

## Bailment and Mainprise. C H A P. CLXVI. V. 114.

**B**ailment, Mainprise or Replevin, is the saving or delivery of a Man out of Prison, or the freeing or setting at liberty of one arrested before that he hath satisfied the Law; *sc.* by finding Sureties to appear at a certain day, and to answer, and be justified by the Law. §. 1. Definition.

And to this purpose these three terms (Bailment, Mainprise and Replevin) be indifferently used in our Statutes and Books.

Stamf. 65.  
P. Mainp.  
18.

He that is bailed is taken or kept out of Prison, and delivered (as it were) into the hands of his Sureties, who are reputed his Guardians, and who may keep him with them, and may imprison him by some Opinions, See 21 H. 6. Br. Surety 8. & Mainp. 89. §. 2. Nature of it.

Crom. 157

If the Mainpennors or Sureties do at any time, or in any case, doubt that their Prisoner, or the party by them bailed, will flee, they may take him, and bring him before any Justice of Peace; and upon their Prayer the said Justice of Peace may and ought to discharge such Sureties, and to commit the party to prison, except he shall find Sureties, &c.

So if a Prisoner be bailed by insufficient Persons, the Justice of Peace *ex Officio* may cause him to find better Sureties, and may commit him (as it seemeth) till he shall so do; for the Stat. of West. 1. cap. 15. requireth, That such as be bailed be let out by sufficient Surety, P. Mainp. 2. Vide *antea tit. Surety for the Peace.*

If the Prisoner cannot find sufficient Sureties, the Justice of Peace is not bound (nay ought not, knowing their insufficiency) to let the Prisoner to bail. See Co. 10. 101.

And therefore, although the number of such Sureties, their sufficiency, and the Sum wherein they shall be bound, resteth (in some sort) in the discretion of the Justices; yet it is safe for them to take two Sureties at the least, and those to be Subsidy-men, and to be bound in good Sums, especially if the Prisoner be in for felony, or suspicion thereof: for the more and the more able that the Sureties are, the rather they will cause him that is bailed to appear. And again, for want of taking sufficient Bail the Justices of Peace are finable. And at Cambridge Assizes, A. D. 1613. Judge Warberton threatened to have set 40 l. Fine upon two Justices of Peace, who had bailed a Prisoner that was committed for suspicion of felony, and appeared not, for that the Sureties were not Subsidy-men. §. 3. Sufficiency.

*Quere*, if the Justices of Peace may not examine upon their Oaths the Sureties concerning their sufficiency, or whether they be Subsidy-men. §. 4. Oath.  
The Justices of the Common Pleas (7 H. 6. 25.) did examine the ability of the Sureties upon their Oaths, &c. And that which the Higher Courts do, may be a good rule for others. Vide 2 H. 7. f. 1.

Stamf. 77.  
21 H. 7. 20.

Now Bailment by the Justices of Peace (in case of felony, or for any other matter) is always upon a certain Sum of Mony, (as upon 40 l. &c.) the which Sum the Sureties, &c. shall forfeit to the King, if the Prisoner appeareth not at his day. Nature.

Also the Bailment in felony is, *Ad standum rectum de latrocinio predicto secundum Legem*, &c. Which seemeth to imply, That they which have taken him to bail shall not only cause him to appear, but also to answer the felony, Stamf. 77. d.

And in this business of Bailment (being a matter of much weight) it behoveth the Justices of Peace to be very circumspect, as well for fear of wrong by denying it to him that isailable, as also for fear of danger §. 5. Danger.