sessions. Kilty observes in his note to this last Act, that "while the County Courts were held by justices of the peace, there was nothing to prevent a literal compliance with the third Section, *and it appears reasonable that the power should continue in two justices not in Court.*" However, no doubt the practice here has been for one justice to exercise the powers given to two justices by this Act, and to bail for all offences except the more enormous grades of felony, on what is said to be the general principle that wherever a justice may apprehend by his warrant he may bail if the offence be bailable, see Latrobe's Just. 1863, *et seq.* But this appears to be very doubtful. A private person may arrest a felon in the act, but it was never supposed that he could admit the felon to bail.

The Statute of Westminster is in force here with the exception of the parts relating to the forest and persons excommunicate. As appears from it four classes of offenders, not being bailable by the common writ *de homine replegiando*, are first declared irreplevisable under it. The only remedy such persons have is by application to the Superior Courts by *habeas corpus*. First, those taken for the death of a man. The Statute makes no difference between homicide that is malicious and homicide by misadventure or in self-defence. Consequently it is said that whilst a justice may bail a man arrested for a light suspicion of homicide, he cannot bail one for man-
59 *slaughter or excusable homicide, if it appears manifestly that such person is *guilty of the fact*, i. e. is the slayer, although it be plain that it does not amount to murder. And where a dangerous wound has been given the justice is advised to be cautious how he admits the accused to bail, as if the other should die within a year and a day and the offender do not appear, the justice will be liable to a heavy fine, see 1 Hawk. P. C. 138; 2 Hawk. P. C. 95, 105, 164. However, it is laid down in 1 Chit, Cr. L. 95, that if the killing appear to have been by misadventure or in self-defence, the justice may safely liberate the party on his finding sufficient sureties.

The second and third classes of offenders are those imprisoned by commandment of the King or of his justices. This means according to Lord Coke, 2 Inst. 186-7, by matter of record in one of the King's Courts, not by any extrajudicial commandment. The separation of the two classes was made because in England some Courts are said to be held before the King himself, as the K. B., and others before the King's justices, as justices of assize. With the fourth class, "or for the forest," we have nothing to do.

In other respects, the following list of persons who may or may not be bailed is taken from Petersdoff on Bail, 489, with some omissions. Under sec. 181, of Art. 30 of the Code,[4] confinement in the penitentiary is prescribed as the general punishment for felonies, both clergyable and non-clergyable, and included or not included in the Code. Probably, therefore, all offences punishable by confinement in the penitentiary under the Code, and all common law felonies not mentioned in the Code should be added.

1. Instances in which a justice cannot bail:

ABJURORS of the realm, see 4 Black. Comm. 423.

APPROVERS.—But by Art. 30, sec. 190 of the Code,[5] an approver shall not be admitted in any case whatsoever.

[4] Code 1904, Art. 27, sec. 448.

[5] Code 1904, Art. 27, sec. 457.