

person may do any thing to prevent the perpetration of a felony. It was added by Heath J. in the same case, that in the riots of 1780 this matter was much misunderstood, a general persuasion prevailed that no indifferent person could interpose without the authority of a magistrate, in consequence of which much mischief was done which might have been prevented.

Stat. 34 E. 3, c. 1, authorizes justices of the peace to restrain and arrest rioters and this has been construed to give a single justice power to arrest persons assembled riotously by raising the power of the county, if necessary, and to authorize others to arrest them by a bare parol command, and the persons so commanded may pursue and arrest the offenders in his absence. And it is said, too, that if he be sick he may send his servants to arrest persons whom he may hear to be riotously assembled, and have them brought before him. Or, if he hear of a riotous assembly and go there and find none, he may leave his servants behind with orders to arrest the offenders when they come, and when a riot is over, he may send his warrant to arrest any one concerned in it; but if he, proceeding upon this Statute, arrest an innocent person, he is liable to an action of trespass, and the party so arrested may justify the rescuing of himself, for a single justice is not made a judge of the offence, 1 Hawk. P. C. 299.

By Stat. 17 R. 2, c. 8, the sheriff and other the king's ministers, generally, have power to arrest rioters with force, and by 13 H. 4, c. 7, any two justices with the sheriff may come with the *posse comitatus*, if need be, (all persons, except clergymen, persons decrepit, women, and infants under fifteen, being bound to attend the justices in suppressing a riot, under pain of fine and imprisonment,) and suppress any Riot, Rout or Assembly, arrest the rioters, or persons coming from thence riotously arrayed (the Statute extending to all unlawful assemblies), and record on the spot the nature and circumstances of the whole transactions, which record alone shall be a sufficient conviction of the offenders. If the offenders are departed within a month after, the justices are to make inquiry thereof, &c. The other parts of the Statute are not in force. By Stat. 2 H. 5, Stat. 1, c. 8, if the justices make default in inquiring of a riot at the instance of the party grieved, the king's commission shall be issued to inquire as well of the riots as of the default by good and sufficient men, &c., and heinous rioters are to suffer one year's imprisonment, &c. The part of the Statute relating to the writ out of Chancery to inquire of riots is, it is presumed, to be considered not in force, for we have no such inquiries as those mentioned in the first section, see Kilty Rep. 226. But the latter part gives the sheriff and justices the power of summoning the *posse*, &c.

Stat. 19 H. 7, c. 13, confirms Stat. 13 H. 4, c. 7, and provides, that when riots are committed the sheriff, upon a precept directed to him, is to return twenty-four persons, dwelling within the county, to enquire thereof, &c., and provides also for the punishment of maintainers and embracers of the jurors whereby the riot is not found. *I have printed the **204** whole of that Statute, but it is to be observed that the qualifications of the jurors are to be determined by our present laws. Stat. 1 Geo. 1, Stat. 2, c. 5, making the unlawful assembly of twelve persons, who do not disperse within one hour after reading the proclamation to disperse, felony, is not in force here.