth give power to the Justices of peace out of their Sessions to hear and determine, either upon the Confession of the Offenders, or upon Examination of the Witnesses, (whereof see *antea tit. Hear and Determine, &c.* See 5 E. 6. 14. against Foresters;) in all such cases it seemeth the Justices of peace may grant out their Process or Warrant against such Offenders, to appear before them, to answer to their said Offences: and thereupon may proceed to examine, hear and determine the Offence, as being convicted thereof upon such Confession or Examination, without any Indictment or Process.

The difference between Process and the Precept or Warrant of the Justices of peace seems to be this:

The Precept or Warrant of the Justice is only to attach and convene the party before any Indictment or Conviction, and may be made either in the Name of the King or of the Justice, as is before shewed.

Process is always in the Name of the King, and usually after an Indictment found, or after other Conviction.

*Now these Processes seem to be as followeth.*

27 El. 12. THE Justices of peace for the Offences mentioned in 27 El. 12. for Sheriffs, &c. not taking the Oaths upon Conviction, may award Execution for the Forfeitures by *Fi. fa.* Attachment, *Capias*, or Extent.

4 & 5 P. & M. c. 3. Process upon 4 & 5 P. & M. 3. touching Souldiers, &c. shall be as upon Indictments of Trespas at Common Law.

1 E. 6. 1. The Justices of peace before whom any person shall be indicted for depraving or speaking irreverently of the Sacrament, contrary to 1 E. 6. 1. may award two *Capias* and an Exigent, as well into the County where the party is indicted, as into any other County.

First, If the Offender be absent, a *Venire fac.* shall be awarded by the Justice or Justices of peace under his or their own *Teste*. And if thereupon the Offender be returned sufficient, (and maketh a Default) then *Distringas* is awarded, which *Distringas* shall go forth *infinite* till the Offender come in. But if a *Nihil habet*, &c. be at the first returned, then after the *Venire fac.* a *Capias*, then an *Alias*, and after a *Pluries*, shall go forth, and after that an *Exigent*, till the party be taken, or yield himself, or else be outlawed.

And these are the ordinary Processes upon all Indictments of Trespas against the peace, or of other Offences against penal Statutes, not being Felony, or a greater Offence, (if it be not otherwise ordained by Statute.) But the Process is commonly grounded upon an Indictment, and is only to cause the Offender to come in, and to make his Answer; and therefore if the Offender be present, and confess such Indictment, Information,