

Advice.

And now, for that these petty Constables be much absent from their Houses or homes, partly by reason of their employments in their Office, and partly by reason of their own private occasions, (especially in our and other like parts of the Land, where these Officers are for the most part Husbandmen, and so most of the day in the fields;) it would prove very serviceable, if, by a Law to be made in Parliament, every Town and Village were to have a Tithing-man, or such other Officer, (or the like) to attend the service of the Constable, in his absence at the least, for that for want of such assistance, Rogues, Vagabonds and the like, knowing their times now travel up and down far more boldly.

And yet Mr. *Crompton*. fol. 222. saith, That a Constable may make a Deputy to execute his Office in his absence, for that he may be sick, &c. But it hath been resolved, That he may make a Deputy, because it is but a Ministerial Office. *Mich. 13 Jac. B. R. Phillips and Winscome's Case*. But some have held, That the making a Deputy is rather by Toleration, than by Law. *Resol. 29.*

If any man shall make an Affray or Assault upon another in presence of the Constable or Borsholder, or if any man in the presence of the Constable shall threaten to kill, beat, or hurt another, or shall be in a fury ready to break the Peace; in every of these cases the Constable or Borsholder may commit the Offenders to the Stocks, or to some other safe custody for the present, (as his or their quality requireth) and after may carry them before some Justice of Peace, or to the Gaol) until they shall find Surety for the Peace; which Surety the Constable himself may also take by Obligation, to be sealed and delived to the King's use: and if the party will not find such Surety to the Constable, he may imprison the party until he shall do it. *3 H. 4. 9, 10.*

I have seen the Report of *Skarret's Case*, *Termino Trin. An. 35 Eliz. Rot. 1458.* where *Skarret* brought his Action of False Imprisonment against one *Hammer*, for arresting the Plaintiff and imprisoning him, &c. The Defendant, to the Imprisonment, pleaded, That he was High-Constable of the Hundred of *E.* in the County of *S.* and that the Plaintiff made an Affray within the said Hundred upon one *H. W.* who presently came to him and told him thereof, and swore upon a Book that he was in fear of his life by the other; whereupon the Defendant came to the Plaintiff, and arrested and Imprisoned him, until he had found sufficient Sureties for the Peace; upon which the Plaintiff demurred. And it was adjudged, That the Plea of the Defendant was insufficient; first, for that he was not present at the Assault and Affray; secondly, for that he was the High Constable of the Hundred, and not Constable of the Town. In the Argument of which Case *Anderson*, Chief Justice, held Constables to be Conservators of the Peace at the Common Law, and still so to be, and that they ought to preserve the Peace as much as in them lieth; but that (said he) was by parting of men which he should see breaking of the Peace, and to carry them before a Justice of Peace, to find Sureties for the keeping thereof: but to take Sureties himself, the Constable cannot. And those which hold, that he may take Surety cannot tell what Surety that should be: for he cannot take a Recognizance nor Bail, for he is no Officer of Record; and if he shall take an Obligation, how the same shall be certified, and into what Court he said he knew not; and that it should be very inconvenient to give such Authority to every Constable. But by three other Judges, namely, *Walmesley*, *Owen*, and *Beaumont*. Although a Constable cannot take Surety for the Peace by Recognizance nor Bail, yet he may take an Obligation, according to the Book of *10 E. 4.* And if the Affray be in their presence, they are Conservators of the

Moors Rep. P. 845.

3 H. 4. 8.  
2 F. 12.  
Ilic cap 8.

10 E. 3. 18.