

For understanding more fully how felons and Traitors in England may be arrested or apprehended, That is done either 1st By private persons or 2^d By officers or public officers, or 3^d upon Hue and cry Levied, or 4th By warrant or precept.

1st Where a person hath committed a felony, and A. knows it, If a warrant from a Justice of peace for apprehending him cannot be had in convenient time; nor yet safe stances from a constable, without by such delay giving the criminal opportunity to escape; In this case A. without any other authority than what the Law gives him may arrest or apprehend him; and if he cannot do it by his own strength, he may call others to his assistance or raise Hue and cry for his apprehension; and if he doth not thus, he is punishable by fine or imprisonment, as guilty of a misdemeanor, Hale 1st part. cor. vol. 2. pag. 76. Nay, farther, if the Felon resist or fly, so that he cannot be taken without killing him, it is lawful for A. to kill him, Hale ibid. pag. 77. Where a felony is committed by A. but B. who arrests him doth not certainly know it as not being present at the committing of it: The Law is soall one with the former case, only what he doth herein he doth at his peril; for if B. be no felon, it may be manslaughter in A. if he kill B. Where there is a felony committed by some person other than B. and A. hath probable cause to suspect him to be the felon, and accordingly doth arrest him, this arrest is lawful and justifiable. Because otherwise malefactors might be allowed to escape. Hale ibid. pag. 78.

2^d Certain officers and ministers of public Justice are by Law empowered by Law to arrest felons or those suspected of felony before either conviction or Judgment. And they may without any other warrant but from their offices arrest felons, and those probably suspected of felony; and if they be assaulted and killed in the execution of their office it is murder; and if persons suspected by those officers for felony or just suspicion thereof, may for breach of the peace or just suspicion thereof, shall not yield them selves, but either resist or fly before they are apprehended, or being apprehended, shall assault them, resist or fly, and are thereby punishable because they cannot be otherwise taken, It is no felony in those officers or their assistants that upon inevitable necessity kill them, tho' possibly the parties killed are innocent. For by their resistance against the authority of the King, they draw their own blood upon themselves. The officers under this protection of the Law are Justices of peace, Sheriffs, Coronators &c. and all that come in their aid or assistance. And if any being lawfully called shall not give their assistance, they are to be punished by fine or imprisonment, who consequently are under the protection of the Law equally with the officers themselves. Hale ibid. pag. 85. 86.

3^d Hue and cry may be raised as well by an officer of Justice as by the precept of a Justice of peace upon information of a felony, or it may be raised by any private person that is or knows of any felony. In case of hue and cry once raised upon suspicion of a felony committed, in a truth there may be no felony committed, yet those that pursue it may arrest and proceed as if a felony had been really committed; Hale ibid. pag. 100, 101. If hue and cry is raised against a certain person for felony, tho' possibly he is innocent, yet the constables and those who follow the hue and cry may arrest and imprison him in the common Gaol, or carry him to a Justice of peace; If the party by hue and cry be in a house, and the doors are shut & refuse to be opened upon the demand of the constable and notification of his business, he may break open the doors in any case where he may arrest. And if the party cannot be otherwise taken he may be killed, and this necessity extends to the constable. If the hue and cry be not against a person certain but by description of his stature, person, clothes, horse &c. the hue and cry shall justify the constable or other person following it in apprehending the person so described, whether innocent or guilty, for that is his warrant. It is a kind of process in the Law actions (not usual in other cases) viz. to arrest a person by description. Hale ibid. pag. 102.

4th A Justice of peace hath power to issue a warrant to apprehend a person accused of felony, tho' not yet indicted. Hale ibid. pag. 108. He may also issue a warrant to apprehend a person suspected of felony, tho' the original suspicion be not in himself, but in the party that prays his warrant; and the Reason is because he is a competent Judge of the probability of such suspicion. Hale ibid. pag. 109. If a warrant is issued from a Justice of peace to a private person to arrest for felony, or any other matter, he is not bound to show his warrant, unless it be demanded, and then he must show it. But if it be directed to a known officer, as to the Sheriff of the County, or to the constable, he is not bound to show his warrant, tho' demanded. If a Justice of peace issues a warrant to apprehend a felon, or one suspected of