

Also when a Statute doth appoint Imprisonment, but limits no time how long, where, the Prisoner must remain at the discretion of the Court. Crompt. 171.

Where a Statute doth ordain that an Offender shall be imprisoned at the Kings pleasure. *Vide antea tit. Bailment.*

Where a Statute ordaineth that a Prisoner shall not be delivered without the Kings special commandment, and that upon a Fine to be made to the King; who may assess the same Fine, and deliver him. See 18 H.8.1. Br. Impt. 100. Co. 11.43.

But Imprisonment to be inflicted by the Justice of peace, almost in all cases, (except for the Peace, the Good behaviour, or for Felony, or higher Offences) is but to retain the party until he hath made Fine to the King for Contempt or Offence; and therefore if he shall offer to pay his Fine, or shall find Sureties by Recognizance to pay it, he ought to be delivered presently, 2 Mar. 1.

§. 13.
The manner

Now for the manner of Imprisonment, it seemeth generally in all cases where a Man is committed to prison, especially if it be for Felony, or upon an Execution, (or but for a Trespass, or other Offence) every Gaoler ought to keep such his Prisoner *in salva & arcta custodia*: *Salva*, sc. that he ought to be imprisoned so surely as that he cannot escape; *Arcta*, in respect that he ought to be kept close, without conference with others, or intelligence of things abroad. Co. 3. 44

And therefore if the Gaoler shall licence his Prisoner to go abroad for a time, and then to come again, or to go abroad with a Keeper, though he come again; yet these are Escapes: and if the Prisoner were in for Felony, this is finable in the Gaoler at least, if it be not Felony; and if the Prisoner were in upon an Execution, this is so penal to the Officer, as that he shall be charged for the Debt; and if the Prisoner were in but for a Trespass, yet the Officer is finable: for Imprisonment was ordained for punishment of Offenders, and in terror of all others; *ut pena ad paucos, metus ad omnes perveniat*. *Vide antea tit. Felony by Statute.* 1 R. 2. c. 13 7 H.4. c. 4.

And yet see Co. L. 260. That Imprisonment must be *Custodia*, & non *pena*: for *Carcer ad homines custodiendos, non ad puniendos, dari debet*: But yet it seemeth meet and just that it should be *pena* as well as *custodia*, sc. for Malefactors, that it should be a punishment to them, and a terror to others; and for Debtors, that they may the sooner pay, or take order with their Creditors.

For, as one saith, *Maxima illecebra peccandi impunitatis spes*, A great impulsive cause of Offence is the hope to escape unpunished: And so a great cause that Debtors care not to pay, nor to take order with their Creditors, is their hope to escape Imprisonment, or of too much favour and liberty in Prison.

Also (by the Law) those which are in Execution ought not to go at liberty within the Prison, nor abroad with their Keeper, 24 H. 8. much less in cases of Felony, or of higher Offences. Dyer 249. Co. 3. 44.

Also by the Statute of West. 2. c. 11. Accomptants, and such as are in Execution, the Sheriff or Gaoler may put Irons or Fetters upon them: and yet if the Gaoler shall imprison a Man so streightly, by putting him in the Stock, or putting more Irons upon him than is needful, or keepeth his Viſtual from him, whereby the Prisoner becometh decrepid, lamed, or otherwise diseased, he shall have an Action of the Case against the Gaoler; and if the Gaoler shall keep his Prisoner more streight than of right he ought to do, so that the Prisoner dieth thereof, this is Felony in the Gaoler. *Hic verbo Gaoler.* Co. 11. d. 1 P. Accom. 2. Fitz. 93. h.

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