

must be in the presence or view of the Justice of Peace, or else he can neither Record it, nor yet commit the Offenders. 13 H.7. Croak 41. Crom. 195. b.

The form of the *Mittimus*; see the other title, *Forcible Entry*.

§. 6.  
Fine.

5. Also the same Justice of Peace, or some of them that shall see the Force, (as having best knowledge of the matter, and of the quality of the Offence, and having the Custody of this Record) are the proper Judges of this Offence; and therefore may assess the Fine upon every such Offender: but the Fine must be imposed upon every Offender severally and not upon them jointly: and the Justice ought to Estreat the same Fine, and to send the Estreat into the Exchequer, that from thence the Sheriff may be commanded to levy the said Fine for his Majesties use. But upon the same Fine so Assessed and Estreated, it seemeth the Justice is to deliver the Offenders. Co. 8. 41. 2. Lam. 191. 597. Co. 11. 43. a.

*Lamb.* 554.

Also upon payment of the said Fine to the Justice, or upon Sureties found (by Recognizance) for the payment thereof, the said Justice may deliver the Offenders out of Prison again at his pleasure, by som opinions: 10. But *quære* whether the Justice of Peace shall meddle with receiving the Fine, for that the Sheriff is accomptant for all Fines. *Lamb.* 555. Lam. 162. 555. Br. Imp. 10.

Or the Justices of Peace (by some opinions) may Record such Force, and commit the Offenders, and after certifie the Record to the Justice of Assises and Gaol-delivery, (as it was done at *Stafford Assises*, An. 26. *Eliz.* by the report of Mr. *Crompton*;) or else to certifie it to the General Sessions of the Peace, (as it seemeth to Mr. *Crompton*) and there the Offenders may be Fined; for, saith he, the Statute doth not say, that the Fine shall be Assessed by them that Record the Force, more than by other Justices. Cromp. 161. Lam. Edit. 1582.

Or rather the Justice of Peace may certifie or deliver the Record by him made (and refer the Fine and farther proceedings therein) to the King's Bench (in regard of their supreme Authority in such cases) And this Mr. *Lamb.* thinketh to be the safest course. Lam. 163.

§. 7.  
Enquiry.

6. Also the Justice of Peace, notwithstanding his own view of the Force, may and ought in some good Town or Place, near where the Force was (at the costs of the party grieved) to inquire by a sufficient Jury of the same County, to be returned by the Sheriff, as well of those which made such Forcible Entry, as of those which made such Forcible Detainer. See the Stat. 8 H.6. cap. 9. & *Pl.* 86.

And here note, that any one Justice of Peace alone out of the Sessions may make an Enquiry (being so appointed by the Statute;) whereas otherwise there must be Two Justices at the least, to make an Enquiry, or to hold a Sessions, and one of them of the *Quorum Br. Peace.* 14.

And this Enquiry ought to be made, whether the Offenders be present or gone, at the coming of the Justice of Peace; yea this Enquiry the Justice must make, though he go not to see the place where the Force is; for without this Enquiry there can be no Restitution. See more concerning this Enquiry in the other Title, *Forcible Entry, &c.* Br. Forcib. 27.

Also by the words of the Statute of 8 H. 6. cap. 9. (*maintenant mesme les Justices doient inquirer, &c.*) the Justices are to make this Enquiry immediately after the Force committed, and complaint made to them by the party grieved; and yet if they do make this Enquiry at any convenient time after, it suffieth. *Crom.* 124.

§. 8.

If the Sheriff shall not duly execute the Justices Precept directed to him for returning a Jury, he shall forfeit 20 l. And the Justice of Peace may proceed to Hear and Determine such Default of the Sheriff. See 8 H. 6. cap. 9. *hic. postea.*

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