This Statute prescribes who shall or shall not be let to bail by the Sheriff. It will be recollected that at the time of its passage the office of Justice did not exist, being first created by 4 E. 2, c. 4. At common law the sheriff and every constable, being conservators of the peace, might have bailed a man suspected of felony. But this authority was transferred to Justices of the Peace by later Statutes, especially 1 E. 4, c. 2, see Bengough v. Rossiter, 2 H. Black, 418; 4 T. R. 505, and see the Act of Oct. 1780, ch. 10. The Sheriff and Coroner still have in some special cases the power of bailing, as under the Act of Oct. 1780, ch. 10, just cited, re-enacted in the Code, *Art. 88, sec. 11,[2] the Sheriff may take bail in cases not punishable by **58** confinement in the penitentiary. The Statute does not extend to any of the justices of the Superior Courts, 2 Inst. 185. In England the Court of King's Bench, or any judge thereof in time of vacation, may bail for any crime whatsoever, be it treason, murder, or any other offense, according to the circumstances of the case, 4 Bl. Comm. 299. The like authority of the judges of our Superior Courts in the general matter of bail is recognized in the Acts of 1798, ch. 106, and 1808, ch. 113.[3] But the Courts act in conformity with the acknowledged rules adopted in inferior jurisdictions, and do not admit to bail those incapable of being discharged by the latter, unless under particular circumstances in their favour or cogent reason to grant the indulgence, 2 Hawk. P. C. 114.

The taking of bail in criminal cases in this State has been principally regulated by the English Statutes, of which a short account will not be out of place here.

Before the Statute of Westminster above given it was not distinctly defined what were and what were not bailable offences.

The next Act which extended to Maryland was 1 R. 3, c. 3. It enacted that *every* justice of the peace should have a discretionary power to let persons to bail or mainprize, as if they had been indicted before the justices at the Sessions. But this Statute, although included in Kilty's collection, was repealed in this respect by 3 H. 7, c. 3, which required two justices at least to let a prisoner to bail. Its provisions appear by the preamble of 1 & 2 P. & M. c. 13, to have been evaded by a practice of one justice taking bail in the name of himself and another justice without the latter being party or privy thereto. Accordingly, this last Statute in its second Section enacted that no justice or justices should bail for any offense not bailable by the Statute of Westminster, and by its third Section, that *in cases of manslaughter or felony or suspicion of manslaughter or felony, bailable by the law,* no bail shall be taken but by two justices, &c., at least, present together, unless in open sessions. This Act therefore abolishes the power of a single justice to bail for felony or suspicion of felony. But the authority of two justices is left the same as before, as also the authority of justices at sessions, and the power of a single justice to bail for misdemeanors is not altered. When therefore Blackstone and other writers speak of certain felonies being bailable in the discretion of the justices, they are to be understood of, as they say, *two* justices or the justices in

[2] Code 1911, Art. 87, sec. 7.

[3] See Code 1911, Art 42.