

THE
MAGISTRATE'S MANUAL.

ACCESSORY.

AN ACCESSORY is one guilty of Felony, not as a principal but by participation, command, advice or concealment. In high treason there can be no accessories, as all concerned are considered principals: so in petit larceny, misdemeanor, or inferior crimes of the like nature, under the degree of felony, there can be no accessories. The mere concealment of a felony *intended* to be committed, does not render the concealer an accessory. It is only misprision of felony. 2 Haw. c. 29. § 23.

There are accessories *before* and *after* the fact.

An *Accessory before the fact* is, as Hale defines it, one who being absent at the time the crime is committed doth procure, counsel, or advise the commission of it; and his absence is necessary to constitute him an accessory.

Accessories after the fact, are those who knowing the felony to have been committed by another, receive, relieve, comfort or assist, the felon. 1 Hale. 618.

But if others accompany the principal to commit a felony, and keep within hearing, or upon watch, all are in such case, deemed principals. 2 Haw. c. 29. § 7. 8.

A wife cannot be accessory to her husband, either before or after the fact, unless she be any way guilty of procuring him to commit the felony. 2 Haw. 320.

Anciently, the accessory could not be tried unless the principal were attainted; 3 Ed. 1. c. 14; but by the 1 Ann. c. 9. § 1. If the principal be convicted, or stand mute, or challenge above twenty of the Jury, the accessory may be tried as if the principal had been attainted.

By the 29 G. 2. c. 30. The buyer or receiver of stolen lead, iron, copper, brass, bell metal or solder, may be convicted altho' the principal had not been, and shall be transported for fourteen years.

And now by 3 W. 4 c. § 12. Accessories before the fact, to any capital offence, shall suffer death.