

No. 17-2202

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**In the United States Court of Appeals  
for the First Circuit**

MICHAEL GOULD, CHRISTOPHER HART, COMMONWEALTH SECOND AMENDMENT,  
INC., DANNY WENG, SARAH ZESCH, JOHN R. STANTON,  
*Plaintiffs-Appellants,*

MARKUS VALLASTER; IRWIN CRUZ,  
*Plaintiffs,*

v.

MARK MORGAN, in his official capacity as Acting Chief of the Brookline Police  
Department, WILLIAM B. EVANS, in his official capacity as Commissioner of the Boston  
Police Department, COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY  
GENERAL,  
*Defendants-Appellees,*

DAVID A. PROVENCHER, in his official capacity as  
Chief of the New Bedford Police Department,  
*Defendant.*

On Appeal from the United States District Court  
for the District of Massachusetts (No. 16-cv-10181-FDS)

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**BRIEF OF DEFENDANT-APPELLEE MARK MORGAN, IN HIS OFFICIAL  
CAPACITY AS ACTING CHIEF OF THE BROOKLINE POLICE DEPARTMENT**

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## **REASONS WHY ORAL ARGUMENT SHOULD BE HEARD**

This appeal involves a constitutional challenge to Massachusetts's regulatory scheme for carrying handguns in public, as implemented by Brookline and Boston. The issues presented are of considerable importance, both practically and doctrinally. This brief lays out the Anglo-American historical foundation for the regulation in detail, and demonstrates why that foundation renders it constitutional under *District of Columbia v. Heller*, 554 U.S. 570 (2008). To help provide the Court with a full understanding of that history and its constitutional significance, Brookline respectfully requests an opportunity to present oral argument in this appeal. No other party addresses the relevant history in such detail.

## INTRODUCTION

When Michael Gould requested a license to carry a loaded firearm in public, he said he needed one to defend himself while working around town, hiking, and for target-shooting. He soon received a license from the Town of Brookline, allowing him to do all that and more—in addition to the right he already had to carry a gun at home. But this didn’t satisfy Gould. Because his license does not also allow him to carry loaded guns in public under other unspecified circumstances, he filed suit challenging Brookline’s public-carry policy as unconstitutional. In his view, this policy (and Boston’s parallel policy, challenged by the other plaintiffs) “is akin to a total ban” that “extinguishes [his] core Second Amendment rights.”

There is no support for such a radical reading of the Second Amendment, and the district court was right to reject it here. Four federal circuits have agreed, upholding similar laws in full. And the one circuit that reached a different result (in a 2–1 decision) did so where the plaintiffs were entirely barred from carrying handguns in public—not where they could carry “in all of the circumstances in which [they] indicated [they] needed the firearm,” as Gould can. JA 80.

What makes Gould’s argument particularly extreme, however, is that it flouts not just precedent but history. History is critical here because this Court may uphold the law and “rest [its] conclusion on the existence of a longstanding tradition” of “state laws imposing similar restrictions.” *United States v. Rene E.*, 583 F.3d 8, 12 (1st Cir.

2009). Under the Supreme Court’s decision in *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008), such “longstanding” laws” are treated as tradition-based “exceptions” to the Second Amendment by virtue of their “historical justifications.”

Massachusetts’ public-carry regime is such a law. As implemented by Brookline and Boston, it has two important features—each with its own robust historical pedigree. The first is that public carry has long been heavily regulated in urban areas like Brookline and Boston. This regulatory tradition began in medieval England, which broadly “prohibited carrying concealed” and “concealable” arms in populous places, as the en banc Ninth Circuit observed in canvassing this history and upholding California’s concealed-carry restrictions as “longstanding.” *Peruta v. Cnty. of San Diego*, 824 F.3d 919, 932 (9th Cir. 2016). The tradition then took hold in America in the 17th and 18th centuries, when Massachusetts and several other colonies enacted similar laws. And it continued into the 19th century, when states, territories, and local governments prohibited public carry in cities, towns, and villages, but not rural areas.

The second feature is that Massachusetts’s regime has long had a “good cause” exception, making it far more permissive than these older prohibitions. It allows people to carry a handgun at home or at work without a license. M.G.L. ch. 269, § 10(a). And it permits people to carry a handgun elsewhere upon a showing of “good reason to fear injury” to themselves or their property, or “for any other reason,” subject to restrictions set by local police. M.G.L. ch. 140, § 131(d). Brookline police

work hard to ensure that eligible people may carry firearms for “those occasions when an applicant has stated in his or her application that they need a firearm and supported that claim with some information,” JA 230—as they did in Gould’s case.

The good-cause exception has been part of Massachusetts’ law since 1836, after which many other states followed suit. Although a more permissive approach emerged in the South before the Civil War, these antebellum laws were motivated largely by fear of slave rebellions, and they did not represent a majority approach.

Altogether, by the early 1900s, more than half the states and many cities had adopted laws that either entirely prohibited public carry in urban areas or required a showing of “good cause.” Because Massachusetts carries forward this longstanding tradition, its public-carry regime falls within the class of laws that “were left intact by the Second Amendment and by *Heller*.” *Rene E.*, 583 F.3d at 12. Indeed, this Court upheld a law as “longstanding” because nine states and Chicago “enacted similar statutes” around the turn of the 20th century. *Id.* at 14. Under that precedent, this is an *a fortiori* case: the history here is both broader and deeper.

Upholding Brookline’s policy does not require the Court to decide whether the Second Amendment has *any* application outside the home. To the contrary, the Court need only recognize that the policy is consistent with the “historical understanding of the scope of the right.” *Heller*, 554 U.S. at 625. The right that Gould asserts, by contrast—unfettered public carry in urban areas, without any

demonstration of need or purpose—has no historical foundation. At no point in our history has there been a constitutional “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* at 626.

But even without reference to history, Brookline’s policy is constitutional. It allows people “to use arms in defense of hearth and home”—the use *Heller* “elevates above all,” 554 U.S. at 635—while allowing ample avenues for self-defense outside the home. Even assuming this policy imposed a modest burden on Second Amendment rights, it would be justified by the “substantial relationship” between the policy and Brookline’s “undeniably important” interest in preventing urban gun violence. *United States v. Booker*, 644 F.3d 12, 25 (1st Cir. 2011).

### **STATEMENT OF THE ISSUE**

For nearly two centuries, Massachusetts has required residents to show good cause for carrying a loaded firearm in public. Dozens of other states and cities have imposed similar (or more restrictive) regulations throughout American history. In implementing this longstanding good-cause requirement, the Town of Brookline issued Michael Gould a license allowing him to carry a loaded handgun in “all of the circumstances in which he indicated he needed [it],” JA 80—to defend himself while at work, traveling to and from work, hiking, and for target-shooting—in addition to being able to defend himself at home. Did Brookline violate the Second Amendment by not also issuing him a license for other unspecified circumstances?

## STATEMENT OF THE CASE

### I. Regulatory background

***History of public carry in Massachusetts.*** Massachusetts’s regulation of public carry spans five centuries. In the 17th and 18th centuries—both before and after the Constitution’s adoption—the state broadly prohibited public carry. In keeping with English tradition (more about that later), Massachusetts authorized justices of the peace to arrest anyone who “shall ride or go armed offensively, to the fear or terror of the good citizens of this Commonwealth.” 1795 Mass. Laws 436, ch. 2; *see also* 1694 Mass. Laws 12, no. 6. There was no exception for “good cause.” This blanket prohibition governed for nearly 150 years.

Massachusetts maintained its broad prohibition in the 19th century, while creating a narrow exception for those who could show that they had “reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property.” 1836 Mass. Laws 748, 750, ch. 134, § 16. Absent such a showing, no person could “go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon.” *Id.* This “good cause” requirement would become a model for other states in the decades that followed. *See infra*, at 31–33.

At the dawn of the 20th century, Massachusetts sought to increase oversight of the good-cause requirement by incorporating it into a licensing regime. To obtain a license, a person would have to submit an application substantiating his or her need

“to carry a loaded pistol or revolver” in public. 1906 Mass. Sess. Laws 150, § 1. Local law-enforcement officials would then have discretion to issue a public-carry license if the applicant (1) was a “suitable person to be so licensed” and (2) met the good-cause standard. *Id.* Within a few years of adopting this licensing regime, the state extended it to cover unloaded guns, increased the fine for violations, and added a one-month minimum mandatory sentence. 1911 Mass Acts 568, ch. 548.

In 1919, Massachusetts amended the law to expand public-carry access. Under the new law, licenses could be issued not only for good cause, but also for “any other proper purpose.” 1919 Mass. Acts 156, ch. 207. Local officials were eventually authorized to restrict the license to the purpose for which it was issued. For example, a license could be issued for “the carrying of a pistol or revolver for use for target practice only.” 1936 Mass. Acts 289, ch. 302, § 131.

Around the same time that it was expanding public-carry access by creating restricted licenses, Massachusetts also specified what it means to be a “suitable person” eligible for a license. It expressly prohibited certain categories of people from obtaining a license, including minors, domestic abusers, and felons. 1936 Mass. Acts 289, ch. 302, § 131. Those eligible would still have to show good cause or a proper purpose to obtain a license. In addition, licenses would have to be annually renewed and were “revocable at the will of” the issuing body. 1922 Mass. Acts 560.

***The licensing regime today.*** The current regime operates in much the same way. Applications are submitted to the local “licensing authority,” who “may issue” a license if the applicant (1) is not a “prohibited person” and (2) “has good reason to fear injury to the applicant or the applicant’s property or for any other reason,” “subject to the restrictions expressed or authorized in this section.” M.G.L. ch. 140, § 131(d). When an applicant meets these requirements, the licensing authority may “subject [the license] to such restrictions relative to the possession, use or carrying of firearms as the licensing authority deems proper.” *Id.* § 131(a). A person who obtains a license (whether restricted or unrestricted) may carry a loaded gun in public consistent with the scope of the license. Those without a license may still carry a gun “in or on [their] residence or place of business.” M.G.L. ch. 269, § 10(a)(1).

Although restricted licenses are somewhat rare across the state as a whole, they are much more likely to be issued by law enforcement in populous urban areas, where the problems of gun violence are most acute. JA 154–55. That includes the defendants here, Boston and Brookline. *Id.* Boston is Massachusetts’s largest city, and Brookline its largest town.<sup>1</sup> Both fall within the Greater Boston metropolitan region, where 70% of the state’s population resides.<sup>2</sup>

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<sup>1</sup> *Information and Historical Data on Cities, Towns and Counties in the Commonwealth of Massachusetts*, Sec’y of the Commonwealth of Massachusetts, <https://goo.gl/kcFVfs>.

<sup>2</sup> See *QuickFacts: Massachusetts*, U.S. Census Bureau, <https://perma.cc/ZJ2R-TU5P>; *Boston-Cambridge-Newton, MA-NH Metro Area*, Census Reporter, <https://perma.cc/EE9D-46JK>.

***Brookline’s implementation of the licensing regime.*** At the time that Gould’s application was considered, the Town of Brookline’s application process was administered by Police Chief Daniel O’Leary and Sergeant Christopher Malinn, who had a combined 62 years of experience in the force. JA 226, 232.<sup>3</sup> Together, these officials implement the state’s public-carry regime through a tailored policy offering seven types of restricted licenses: target, hunting, transport, sporting, employment, home, and collecting. JA 77–78. An applicant may receive a license for some or all these uses, depending on their reasons for needing a handgun. The officials review each application on a “case by case basis, taking into consideration all information provided in the application,” JA 82, and are willing to expand on these seven uses to accommodate even a single applicant. JA 230. And when a qualifying request cannot be met by some combination of the restricted uses, the Town issues an unrestricted license if the applicant demonstrates the necessary “knowledge, skill and character” and a “good reason” for such a license. JA 84.

Of the 191 licenses Brookline issued from early 2015 to mid 2017, nearly 40% were unrestricted. JA 59. Many of these applicants were “employed in positions that would be deemed dangerous at any time, not just while working.” JA 82. So an

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<sup>3</sup> While this case was on appeal, Chief O’Leary retired. Mark Morgan is currently serving as Acting Chief of the Brookline Police Department during the search for a permanent Chief. Under Federal Rule of Appellate Procedure 43(c)(2), Mr. Morgan is to be automatically substituted in Mr. O’Leary’s place.

“employment” restriction—allowing a loaded gun to be carried “[i]n the home and while working,” and traveling in between the two—would not be sufficient. JA 79. Examples of such people include off-duty police officers, criminal-defense attorneys, and judges “hearing and deciding criminal cases,” who “would likely receive an unrestricted license due to the threat posed by sentencing and presiding over cases involving potentially dangerous persons.” *Id.*<sup>4</sup>

Other applicants were able to obtain a license allowing them to carry a firearm under all the circumstances for which they could demonstrate a need (*e.g.*, hunting, employment, target-shooting, etc.). For example, Chief O’Leary explained that, given the nature of the surrounding community, the “majority of people that we talk to, they really don’t want to carry it all the time but they want it to go target shooting or hunting.” Pait, *Looking Down the Sights: An Investigation into Firearms in Brookline*, The Sagamore, June 17, 2016, <https://goo.gl/oWdTj3>. So they were given licenses to carry a firearm for that purpose, but not for other unspecified purposes.

Brookline processes each application with great care. Sergeant Malinn serves as the point of contact and investigator. JA 224. He meets and interviews the applicant to “gather all of the facts.” *Id.* He also “discusses the matter with and

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<sup>4</sup> Gould attempts to cast these professions (and doctors) as “favored.” Gould Br. 8. But that ignores the unique dangers posed by their work and the difficulties of extrapolating meaningful information from small data sets. *See* JA 262 (data based on applications by fourteen doctors and six attorneys).

answers questions from the applicant,” *id.*, ensuring that he understands the applicant’s needs and that they in turn understand the Town’s licensing policy. When he finishes his inquiry, he “has a discussion with and makes a recommendation to the Chief[.]” JA 76. The Chief then personally reviews all the information in the application, taking whatever time and resources are needed to make a thoughtful decision based on that information, with further input from Sergeant Malinn. *Id.*

When the license is issued, Sergeant Malinn “explains the restriction to the license holder and answers any question that he or she may have.” JA 78. The license is also explained in writing, in a document that the applicant must sign to confirm that they accept and understand the license. At any stage of the process, if the applicant wishes to discuss the matter directly with the Chief, he is “always willing to do so.” JA 225. And if the applicant would like to provide more information, he is “always willing” to accept it. *Id.*

The Chief is also willing to reconsider any decision he has made. Since January 2015, he has been asked to reassess seventeen license restrictions. JA 79. Of those, he modified seven and removed the restriction entirely from three. *Id.* Although this is a small sample size, it means that the applicant prevailed more than half the time, illustrating that the Chief has no problem changing his decision when appropriate. He is proud that the “Brookline Police Department devotes more time and resources to reviewing firearm license applications than most if not all other

cities and towns in Massachusetts.” JA 225–26. Doing so allows him to “provide the gun-owning community the rights secured by the Second Amendment while at the same time protect[ing] the public as much as possible given the reach of these rights.” JA 230.

## **II. Factual background**

The sole plaintiff in this case who requested a firearms license from the Town of Brookline is Michael Gould.<sup>5</sup> Gould met with Sergeant Malinn in July 2014 to renew a restricted license he held from the Town of Weymouth, which he was seeking to renew as an unrestricted license. JA 232–33. Sergeant Malinn walked Gould through all the necessary questions to fill out his application. JA 232. Gould said that he needed to carry a loaded firearm for hiking, target-shooting, and for his work as a professional photographer, “to protect himself while in possession of valuable works of art and camera equipment[.]” JA 137, 234. To assist Gould with this application, Sergeant Malinn gave him some suggestions about the types of information he could provide to Chief O’Leary to support his stated needs. JA 233.

A couple of months later, Gould wrote a letter articulating the same reasons that he had given earlier for needing to carry a loaded firearm in public. He asserted

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<sup>5</sup> The organizational plaintiff, Commonwealth Second Amendment, has not identified any member of theirs who resides in Brookline, much less one who has been denied a requested license. The other individual plaintiffs sought unrestricted licenses from Boston, whose public-carry policies are similar to Brookline’s.

a desire to be able to defend himself while “working with valuable photography equipment as well as extremely valuable works of art.” JA 137. He also wrote that he is “very often alone hiking through the woods with [his] camera equipment, photographing scenic landscapes and areas to sell on the stock site,” and expressed an interest in target-shooting. *Id.* He did not identify any other reason why he needed to carry a loaded firearm in public or provide any other specifics. *Id.*

After considering all the information provided by Gould, Chief O’Leary offered him a license that “allowed Mr. Gould to carry a gun on all of the occasions when he indicated he wanted to carry a firearm (*i.e.* for target shooting and to protect himself while in possession of valuable works of art and camera equipment, which was, at times, in remote places).” JA 234; *see* JA 139. Although still restricted, the license “would expand [Gould’s] right to carry a gun” from the license he had previously held from Weymouth, allowing him to carry a firearm “any time he is engaged in his business,” as well as for target-shooting, hunting, and a range of outdoor recreational activities such as hiking and camping. JA 225, 230, 234.

Upon receiving the offer, Gould asked Sergeant Malinn if he should send additional information. JA 140–41. Malinn explained that more information was unlikely to expand the license’s scope because Gould hadn’t provided any “reasons why he needed a firearm for self-defense (other than his work)” and the license already allowed Gould to carry a firearm under all the circumstances he had given.

JA 233. If Gould had provided an additional reason, however, Sergeant Malinn “would have suggested the information he could have provided to support this.” *Id.* Gould decided to accept the restricted license, signing the acknowledgement forms without identifying any additional intended uses or seeking reconsideration. JA 234.

### **III. Procedural background**

Rather than seek reconsideration or substantiate a need for a broader license, Gould filed this lawsuit in 2016, joined by plaintiffs who received similarly restricted licenses from Boston. They contend that the Constitution mandates that they be able to carry firearms not only in their homes, on their property, while working, while traveling to and from work, while hiking, and for target-shooting, but anytime they wish to go armed on the crowded urban streets of Brookline and Boston, for any reason, and that there is no role for the people’s representatives to say otherwise.

The court rejected this argument. Following the Second, Third, Fourth, and Ninth Circuits—and heeding this Court’s call for caution in interpreting the Second Amendment—the district court upheld Boston and Brookline’s public-carry policies as constitutional and granted them summary judgment. Gould Add. (“Add.”) 21.

The district court noted that this Court has not yet “explicitly adopted” the two-step approach widely used by the other circuits, but that its decisions are consistent with that approach. Add. 16. Under this framework, courts “first consider whether the challenged law imposes a burden on conduct that falls within the scope

of the Second Amendment’s guarantee as historically understood.” Add. 16. If so, they “next determine the appropriate form of judicial scrutiny to apply.” *Id.*

The district court cited *United States v. Rene E.*, 583 F.3d 8 (1st Cir. 2009), involving the federal prohibition on firearm possession by juveniles, as an example of a case in which this Court upheld a law at step one. Add. 16. Because many states had adopted similar juvenile prohibitions in the late 1800s and early 1900s, this law “was one of the ‘longstanding prohibitions’ that *Heller* did not call into question.” *Id.* The court cited *United States v. Booker*, 644 F.3d 12 (1st Cir. 2011), *Hightower v. City of Boston*, 693 F.3d 61 (1st Cir. 2012), and *United States v. Armstrong*, 706 F.3d 1 (1st Cir. 2013), as cases in which this Court upheld a law at step two. Add. 17.

Applying the two-step framework, the district court “assume[d] for analytical purposes that the Second Amendment extends to protect the right of armed self-defense outside the home,” as some other courts have done. Add. 21. But the district court (like those courts) did not ask the more relevant step-one question: whether the cities’ public-carry policies—which allow substantial avenues for armed self-defense outside the home—had a sufficiently old lineage to qualify as longstanding.

Having skipped past this question, the court turned to step two. It observed that this Court’s precedents support the application of intermediate scrutiny (the level of scrutiny applied by the Second, Third, and Fourth Circuits in upholding similar laws). Add. 22. Under those precedents, the ultimate question is “whether the

defendant has shown a ‘substantial relationship between the restriction and an important governmental objective.’” Add. 24.

The district court had no trouble finding that Massachusetts’s public-carry regime—and Boston and Brookline’s implementing policies—survive this standard. The regime is “substantially related to [the government’s] important objective in protecting public safety and preventing crime.” Add. 28. The court thus “agree[d] in substance with the Second, Third, and Fourth Circuits,” and concluded that the policy of requiring “applicants to show a specific reason” for needing an unrestricted license is constitutional. Add. 29.

### **SUMMARY OF ARGUMENT**

In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment protects “the right of law-abiding, responsible citizens to use arms in defense of hearth and home,” and struck down as unconstitutional a law “totally ban[ning] handgun possession in the home.” 554 U.S. 570, 629, 635 (2008). The Court made clear, however, that its analysis does not “suggest the invalidity of laws” that “do not remotely burden the right of self-defense as much as an absolute ban on handguns.” *Id.* at 632. And it went out of its way to explain that “longstanding” regulations are treated as “exceptions” to the self-defense right based on their “historical justifications,” and thus deemed constitutional. *Id.* at 626–27 n.26, 635.

Following that precedent, four circuits have upheld public-carry restrictions similar to Massachusetts’s regime. One circuit did so based on a “historical analysis,” finding that California’s prohibition on carrying concealed firearms in public had a sufficient pedigree to qualify as longstanding under *Heller*. See *Peruta v. Cnty. of San Diego*, 824 F.3d 919, 929 (9th Cir. 2016) (en banc) (“[T]he history relevant to both the Second Amendment and its incorporation by the Fourteenth Amendment lead to the same conclusion: The right of a member of the general public to carry a concealed firearm in public is not, and never has been, protected by the Second Amendment.”). Three other circuits—none of which had access to the full wealth of historical materials we provide in this brief—upheld public-carry restrictions under intermediate scrutiny. Massachusetts’s regime, as implemented by Brookline and applied to Gould, is constitutional under either approach.

**I.** Under the historical approach, Massachusetts’s regime can be upheld based “on the existence of a longstanding tradition” of similar regulations. *United States v. Rene E.*, 583 F.3d 8, 12 (1st Cir. 2009). That tradition stretches from medieval England to the modern age. By the early 1900s, nearly 30 states and numerous cities had at one time adopted laws either entirely prohibiting public carry in urban areas or doing what Massachusetts does here: requiring a good reason for such carry. As this Court has already recognized in upholding a gun regulation as longstanding, that is more than enough to satisfy *Heller*. *Id.*

**II.** Under the other approach, Brookline’s public-carry policy is constitutional as applied to Gould because it satisfies intermediate scrutiny. It allows people to carry guns in the home and on the job, while also providing many opportunities for armed self-defense in public. Indeed, Gould himself may carry “in all of the circumstances in which he indicated he needed the firearm,” JA 80—including while working, traveling to and from work, hiking, target-shooting, and at home. As Massachusetts explains in greater detail in its brief, any burden on his constitutional rights is justified by the “substantial relationship” between the law’s restrictions and the government’s interest in public safety. *United States v. Booker*, 644 F.3d 12, 25 (1st Cir. 2011).

### **ARGUMENT**

The question in this case is *not* whether there exists “some limited right under the Second Amendment to keep and bear operable firearms outside the home for the purpose of self-defense”—a question this Court has not yet answered. *Powell v. Tompkins*, 783 F.3d 332, 348 n.10 (1st Cir. 2015). Instead, the question is whether Massachusetts’s public-carry regime (as implemented by Brookline) is consistent with the Second Amendment (as applied to Gould).

For two reasons, it is. *First*, the regime is constitutional in its entirety because there is a “longstanding tradition” of “state laws imposing similar restrictions.” *Rene E.*, 583 F.3d at 12. *Second*, the regime is constitutional as applied to Gould even without “reference to its historical provenance.” *Booker*, 644 F.3d at 24 n.15. Far from

“extinguish[ing]” his “core Second Amendment right,” as Gould asserts (at 35), Brookline allows him to carry a loaded gun in public in “all of the circumstances in which he indicated he needed [one].” JA 80. And it allows him “to use arms in defense of hearth and home”—the use the Amendment “elevates above all” else. *Heller*, 554 U.S. at 635. The Constitution entitles him to no more. Even if his rights were somehow burdened, that minimal burden would be amply justified because “there is a substantial relationship” between the law and Brookline’s “undeniably important” interest in preventing urban gun violence. *Booker*, 644 F.3d at 25.

**I. Because Brookline carries forward a centuries-old tradition of restricting public carry in populated areas, its public-carry policy is “longstanding” and thus constitutional under *Heller*.**

**A. “Longstanding” laws are constitutional under *Heller* because they are consistent with our historical tradition.**

One way to determine whether a law violates the Second Amendment is to assess the law based on a “historical understanding of the scope of the right,” *Heller*, 554 U.S. at 625, and ask whether there is a “longstanding tradition” of analogous regulations, *Rene E.*, 583 F.3d at 12. *Heller* identified several “examples” of such regulations, including “prohibitions on the possession of firearms by felons and the mentally ill” and “laws imposing conditions and qualifications on the commercial sale of arms,” which are “presum[ed]” constitutional because of their historical acceptance as consistent with the Second Amendment. 554 U.S. at 626–27 & n.26.

Such “longstanding” laws, the Supreme Court explained, are treated as tradition-based “exceptions” by virtue of their “historical justifications.” *Id.* at 635; see *Fyock v. Sunnyvale*, 779 F.3d 991, 997 (9th Cir. 2015) (“[L]ongstanding prohibitions” are “traditionally understood to be outside the scope of the Second Amendment.”); *United States v. Marzzarella*, 614 F.3d 85, 91 (3d Cir. 2010) (“[L]ongstanding limitations are exceptions to the right to bear arms.”). As this Court has put it: “These restrictions, as well as others similarly rooted in history, were left intact by the Second Amendment and by *Heller*.” *Rene E.*, 583 F.3d at 12.

For a law to qualify as “longstanding,” it need not “mirror limits that were on the books in 1791” (or in this case involving a state law, 1868). *Booker*, 644 F.3d at 24 (quotation marks omitted). Nor must it have been enacted in every jurisdiction. To the contrary, a law may be longstanding even if it “cannot boast a precise founding-era analogue,” *NRA v. BATF*, 700 F.3d 185, 196 (5th Cir. 2012), as was the case with the “early twentieth century regulations” *Heller* deemed longstanding, *Fyock*, 779 F.3d at 997. Indeed, *Heller* indicated that the modern “felony firearm disqualification law,” for example, is considered longstanding even though it is “firmly rooted in the twentieth century and likely bears little resemblance to laws in effect at the time the Second Amendment was ratified.” *Booker*, 644 F.3d at 23–24. And this Court has upheld a gun law as longstanding because nine states and Chicago “enacted similar statutes” in the late 19th and early 20th century. *Rene E.*, 583 F.3d at 14.

Under these precedents, this is an easy case. Since its colonial origins in the 1600s, Massachusetts has regulated public carry, beginning with a broad ban and then requiring “good cause” in the early 1800s. It was not alone in doing so. By the early 20th century, more than 25 states and countless cities had enacted laws either entirely banning public carry in urban areas or requiring a “good reason” for it. Because Brookline’s good-cause regime carries forward this robust tradition, it is longstanding and thus constitutional under *Heller*.

**B. Brookline’s public-carry policy has a centuries-long pedigree in Anglo-American history and is therefore “longstanding” and constitutional under *Heller*.**

**1. English history**

***Beginning in 1328, England broadly restricts public carry in populated areas.*** The Anglo-American tradition of broadly restricting public carry in populated areas stretches back to at least 1328, when England enacted the Statute of Northampton providing that “no Man great nor small” shall “go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere.” 2 Edw. 3, 258, ch. 3 (1328). After this statute was enacted, King Edward III and his successors directed sheriffs and bailiffs to arrest “all those whom [they] shall find going armed.” Charles, *The Faces of the Second Amendment Outside the Home*, 60 Clev. St. L. Rev. 1, 13–25 (2012).

This prohibition expanded on two earlier laws: one making it a crime “to be found going or wandering about the Streets of [London], after Curfew ... with Sword or Buckler, or other Arms for doing Mischief,” 13 Edw. 1, 102 (1285), and another prohibiting coming with “Force [or] Armour” to the “Parliament at Westminster,” 7 Edw. 2, 170 (1313)—the seat of the English government.

Over the ensuing decades, England repeatedly reenacted the Statute of Northampton’s public-carry restriction. *See, e.g.*, 7 Ric. 2, 35, ch. 13 (1383); 20 Ric. 2, 93, ch. 1 (1396). Because this restriction carried misdemeanor penalties, violators were usually required to forfeit their weapons and pay a fine. *Id.* A separate law went further, outlawing “rid[ing] armed covertly or secretly with Men of Arms against any other.” 25 Edw. 3, 320, ch. 2, § 13 (1351). This law had heavier penalties because it regulated threatening behavior rather than simply carrying weapons in public—the conduct prohibited by the Statute of Northampton. *Id.*

By the 16th century, firearms had become increasingly accessible in England, and the possibility that they would be carried in public had become increasingly threatening to public safety. To guard against this threat, Queen Elizabeth I in 1579 called for strict enforcement of Northampton’s prohibition on carrying “Daggers, Pistols, and such like, not only in Cities and Towns, [but] in all parts of the Realm in common high[ways], whereby her Majesty’s good quiet people, desirous to live in [a] peaceable manner, are in fear and danger of their lives.” Charles, *Faces*, 60 Clev.

St. L. Rev. at 21 (spelling modernized). The carrying of “such offensive weapons” (like “Handguns”), she elaborated, and “the frequent shooting [of] them in and near Cities, Towns corporate, [and] the Suburbs thereof where [the] great multitude of people do live, reside, and trav[el],” had caused “great danger” and “many harms [to] ensue.” *Id.* at 22 (spelling modernized). Fifteen years later, she reaffirmed that publicly carrying pistols—whether “secretly” or in the “open”—was “to the terrour of all people professing to travel and live peaceably.” *Id.*

To carry out the Statute of Northampton’s prohibition, British constables, magistrates, and justices of the peace were instructed to “Arrest all such persons as they shall find to carry Daggers or Pistols” publicly. Keble, *An Assistance to the Justices of the Peace, for the Easier Performance of Their Duty* 224 (1683). This mandate was unmistakably broad: “[I]f any person whatsoever ... shall be so bold as to go or ride Armed, by night or by day, in Fairs, Markets, or any other places ... then any Constable” may “commit him to the Gaol.” *Id.*

***In the 17th and 18th centuries, English authorities interpret the Statute of Northampton to restrict public carry in populated areas.*** This understanding of the law—as broadly prohibiting carrying guns in populated public places—continued into the 17th and 18th centuries. *See generally* Charles, *The Statute of Northampton by the Late Eighteenth Century*, 41 *Fordham Urb. L.J.* 1695 (2012). In 1644, for example, Lord Coke—“widely recognized by the American colonists as the greatest

authority of his time on the laws of England,” *Payton v. New York*, 445 U.S. 573, 593–94 (1980)—described the Statute of Northampton as making it unlawful “to goe nor ride armed by night nor by day ... in any place whatsoever.” Coke, *The Third Part of the Institutes of the Laws of England* 160 (1817 reprint).

One century later, Blackstone—“the preeminent authority on English law for the founding generation,” *Heller*, 554 U.S. at 593–94—described the statute similarly: “The offence of riding or going armed with dangerous or unusual weapons is a crime against the public peace, by terrifying the good people of the land; and is particularly prohibited by the statute of Northampton.” 4 Blackstone, *Commentaries on the Laws of England* 148–49 (1769).<sup>6</sup> In other words, because carrying a dangerous weapon (such as a firearm) in populated public places naturally terrified the people, it was a crime against the peace—even if unaccompanied by a threat, violence, or any additional breach of the peace. *See Chune v. Piott*, 80 Eng. Rep. 1161, 1162 (K.B. 1615) (“Without all question, the sheriffe hath power to commit ... if contrary to the Statute of Northampton, he sees any one to carry weapons in the high-way, in terrorem populi Regis; he ought to take him, and arrest him, notwithstanding he doth not break the peace in his presence.”).

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<sup>6</sup> The same description appears in “the most important early American edition of Blackstone’s *Commentaries*,” by St. George Tucker. *Heller*, 554 U.S. at 594; *see* Tucker, *Blackstone’s Commentaries* 149 (1803).

To carry out Northampton’s prohibition, British constables, magistrates, and justices of the peace were instructed to “Arrest all such persons as they shall find to carry Daggers or Pistols” publicly. Keble, *An Assistance to the Justices of the Peace, for the Easier Performance of Their Duty* 224 (1683). This mandate was unmistakably broad: “[I]f any person whatsoever ... shall be so bold as to go or ride Armed, by night or by day, in Fairs, Markets, or any other places ... then any Constable ... may take such Armor from him for the Kings use, and may also commit him to the Gaol.” *Id.*<sup>7</sup>

Heeding this instruction, one court issued an arrest warrant for a man who committed “outrageous misdemeanours” by going “armed” with “pistolls[] and other offensive weapons.” *Rex v. Harwood*, Quarter Sessions at Malton (Oct. 4–5, 1608), reprinted in North Riding Record Society, *Quarter Sessions Records* 132 (1884). Another sentenced a man to prison because he “went armed under his garments,” even though he had not threatened anyone and had done so only to “safeguard ... his life” because another man had “menaced him.” Coke, *Institutes* 161. And a jury convicted a man “for going Armed with a Cutlass Contrary to the Statute,” for which he was sentenced to two years in prison plus fines. *Middlesex Sessions: Justices’ Working Documents* (1751), available at <https://perma.cc/ET65-DQGC>.

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<sup>7</sup> See also Lambarde, *The Duties of Constables, Borsholders, Tythingmen, and Such Other Low and Lay Ministers of the Peace* 13–14 (1602) (same); 1 Hutcheson, *Treatise on the Offices of Justice of Peace* app. I at xlvi (1806) (citing Cromwell, *Instructions Concerning Constables* (1665)) (“A constable shall arrest any person, not being in his Highness service, who shall be found wearing naugbuts, or guns, or pistols, of any sort.”).

***The law’s narrow exceptions confirm this general public-carry prohibition.*** In addition to its focus on populated public places, the Statute of Northampton was understood to contain limited exceptions. One important exception was that the prohibition did not apply inside the home, in keeping with principles of self-defense law, which imposed a broad duty to retreat while in public but conferred a strong right to self-defense at home. Blackstone, 4 *Commentaries* 185. As Lord Coke explained, using force at home “is by construction excepted out of this act[,] ... for a man’s house is his castle.” *Institutes* 162. “But [a man] cannot assemble force,” Coke continued—including by carrying firearms—even “though he [may] be extremely threatened, to go with him to Church, or market, or any other place, but that is prohibited by this act.” *Id.*<sup>8</sup> William Hawkins likewise explained that “a man cannot excuse the wearing [of] such armour in public, by alleging that such a one threatened him, and he wears it for [his] safety,” but he may assemble force “in his own House, against those who threaten to do him any Violence therein, because a Man’s House is as his Castle.”<sup>1</sup> Hawkins, *A Treatise of the Pleas of the Crown* 489, 516

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<sup>8</sup> See also 1 Hale, *History of the Pleas of the Crown* 547 (1800) (noting that armed self-defense was permitted at home, but not during “travel, or a journey,” because of “special protection” accorded “home and dwelling”); *Semayne’s Case*, 77 Eng. Rep. 194, 195 (K.B. 1603) (“[E]very one may assemble his friends and neighbors to defend his house against violence: but he cannot assemble them to go with him to the market, or elsewhere for his safeguard against violence.”).

(1721) (1824 reprint); 1 Russell, *A Treatise on Crimes & Misdemeanors* 589 (1826) (same in American edition).<sup>9</sup>

There were two other important exceptions to the public-carry prohibition: a narrow (unwritten) exception permitting high-ranking nobles to wear fashionable swords and walk in public with armed servants, and a narrow (written) exception for the King’s officers. See 1 Hawkins, *Treatise of the Pleas of the Crown* 489, 798 (explaining that noblemen were in “no danger of offending against this statute” by wearing “weapons of fashion, as swords, &c., or privy coats of mail,” or by “having their usual number of attendants with them for their ornament or defence,” for that would not “terrify the people”).<sup>10</sup>

Putting these exceptions together, “no one” could “carry arms, by day or by night, except the vadlets of the great lord of the land, carrying the swords of their masters in their presence, and the serjeants-at-arms [of the royal family],” as well as

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<sup>9</sup> A contrary rule—permitting armed self-defense in populated areas, even though it terrified the public—would have suggested that “the King were not able or willing to protect his subjects.” *Sir John Knight’s Case*, 87 Eng. Rep. 75, 76 (K.B. 1686). Hence, the castle doctrine was confined to the home. Tucker, *Blackstone’s Commentaries* 225.

<sup>10</sup> See also Russell, *Treatise on Crimes & Misdemeanors* 588–89 (same); Charles, *Faces*, 60 Clev. St. L. Rev. at 26 n.123 (citing historical distinction between “go[ing] or rid[ing] armed” and noblemen “wear[ing] common Armour”); *Rex v. Sir John Knight*, 90 Eng. Rep. 330 (K.B. 1686) (noting a “general connivance” for “gentlemen” to carry arms in this way, but declining to dismiss indictment for “walk[ing] about the streets armed with guns” against a defendant who was later acquitted); *Sir John Knight’s Case*, 87 Eng. Rep. at 76 (acquittal).

those responsible for “saving and maintaining the peace.” Carpenter & Whittington, *Liber Albus: The White Book of the City of London* 335 (1419) (1861 reprint).<sup>11</sup>

***The Statute of Northampton’s public-carry restriction remains fully in effect following the English Bill of Rights of 1689.*** In the late 17th century, William and Mary enshrined the right to have arms in the Declaration of Rights, later codified in the English Bill of Rights in 1689. This right—which “has long been understood to be the predecessor to our Second Amendment,” *Heller*, 554 U.S. at 593—ensured that subjects “may have arms for their defence suitable to their conditions, and as allowed by law.” 1 W. & M. sess. 2. ch. 2. As Blackstone later wrote, this right was considered “a public allowance, under due restrictions[,] of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression.” 1 Blackstone, *Commentaries on the Laws of England* 144 (1769). One such “due restriction” was the Statute of Northampton, which remained in effect after the right to bear arms was codified in 1689. See 4 Blackstone, *Commentaries* 148–49; Gardiner, *The Compleat Constable* 18 (1692); *Middlesex Sessions* (reporting 1751 conviction under law).

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<sup>11</sup> A 1409 royal order confirms the narrow exception allowing noblemen to carry swords. It “forb[ade] any man of whatsoever estate or condition to go armed within [London] and [its] suburbs, or any except lords, knights and esquires with a sword.” 3 *Calendar of the Close Rolls, Henry IV* 485 (Jan. 30, 1409).

## 2. *Founding-era American history*

***The colonies begin adopting England’s tradition of public-carry regulation.*** Around the time that the English Bill of Rights was adopted, America began its own public-carry regulation. The first step was a 1686 New Jersey law that sought to prevent the “great fear and quarrels” induced by “several persons wearing swords, daggers, pistols,” and “other unusual or unlawful weapons.” 1686 N.J. Laws 289, 289–90, ch. 9. To combat this “great abuse,” the law provided that no person “shall presume privately to wear any pocket pistol” or “other unusual or unlawful weapons,” and “no planter shall ride or go armed with sword, pistol, or dagger,” except for “strangers[] travelling” through. *Id.* This was only the start of a long history of regulation “limiting gun use for public safety reasons”—especially public carry in populated areas. Meltzer, *Open Carry for All*, 123 Yale L.J. 1486, 1523 (2014). As against this history, “there are no examples from the Founding era of anyone espousing the concept of a general right to carry.” *Id.*

***Massachusetts and other states enact laws mirroring the Statute of Northampton both before and after the Constitution’s adoption.*** Eight years after New Jersey’s law, Massachusetts enacted its own version of the Statute of Northampton, authorizing justices of the peace to arrest anyone who “shall ride or go armed Offensively before any of Their Majesties Justices, or other [of] Their Officers or Ministers doing their Office, or elsewhere.” 1694 Mass. Laws 12, no. 6.

By using the word “offensively,” Massachusetts ensured that this prohibition applied only to “offensive weapons,” as it had in England—not all arms. Constable oaths of the 18th century described this law with similar language. *See* Charles, *Faces*, 60 Clev. St. L. Rev. at 34 n.178. One treatise, for example, explained that “[a] person going or riding with offensive Arms may be arrested.” Bond, *A Compleat Guide for Justices of the Peace* 181 (1707). Thus, under the law, a person could publicly carry a hatchet or horsewhip, but not a pistol. *See* 1 Hawkins, *Treatise of the Pleas of the Crown* 665 (1824 reprint) (explaining that hatchets and horsewhips were not “offensive weapons,” while “guns” and “pistols” were); *King v. Hutchinson*, 168 Eng. Rep. 273, 274 (1784) (explaining that firearms are offensive weapons).<sup>12</sup>

One century later, Massachusetts reenacted its law, this time as a state. 1795 Mass. Laws 436, ch. 2. Because the law had been in effect for so long, it was “well known to be an offence against law to ride or go with ... firelocks, or other dangerous weapons,” as one newspaper later reported, so it “[could not] be doubted that the vigilant police officers” would arrest violators. Charles, *Faces*, 60 Clev. St. L. Rev. at 33 n.176 (quoting *The Salem Gazette*, June 2, 1818, at 4).

Following Massachusetts’s lead, additional states enacted similar laws, including founding-era statutes in Virginia and North Carolina, a New Hampshire

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<sup>12</sup> American treatises said the same. *See* Bishop, *Commentaries on the Law of Statutory Crimes* 214 (1873); Russell, *Treatise on Crimes & Misdemeanors* 124.

law passed five years after Massachusetts's first enactment, and later enactments in states ranging from Maine to Tennessee. *See* 1699 N.H. Laws 1; 1786 Va. Laws 33, ch. 21; 1792 N.C. Laws 60, 61, ch. 3; 1801 Tenn. Laws 710, § 6; 1821 Me. Laws 285, ch. 76, § 1; 1852 Del. Laws 330, 333, ch. 97, § 13. Still other states incorporated the Statute of Northampton through their common law.<sup>13</sup>

To ensure that these laws were enforced, constables, magistrates, and justices of the peace in these jurisdictions were required to “arrest all such persons as in your sight shall ride or go armed.” Haywood, *A Manual of the Laws of North-Carolina* pt. 2 at 40 (1814) (N.C. constable oath). That was because, as they were informed, “going armed with dangerous or unusual weapons, is a crime against the public peace, by terrifying the good people of the land, and is prohibited by statute.” Haywood, *The Duty and Office of Justices of the Peace, and of Sheriffs, Coronors, Constables* 10 (1800); *see also* Haywood, *The Duty & Authority of Justices of the Peace, in the State of Tennessee* 176 (1810).

As with the English statute, prosecution under these laws did not require a “threat[] [to] any person in particular” or “any particular act of violence.” Ewing, *A*

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<sup>13</sup> *See* A Bill for the Office of Coroner and Constable (Mar. 1, 1682), reprinted in Leaming & Spicer, *Grants, Concessions & Original Constitutions* 251 (1881) (N.J. constable oath) (“I will endeavour to arrest all such persons, as in my presence, shall ride or go arm’d offensively.”); Niles, *The Connecticut Civil Officer* 154 (1833) (noting crime of “go[ing] armed offensively,” even without threatening conduct); Dunlap, *The New York Justice* 8 (1815); *Vermont Telegraph*, Feb. 7, 1838 (“The laws of New England” provide a self-defense right “to individuals, but *forbid their going armed* for the purpose.”). Northampton also applied in Maryland. Md. Const. of 1776, art. III, § 1.

*Treatise on the Office & Duty of a Justice of the Peace* 546 (1805); see also Bishop, *Commentaries on the Law of Statutory Crimes* (noting that there was no requirement that “peace must actually be broken, to lay the foundation for a criminal proceeding”). Nor did these laws have a self-defense exception: No one could “excuse the wearing [of] such armor in public, by alleging that such a one threatened him.” Wharton, *A Treatise on the Criminal Law of the United States* 527–28 (1846).

### **3. Early-19th-century American history**

***Massachusetts begins allowing public carry with “reasonable cause to fear an assault,” and many states follow its lead.*** In 1836, Massachusetts amended its public-carry prohibition to provide a narrow exception for those having “reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property.” 1836 Mass. Laws 748, 750, ch. 134, § 16. Absent such “reasonable cause,” no person could “go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon.” *Id.* Those who did so could be punished by being made to pay sureties for violating the statute, *id.*; if they did not do so, they could be imprisoned. *See id.* at 749.<sup>14</sup>

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<sup>14</sup> Sureties were a form of criminal punishment, like a bond. *See* Punishments, The Proceedings of the Old Bailey, London’s Central Criminal Court, 1674 to 1913, <https://goo.gl/LGFMf4>; 34 Edw. 3, 364, ch. 1 (1360). They still exist as a form of criminal punishment in Massachusetts. *See* M.G.L. ch. 275, § 4. The criminal nature of the surety-based historical laws, moreover, is confirmed by the legislatures that enacted them. The Massachusetts legislature placed its restriction in part of the code entitled “Of Proceedings in Criminal Cases.” 1836 Mass. Laws 748, 750, ch. 134,

Although the legislature chose to trigger these penalties using a citizen-complaint mechanism (allowing “any person having reasonable cause to fear an injury, or breach of the peace” to file a complaint, *id.* at 750, § 16), the law was understood to restrict carrying a firearm in public without good cause. This was so even when the firearm was not used in any threatening or violent manner: The legislature placed the restriction in a section entitled “Persons who go armed may be required to find sureties for the peace,” and expressly cited the state’s previous enactment of the Statute of Northampton. *Id.* And elsewhere in the same statute the legislature separately punished “any person [who] threatened to commit an offence against the person or property of another.” *Id.* at 749, § 2. Thus, as one Massachusetts judge explained in a grand jury charge appearing in the contemporary press in 1837, there was little doubt at the time that “no person may go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to apprehend an assault or violence to his person, family, or property.” Cornell, *The Right to Carry Firearms Outside of the Home*, 39 Fordham Urb. L.J. 1695, 1720 & n.134 (2012); see Hammond, *A Practical Treatise; Or an Abridgement of the Law Appertaining to the Office of Justice of the Peace* 184–86 (1841).

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§ 16. Others did likewise. See 1851 Minn. Laws at 527–28, §§ 2, 17, 18 (“Persons carrying offensive weapons, how punished.”); 1846 Mich. Laws 690, ch. 162, § 16 (“Of Proceedings in Criminal Cases”); 1847 Va. Laws 127, ch. 14, § 16 (same); 1871 Tex. Laws 1322, art. 6512 (“Criminal Code”).

Within a few decades, many states (all but one outside the slaveholding South) had adopted nearly identical laws.<sup>15</sup> Most copied the Massachusetts law verbatim—enforcing the public-carry prohibition through a citizen-complaint provision and permitting a narrow self-defense exception. *See, e.g.*, 1851 Minn. Laws at 527–28, §§ 2, 17, 18 (section entitled “Persons carrying offensive weapons, how punished”); 1873 Minn. Laws. 1025, § 17 (same after 14th Amendment). At least one state used slightly different language. 1847 Va. Laws 127, 129, § 16 (“If any person shall go armed with any offensive or dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, he may be required to find sureties for keeping the peace.”). Semantic differences aside, these laws were understood to do the same thing: broadly restrict public carry, while establishing a limited exception for those with a particular need for self-defense.

***Taking a different approach, many southern states elect to permit public carry, while regulating the manner of carry.*** In contrast to the Northampton model and its good-cause variant, many—but not all—states in the slaveholding South were more permissive of public carry. They generally allowed white citizens to carry firearms in public so long as the weapons were not concealed.

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<sup>15</sup> *See, e.g.*, 1838 Wisc. Laws 381, § 16; 1841 Me. Laws 709, ch. 169, § 16; 1846 Mich. Laws 690, 692, ch. 162, § 16; 1847 Va. Laws 127, 129, ch. 14, § 16; 1851 Minn. Laws 526, 528, ch. 112, § 18; 1853 Or. Laws 218, 220, ch. 16, § 17; 1861 Pa. Laws 248, 250, § 6.

*See, e.g.*, 1854 Ala. Laws 588, § 272; 1861 Ga. Laws 859, § 4413; *see generally* Cramer, *Concealed Weapon Laws of the Early Republic* (1999). It is this alternative (and minority) tradition on which a divided panel relied in *Wrenn v. District of Columbia*, 864 F.3d 650, 658 (D.C. Cir. 2017), the key case cited by Gould.

This tradition owes itself to the South’s peculiar history and the prominent institution of slavery. *See generally* Ruben & Cornell, *Firearm Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context*, 125 Yale L.J. Forum 121 (Sept. 25, 2015), <https://goo.gl/3pUZHB>. It reflects “a time, place, and culture where slavery, honor, violence, and the public carrying of weapons were intertwined.” *Id.* at 125. Frederick Law Olmsted, for example, “attributed the need to keep slaves in submission as the reason that ‘every white stripling in the South may carry a dirk-knife in his pocket, and play with a revolver before he has learned to swim.’” Cramer, *Concealed Weapon Laws* 21 (quoting Olmsted, *A Journey in the Back Country* 447 (1860)); *cf. McDonald v. City of Chicago*, 561 U.S. 742, 844 (2010) (Thomas, J., concurring) (“[I]t is difficult to overstate the extent to which fear of a slave uprising gripped slaveholders and dictated the acts of Southern legislatures.”). And historians agree that “the South was substantially more violent than the North.” Cramer, *Concealed Weapon Laws* 18; *see also* Redfield, *Homicide, North and South* vii, 10, 13 (1880) (2000 reprint) (study concluding that 19-century homicide rate in southern states was 18 times the rate in New England). This view was supported by Massachusetts Senator Charles Sumner,

whose “Bleeding Kansas” speech was cited at length in *Heller*, 554 U.S. at 609. In 1845, he addressed the disparate weapon cultures like so:

In those portions of our country where it is supposed essential to personal safety to go armed with pistols and bowie-knives, mortal affrays are so frequent as to excite but little attention, and to secure, with exceedingly rare exceptions, impunity to the murderer; whereas at the North and East, where we are unprovided with such facilities for taking life, comparatively few murders of the kind are perpetrated.

Sumner, *The True Grandeur of Nations: An Oration Delivered Before the Authorities of the City of Boston, July 4, 1845*, 61–62 (1845).

Even within the South, however, courts and legislatures took varying stances toward public carry. Virginia, for instance, “home of many of the Founding Fathers,” *Edwards v. Aguillard*, 482 U.S. 578, 605 (1987) (Powell, J., concurring), prohibited public carry (with an exception for good cause) before the Fourteenth Amendment’s ratification, after enacting a Northampton-style prohibition at the founding. 1847 Va. Laws 127,129, § 16 (making it illegal to “go armed with any offensive or dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property”); 1786 Va. Laws 33, ch. 21. South Carolina enacted a Northampton-style law during Reconstruction. 1870 S.C. Laws 403, no. 288, § 4. Around the same time, Texas prohibited public carry with an exception for good cause—a prohibition enforced with possible jail time, and accompanied by narrow exceptions that confirmed the law’s breadth. 1871 Tex. Laws 1322, art. 6512 (prohibiting public carry absent an “immediate and pressing” self-

defense need, while exempting one’s “own premises” and “place of business,” and travelers “carrying arms with their baggage”). And West Virginia, added to the Union during the Civil War, similarly allowed public carry only upon a showing of good cause. 1870 W. Va. Laws 702, 703, ch. 153, § 8.

Southern case law, too, reveals a lack of uniformity. Although a few pre-Civil-War decisions interpreted state constitutions in a way that can be read to support a right to carry openly, even in populated public places without good cause, several post-War cases held the opposite. The Texas Supreme Court, for instance, twice upheld that state’s good-cause requirement. *English v. State*, 35 Tex. 473 (1871); *State v. Duke*, 42 Tex. 455 (1874). The court remarked that the law—which prohibited carrying “any pistol” in public without good cause, 1871 Tex. Laws 1322, art. 6512—“is nothing more than a legitimate and highly proper regulation” that “undertakes to regulate the place where, and the circumstances under which, a pistol may be carried; and in doing so, it appears to have respected the right to carry a pistol openly when needed for self-defense or in the public service, and the right to have one at the home or place of business,” *Duke*, 42 Tex. at 459. The court explained that the law thus made “all necessary exceptions,” and noted that it would be “little short of ridiculous” for a citizen to “claim the right to carry” a pistol in “place[s] where ladies and gentlemen are congregated together.” *English*, 35 Tex. at 477–79. Further, the court observed, the good-cause requirement was “not peculiar to our own state,” for nearly “every

one of the states of this Union ha[d] a similar law upon their statute books,” and many had laws that were “more rigorous than the act under consideration.” *Id.* at 479.

When the U.S. Supreme Court considered Texas’s law in 1894, it took a similar view. After noting that the law “forbid[s] the carrying of weapons” absent good cause and “authoriz[es] the arrest, without warrant, of any person violating [it],” the Court determined that a person arrested under the law is not “denied the benefit” of the right to bear arms. *Miller v. Texas*, 153 U.S. 535, 538 (1894). Other courts upheld similar good-cause laws against constitutional attacks. *See, e.g., State v. Workman*, 35 W. Va. 367, 367 (1891) (upholding West Virginia’s good-cause requirement after previously interpreting it, in *State v. Barnett*, 34 W. Va. 74 (1890), to require specific, credible evidence of an actual threat of violence, not an “idle threat”). And even when a law wasn’t directly challenged as unconstitutional, like in Virginia, courts “administered the law, and consequently, by implication at least, affirmed its constitutionality.” *Id.* (referring to Virginia and West Virginia courts).

By contrast, Gould has identified no historical case (southern or otherwise) striking down a good-cause requirement as unconstitutional, let alone a law applying primarily to urban areas.<sup>16</sup> To be sure, a couple of cases, in the course of upholding

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<sup>16</sup> Even *Andrews v. State*, 50 Tenn. 165 (1871), cited in *Wrenn*, does not go so far. There, the court invalidated what “in effect [was] an absolute prohibition” on carrying a weapon “for any and all purposes,” whether “publicly or privately,

concealed-carry prohibitions, expressed the view that the right to bear arms protects the right, under some circumstances, to openly carry a weapon in public. *See Nunn v. State*, 1 Ga. 243 (1846) (striking down the open-carry portion of a statewide prohibition on openly carrying weapons based on the erroneous view that the Second Amendment applied to the states before 1868). But even within the South, open carry was rare: The Louisiana Supreme Court, for example, referred to “the extremely unusual case of the carrying of such weapon in full open view.” *State v. Smith*, 11 La. Ann. 633, 634 (1856). And Massachusetts’s law, of course, does not go nearly as far as the one struck down in *Nunn*, which prohibited *any* form of public carry, and banned most handguns. At any rate, isolated snippets from a few state-court decisions issued decades after the Framing cannot trump the considered judgments of countless courts and legislatures throughout our nation’s history.

#### **4. *Mid-to-late-19th- and early-20th-century American history***

***States continue to restrict public carry both before and after the 14th Amendment’s ratification.*** As America entered the second half of the 19th

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without regard to time or place, or circumstances.” *Id.* at 187. “Under this statute,” the court explained, “if a man should carry such a weapon about his own home, or on his own premises, or should take it from his home to a gunsmith to be repaired, or return with it, ... he would be subjected to the severe penalties of fine and imprisonment prescribed in the statute.” *Id.* In striking down that prohibition, the court did not cast doubt on the constitutionality of a law like the one at issue here. If anything, the court did the opposite: It reaffirmed that the legislature may “regulate the carrying of this weapon publicly.” *Id.* at 187–88.

century, additional jurisdictions began enacting laws broadly restricting public carry, often subject to limited self-defense exceptions. Before the Civil War, New Mexico passed *An Act Prohibiting The Carrying Of Weapons, Concealed Or Otherwise*, making it unlawful for “any person [to] carry about his person, either concealed or otherwise, any deadly weapon,” and requiring repeat offenders to serve a jail term “of not less than three months.” 1859 N.M. Laws 94, § 2.

After the Civil War, several other states enacted similar laws notwithstanding the recent passage of the 14th Amendment. West Virginia and Texas enacted laws that broadly prohibited public carry without good cause. West Virginia’s law made clear that “[i]f any person go armed with a deadly or dangerous weapon, without reasonable cause to fear violence to his person, family, or property, he may be required to give a recognizance.” 1870 W. Va. Laws 702, 703, ch. 153, § 8.<sup>17</sup> Courts construed this self-defense exception narrowly to require specific evidence of a concrete, serious threat. *See, e.g., Barnett*, 34 W. Va. 74. Texas’s law had a similarly circumscribed exception, barring anyone not acting in “lawful defense of the state” (“as a militiaman” or “policeman”) from “carrying on or about his person ... any

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<sup>17</sup> A later version reaffirmed the law’s breadth by clarifying that it didn’t “prevent any person from keeping or carrying about his dwelling house or premises, any such revolver or other pistol, or from carrying the same from the place of purchase to his dwelling house, or from his dwelling house to any place where repairing is done, to have it repaired and back again.” 1891 W. Va. Laws 915, 915–16, ch. 148, § 7. Violators could be fined or jailed. *Id.*

pistol” without “reasonable grounds for fearing an unlawful attack on his person” that was “immediate and pressing.” 1871 Tex. Laws 1322, art. 6512.

And then there are the early-20th-century laws, also deemed “longstanding” under *Heller* and *Rene E.* Massachusetts led the way in 1906, enacting a modernized version of its 1836 law. This version prohibited public carry without a license, which could be obtained only upon a showing of “good reason to fear an injury to his person or property.” 1906 Mass. Sess. Laws 150. In 1909, Alabama made it a crime for anyone “to carry a pistol about his person on premises not his own or under his control,” but allowed a defendant to “give evidence that at the time of carrying the pistol he had good reason to apprehend an attack.” 1909 Ala. Laws 258, no. 215, §§ 2, 4. In 1913, New York banned all public carry without a permit, which required a showing of “proper cause,” and Hawaii barred public carry without “good cause.” 1913 N.Y. Laws 1627; 1913 Haw. Laws 25, act 22, § 1; *see also Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 84–85 (2d Cir. 2012) (describing the history of New York’s regulation of public carry). A decade later, in 1923, the U.S. Revolver Association published a model law, which several states adopted, requiring someone to demonstrate a “good reason to fear an injury to his person or property” before obtaining a concealed-carry permit. *See, e.g.*, 1923 Cal. Laws 701, ch. 339.<sup>18</sup> West Virginia also enacted a public-carry law

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<sup>18</sup> *See also* 1923 Conn. Laws 3707, ch. 252; 1923 N.D. Laws 379, ch. 266; 1923 N.H. Laws 138, ch. 118; 1925 Mich. Laws 473, no. 313; 1925 N.J. Laws 185, ch. 64; 1925 Ind. Laws 495, ch. 207; 1925 Or. Laws 468, ch. 260.

around this time, prohibiting all carry absent good cause. *See* 1925 W. Va. Laws 25. And other states went further, prohibiting all public carry with no exception for good cause.<sup>19</sup>

***Beginning right after the 14th Amendment’s ratification, many legislatures enact laws banning public carry in populated areas.*** Starting with New Mexico in 1869, many legislatures enacted Northampton-style prohibitions on public carry in cities and other populated areas. New Mexico made it “unlawful for any person to carry deadly weapons, either concealed or otherwise, on or about their persons within any of the settlements of this Territory,” while providing a narrow self-defense exception. 1869 N.M. Laws 312, *Deadly Weapons Act of 1869*, § 1. Violators could serve up to 50 days in jail. *Id.* § 3. Wyoming prohibited carrying firearms “concealed or openly” “within the limits of any city, town or village.” 1875 Wyo. Laws 352, ch. 52, § 1. Idaho made it unlawful “to carry, exhibit or flourish any ... pistol, gun or other-deadly weapons, within the limits or confines of any city, town or village or in any public assembly.” 1889 Idaho Laws 23, § 1. Arizona banned “any person within any settlement, town, village or city within this Territory” from “carry[ing] on or about his person, saddle, or in his saddlebags, any pistol.” 1889

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<sup>19</sup> *See* 1890 Okla. Laws 495, art. 47, §§ 2, 5 (making it a crime for anyone “to carry upon or about his person any pistol, revolver,” or “other offensive” weapon, except for carrying “shot-guns or rifles for the purpose of hunting, having them repaired, or for killing animals,” or to use in “military drills, or while travelling or removing from one place to another”); 1903 Okla. Laws 643, ch. 25, art. 45, § 584.

Ariz. Laws 16, ch. 13, § 1. And, at the turn of the century, Texas and Michigan granted cities the power to “prohibit and restrain the carrying of pistols.” 1909 Tex. Laws 105; *see* 1901 Mich. Laws 687, § 8.

By this time, many cities had imposed such public-carry bans for decades.<sup>20</sup> “A visitor arriving in Wichita, Kansas, in 1873,” for example, “would have seen signs declaring, ‘LEAVE YOUR REVOLVERS AT POLICE HEADQUARTERS, AND GET A CHECK.’” Winkler, *Gunfight: The Battle over the Right to Bear Arms in America* 165 (2011). Ditto for Dodge City—the iconic Wild West frontier town. A sign read: “THE CARRYING OF FIREARMS STRICTLY PROHIBITED.” *Id.* Even in Tombstone, Arizona, people “could not lawfully bring their firearms past city limits. In fact, the famed shootout at Tombstone’s O.K. Corral was sparked in part by Wyatt Earp pistol-whipping Tom McLaury for violating Tombstone’s gun control laws.” Blocher, *Firearm Localism*, 123 *Yale L.J.* 82, 84 (2013).

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<sup>20</sup> *See, e.g.*, Washington, D.C., Ordinance ch. 5 (1857); Nebraska City, Neb., Ordinance no. 7 (1872); Nashville, Tenn., Ordinance ch. 108 (1873); Los Angeles, Cal., Ordinance nos. 35–36 (1878); Salina, Kan., Ordinance no. 268 (1879); La Crosse, Wis., Ordinance no. 14, § 15 (1880); Syracuse, N.Y., Ordinances ch. 27 (1885); Dallas, Tex., Ordinance (1887); New Haven, Conn., Ordinances § 192 (1890); Checotah, Okla., Ordinance no. 11 (1890); Rawlins, Wyo., Ordinances art. 7 (1893); Wichita, Kan., Ordinance no. 1641 (1899); San Antonio, Tex., Ordinance ch. 10 (1899); *When and Where May a Man Go Armed*, S.F. Bulletin, Oct. 26, 1866, at 5 (“[San Francisco] ordains that no person can carry deadly weapons.”).

In sum, a deep tradition of American law makes clear that prohibitions on public carry in urban areas (with or without a good-cause exception) have long been understood to be consistent with the Constitution. No historical evidence supports the contrary position that public carry was widely permitted in populous cities.

As applied here, the regime challenged by Gould—requiring some articulable reason before a person may carry a firearm on crowded urban streets—fits squarely within our historical tradition, and is therefore constitutional. Were it otherwise, public-carry laws enacted by the majority of states, the District of Columbia, and cities in several other states would all have been unconstitutional. That includes:

- Alabama (1909)
- Arizona (1889)
- California (1923)
- Connecticut (1833, 1923)
- Delaware (1852)
- Hawaii (1913)
- Idaho (1889)
- Indiana (1925)
- Maine (1821, 1841)
- Maryland (1776)
- Massachusetts (1694, 1836, 1906)
- Michigan (1846, 1901, 1925)
- Minnesota (1851, 1873)
- New Hampshire (1699, 1923)
- New Jersey (1686, 1925)
- New Mexico (1859, 1869)
- New York (1815, 1913)
- North Carolina (1792)
- North Dakota (1923)
- Oklahoma (1890, 1903)

- Oregon (1853, 1925)
- Pennsylvania (1861)
- South Carolina (1870)
- Tennessee (1801)
- Texas (1871, 1909)
- Vermont (1838)
- Virginia (1786, 1847)
- West Virginia (1870, 1891, 1925)
- Wisconsin (1838)
- Wyoming (1875)

This Court should reject Gould’s untenable position, and instead do as it did in *Rene E.*: “rest [its] conclusion on the existence of a longstanding tradition” and uphold Massachusetts’s public-carry regime in its entirety. 583 F.3d at 12. If a historical lineage of nine state laws and a city ordinance was enough to sustain the law in *Rene E.*, then *a fortiori* the law at issue here is constitutional.

## **II. Even setting aside its historical pedigree, Brookline’s public-carry policy is constitutional as applied to Gould.**

Alternatively, this Court could uphold Brookline’s public-carry policy without “reference to its historical provenance,” by finding that any burden imposed on Gould’s Second Amendment right is justified by the town’s substantial interest in preventing crime and violence on its public streets. *Booker*, 644 F.3d at 24 n.15. The Second, Third, and Fourth Circuits adopted similar reasoning in upholding similar laws. The policy here is if anything even more well-tailored than those laws, while allowing for greater access to public carry—as Gould’s own experience illustrates.

**A.** As explained above, Brookline allows Gould “to carry a gun on all of the occasions when he indicated he wanted a firearm (*i.e.* for target shooting and to protect himself while in possession of valuable works of art and camera equipment, which [is], at times, in remote places).” JA 234. It allows him “to use arms in defense of hearth and home.” *Heller*, 554 U.S. at 635. It allows him “to carry outside of the home any time he is engaged in his business.” JA 225. It allows him to carry while “traveling to and from” work. *Id.* It allows him to carry while “hunting and while engaged in outdoor recreational activities such as camping, hiking and cross country skiing.” *Id.* And it allows him to expand upon these uses and obtain a broader license by identifying other reasons for needing a firearm and “support[ing] that claim with some information”—which he has not even attempted to do. JA 227–30.

Nowhere does Gould explain how his Second Amendment rights are burdened by this policy. Instead, he pretends as if he were challenging a different policy—a “wholesale prohibition” on armed self-defense, “akin to [the] total ban” on handguns struck down in *Heller*. Gould Br. 13, 33. He then attacks *that* policy as “categorically unconstitutional.” Gould Br. 33. But the policy he imagines is nothing like the policy he challenges. Just as *Heller* did not recognize a “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose,”

it also didn't "suggest the invalidity of laws" that "do not remotely burden the right of self-defense as much as an absolute ban on handguns." 554 U.S. at 626, 632.<sup>21</sup>

Brookline's public-carry policy is such a law. Even assuming that Gould could show that it burdens his Second Amendment rights, that modest burden would be justified by the town's "undeniably important" interest in promoting public safety, reducing crime, and saving lives. *Booker*, 644 F.3d at 25. This Court has held that a law that imposes "a new categorical limit on the Second Amendment right" should be upheld if "there is a substantial relationship between [the limitation] and the governmental interest in preventing gun violence." *Id.* Although the Court did not say so explicitly, that is the language of intermediate scrutiny. *See Kachalsky*, 701 F.3d at 93 n.17. There is no basis for a stricter standard here, where the law does not create a new categorical prohibition, but instead maintains a modest historical restriction.<sup>22</sup>

**B.** Under the substantial-relationship standard, the restriction is constitutional as applied to Gould (and those like him). The Massachusetts Attorney General's brief discusses at length why the Commonwealth's "proper purpose" requirement is

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<sup>21</sup> It is for this reason that Gould's reliance on *Moore v. Madigan* is misplaced. 702 F.3d 933 (7th Cir. 2012). That case—unlike this case—involved an actual "blanket prohibition on carrying [a] gun in public." *Id.* at 940.

<sup>22</sup> Indeed, "not a single court of appeals" holds that strict scrutiny is the appropriate standard by which to assess the constitutionality of firearms laws. *Kolbe v. Hogan*, 813 F.3d 160, 196 (4th Cir. 2016) (King, J., dissenting). In the Fourth and Sixth Circuits, two divided panels applied strict scrutiny; both were promptly reversed en banc. *See Kolbe v. Hogan*, 849 F.3d 114, 138 (4th Cir. 2017) (en banc); *Tyler v. Hillsdale Cty. Sheriff's Dep't*, 837 F.3d 678, 692 (6th Cir. 2016) (en banc).

substantially related to the promotion of public safety. Mass. AG Br. 29–46. The same goes for Brookline’s implementation of this requirement. As other circuits have recognized, requiring articulable reasons for needing to carry a handgun in public—and issuing a license tied to those reasons—“substantially promotes an important government interest in preventing [urban] gun violence.” *Booker*, 644 F.3d at 26; see *Kachalsky*, 701 F.3d at 98 (“Restricting handgun possession in public to those who have a reason to possess the weapon for a lawful purpose is substantially related to New York’s interests in public safety and crime prevention.”). No circuit concluded otherwise.<sup>23</sup>

Although the precise relationship between guns and crime may be open to debate, empirical researchers at Stanford have authoritatively concluded that “[t]he totality of the evidence based on educated judgments about the best statistical models suggests that right-to-carry laws are associated with substantially higher rates of aggravated assault, rape, robbery and murder.” Parker, *Right-to-carry gun laws linked to increase in violent crime, Stanford research shows*, Stanford News, Nov. 14, 2014, <https://goo.gl/e47Ki7>; see Aneja, Donohue, and Zhang, *The Impact of Right to Carry Laws and the NRC Report: The Latest Lessons for the Empirical Evaluation of Law and Policy*

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<sup>23</sup> In *Wrenn v. District of Columbia*, 864 F.3d 650, 658 (D.C. Cir. 2017), a divided panel found a Second Amendment violation where the plaintiff was precluded from carrying a firearm in public under *any* circumstances. That is far cry from this case, where Gould may carry “in *all* of the circumstances in which he indicated he needed the firearm.” JA 80 (emphasis added).

(Nov. 2014), <http://www.nber.org/papers/w18294.pdf>; *see also* Nat'l Research Council, *Firearms and Violence: A Critical Review* (2004); Donohue, *Guns, Crime, and the Impact of State Right-to-Carry Laws*, 73 *Fordham L. Rev.* 623 (2004); Ayres & Donohue, *Shooting Down the "More Guns, Less Crime" Hypothesis*, 55 *Stan. L. Rev.* 1193 (2003). Policymakers are entitled to reach the same conclusion. *See Kachalsky*, 701 F.3d at 97–101 (deferring to New York's predictive judgment that there is a "connection between promoting public safety and regulating handgun possession in public"); *Wollard v. Gallagher*, 712 F.3d 865, 878–83 (4th Cir. 2013) (same for Maryland); *Drake v. Filko*, 724 F.3d 426, 437–40 (3d Cir. 2013) (same for New Jersey).

That should be especially true for Brookline, a very densely populated area where the need for armed self-defense is low.<sup>24</sup> The town's density—and the link between public carry and public safety—can be illustrated by a recent incident in which a gun accidentally discharged when someone got out of their car, firing a bullet into the living room of a neighboring house. Sweeney, *Stray bullet hits home in Brookline after accidental discharge of gun*, *Boston Globe*, Jan. 24, 2018, <https://goo.gl/LWbwxN>.

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<sup>24</sup> Brookline has more than 8,760 people per square mile. The north part of the town is entirely urban and has a density of nearly 20,000 people per square mile, on par with the densest parts of nearby Cambridge, Somerville, and Chelsea (the densest cities in all of New England) and just below that of central Boston's residential districts (such as Back Bay, South End, Fenway). The overall density of Brookline, including its more suburban areas, is still higher than that of many of the largest cities in the United States.

In implementing the town’s licensing regime within Brookline’s urban environment, the leaders of the Brookline Police Department take pains to ensure that residents enjoy “the rights secured by the Second Amendment[,] while at the same time protect[ing] the public as much as possible given the reach of those rights.” *Id.* They know their community. They know the dangers of gun violence. And in their considered and experienced judgment—a judgment that is shared by the legislatures of eight states, collectively representing the popular will of more than a quarter of the American people—imposing some limits on public carry is necessary to “improve public safety.” JA 230.

This does not mean that public safety alone is enough to justify any firearms law. According to *Heller*, a state may not erect an “absolute prohibition of handguns held and used for self-defense in the home,” no matter how persuasive the rationale. 554 U.S. at 636. But this case is a world away from that case. The Second Amendment may “take[] certain policy choices off the table,” *id.*, but Brookline’s policy isn’t one of them. JA 230. That policy can be upheld as longstanding (as in *Peruta* and *Rene E.*), or it can be upheld under intermediate scrutiny (as in *Kachalsky*, *Wollard*, and *Drake*). But either way, the constitutional right to keep and bear arms has not been infringed.

## **CONCLUSION**

The district court’s judgment should be affirmed.

Respectfully submitted,

/s/ Deepak Gupta

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## **CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 12,917 words, excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word 2010 in 14 point Baskerville font.

June 8, 2018

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## CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2018, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the First Circuit by using the CM/ECF system. All participants are registered CM/ECF users, and will be served by the appellate CM/ECF system:

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27 Ed. I. c. 3.

Justices of Assise and Gaol-delivery.

Oyers and Terminers.

III. Riding or going armed in Affray of the Peace.

IV. The Statute of Lincoln, 9 Edw. II. concerning Sheriffs, &c. confirmed.

V. The Statute Westminster the Second, 13 Edw. I. chapter 39. concerning the Delivery of Writs to the Sheriff, confirmed.

Grandfather to our Lord the King that now is, wherein is contained, that Justices assigned to take Assises, if they be Laymen, shall make Deliverance; and if the one be a Clerk, and the other a Layman, that the Lay Judge, with another of the Country associate to him, shall deliver the Gaols: Wherefore it is enacted, That such [Justices] shall not be made against the Form of the said Statute; and that the Assises, Attaints, and Certifications be taken before the Justices commonly assigned, which should be good Men and lawful, having Knowledge of the Law, and none other, after the Form of another Statute made in the Time of the said [King Edward the First;] and that the Oyers and Terminers shall not be granted but before Justices of the one Bench or the other, or the Justices Errants, and that for great [hurt,] or horrible Trespasses, and of the King's special Grace, after the Form of the Statute thereof ordained in Time of the said Grandfather, and none otherwise.

ITEM, It is enacted, That no Man great nor small, of what Condition soever he be, except the King's Servants in his presence, and his Ministers in executing of the King's Precepts, or of their Office, and such as be in their Company assisting them, and also [upon a Cry made for Arms to keep the Peace, and the same in such places where such Acts happen,] be so hardy to come before the King's Justices, or other of the King's Ministers doing their office, with force and arms, nor bring no force in affray of the peace, nor to go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere, upon pain to forfeit their Armour to the King, and their Bodies to Prison at the King's pleasure. And that the King's Justices in their presence, Sheriffs, and other Ministers (\*) in their Bailiwicks, Lords of Franchises, and their Bailiffs in the same, and Mayors and Bailiffs of Cities and Boroughs, within the same Cities and Boroughs, and Borough-Holders, Constables, and Wardens of the Peace within their Wards, shall have Power to execute this Act. And that the Justices assigned, at their coming down into the Country, shall have Power to enquire how such Officers and Lords have exercised their Offices in this Case, and to punish them whom they find that have not done that which pertained to their Office.

ITEM, Because the Peace cannot be well kept without good Ministers, as Sheriffs, Bailiffs, and Hundreders, which ought to do Execution as well of the King's Privities as of other Things touching our Lord the King and his People; It is ordained and established, That the Statute made in the time of King Edward, Father to the King that now is, at Lincoln, containing that Sheriffs, Hundreders, and Bailiffs shall be of such People as have Lands in the same Shires or Bailiwicks, shall be observed in all Points after the Form thereof; and that Sheriffs and Bailiffs of Fee shall cause their Counties and Bailiwicks to be kept by such as have Lands therein.

ITEM, Where it was ordained by the Statute of Westminster the Second, that they which will deliver their Writs to the Sheriff, shall deliver them in the full County, or in the Rere County, and that the Sheriff or under Sheriff shall thereupon make a Bill; It is accorded and established, that at what Time or Place in the County a Man doth deliver any Writ to the Sheriff or to the Under-Sheriff, that they shall receive the same Writs, and make a Bill, after the form contained in the same Statute, without taking any Thing therefore; and if they refuse to make a Bill, others that be present shall set to their Seals; and if the Sheriff or Under-Sheriff do not return the said Writs, they shall be punished after the form contained in the same Statute; and also the Justices of Assises shall have power to enquire thereof at every Man's Complaint, and to award Damages, as having respect to the Delay, and to the loss and peril that might happen

\* Commissions  
upon a Proclamation of Deeds of Arms in time of Peace, and that in Places where such Deeds are to be done.—See Lib. Rub. Secus. Westm. fo 122 b. a Writ reciting a Grant of K. Richard I. "qd' Torcañita sint in Angl' in v. placias: In p' Sarf & Wiltoñ: In p' Warrewich & Kenelingworth: In p' Stanford & Warneford: In p' Bechele & Mixebñ: In p' Elle & Tykelhit. Ita qd' pax fre nre nō infringet, nō potestas iurisdictionis minorabit' Nec de f. reus nris dāpnū inferet'."

nre Seign' le Roi qore est, en quele est contenuz q̄ les Justices as assises p̄ndre assignez sils soient lais, facent les delivances; et si lun soit clerc, & lautre lais, q̄ le dit lais, associe a lui un autre du pais, facent la delivance des gaols; p̄ qoi acorde est & establi, q̄ tiels Justiceries ne soient mes ḡntees cōuntre la forme du dit estatut, & q̄ les assises, atteintes, & d̄ifications soient p̄ses devant les Justices cōmunement assignez, q̄ soient bones gentz & loialx & conissantz de la lei, & nemie autres; solonc la forme dun autre statut fait en temps meisme le ael; et q̄ les oiers & p̄miners ne soient grantees forsq̄ . . . devant les Justices de lun Bank & de lautre, ou les Justices errantz; & ce p̄ led & orrible trespas, & de lespeciale ḡce le Roi, solonc forme de statut de ce ordene en temps meisme le ael; & nemie autrement.

Ensement acorde est & establi, q̄ nul, ḡnt ne petit de quele condicion qil soit, save les s̄jantz le Roi en la p̄sence le Roi, & les Ministres le Roi, en fesantz execucion des mandementz le Roi, ou de leur office, & ceux qi sont en leur compagnies, eidantz as ditz ministres, & auxint au cri de fait darmes de pees, & ce en lieux ou tielx faitz se ferront, soit si hardi de venir devant les Justices le Roi, ou autres Ministres le Roi enfesant leur office, a force & armes; ne force mesner en affrai de la pees, ne de chivaucher ne daler arme, ne de nuit ne de jour, en faires, marches, nen p̄sence des Justices, ne dautres Ministres, ne nule part aillours, sur peine de p̄dre leur armures au Roi & de leur corps a la prisone a la volunte le Roi. Et q̄ Justices le Roi en leur p̄sences, viscountes & autres Ministres le Roi en leur baillies, seign's des franchises & leur baillifs en yeceles, & Meire & Baillifs des Citees & Burghs deinz meismes les Citees & Burghs, Burghaldres, conestables, & gardeins de la pees deinz leur gardes, eient poair affaire execucion de cest accord. Et q̄ les Justices assignez, a leur venu en pais, eient poair denquere coment tielx Ministres & seign's ont use leur office en ce, & de punir ceux qils trovont, qi nount mie fait ce q̄ a leur office appent.

Et p̄ce q̄ la pees ne poet mie estre bien garde sauntz bons ministres, come Viscountes, Baillifs, & Hundreders qi deivent faire execucion, auxibien des p̄vetez le Roi come dautres choses tochantes le Roi & son poeple, acorde est & establi q̄ lestatut fait en temps le Roi Edward, pierre le Roi qore est, a Nicole, contenant q̄ Viscountes, Hundreders & Baillifs soient des gentz eantz p̄res en meismes les Countez, ou baillies, soit garde en touz pointz solonc la forme dycel, & auxint q̄ les Viscountes & Baillifs de fee, facent garder meismes leur Countez & Baillies p̄ gentz eantz p̄res en yeceles.

Ensement la ou ordene est, p̄ statut de Westmons p̄ le secund, q̄ ceux q̄ li d̄ver volent leur briefs as viscountes, les li d̄ent en plein Counte, ou en rerecounte, & q̄ visconte ou southvisconte facent sur ce bille; acorde est & establi q̄ a quele heure ou a queu lieu deinz le Counte home livre a viscountes, ou a southviscontes, briefs, qils les rescivent & facent bille en la forme contenue en le dit estatut, & ce sanz rien p̄ndre; et sils refusent de faire bille, mettent autres leur oeilx qi s̄ront p̄sentz; et si le Viscounte ou le Southviscounte ne retourne mie les briefs, soient puniz solonc la forme contenue en le dit estatut; & jadumeins eient les Justices as assises p̄ndre assignez poair denquere de ce a chescuny plainte & de agarder damages, cant regard au delai, & a les ptes & pils qi p̄ront avenir.

A.D.1351-2.

25<sup>o</sup> EDW. III. Stat. 5. c.1, 2.

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Statutu apud Westm̄ in P̄liamento in festo S̄ci Hillarii anno regni Regis E. t̄ci vicesimo q̄nto tento, f̄cm.

In Margine Rotuli.

A STATUTE made at WESTMINSTER; In the Parliament holden in the Feast of Saint Hilary; In the TWENTY-FIFTH Year of the Reign of K. EDWARD the THIRD.

Ex magno Rot. Stat. in Turr. Lond. m. 16.

STATUTE THE FIFTH.

AU plement somonz a Westm̄, en la feste de Seint Hiller lan du regne n̄re Seign' le Roi Edward Dengleŕre vintisme quint, & de France douzisme, n̄re f̄' le Roi del assent des Prelatz, Ducs, Countes, Barons, & de tout la comunalte de son Roialme Dengleŕre, au dit plement somons, al hon' de Dieu & de Sainte Eglise, & en amendement de son dit Roialme, ad ordeine & establi les choses soutzscriptes.

En p'mes, p'ce q̄ tresg'untz & tresout'geouses damages & grevances sont faites au poeple p les pno's & p'veo's des vitailles p les hosteux nre f̄' le Roi, ma dame la Roigne, & de lo' enfantz, Si est acorde & assentuz en le dit plement, q̄ les pno's & p'veio's des bledz p les ditz hosteux les pignent p mesure rase, selonc ceo q̄ hōme use pmy le Roialme. Et q̄ touz bledz, feyns, litere & bestaill, & touz auŕs vitailles & choses quecūques, queles sont aprendre p meismes les hosteux, soient p'sez a la v̄roie value, p les Conestables & auŕs bons gentz des villes ou tieles prises se feront, sanz ce q̄ p manaces, ou duresces soient les preisours chacez a metre autre pris q̄ lour ŕement ne voet, & come curt cōement en les p̄scheins marchees: et q̄ entre les Purveyours et ceux des queux les biens ŕont prises, en la p̄sence des Conestables & preisours, soient tailles tantost faites, sanz ceo q̄ les gentz des queux les biens ŕont prises soient ailours traitz ou v̄aillez; & meismes les tailles ensealez des seals les pnours des choses issint prises, p les queles tailles gre soit fait as ceux des queux les choses ŕont issint prises: et si nul pnour ou P'veour p les ditz hosteux face p autre mañe, soit maintenant arestu p la villee ou la prise ŕa faite, et mesne a la p̄scheine gaole, et si de ceo soit atteint, soit la fait de lui come de laron, si la quantite des biens le demand; solonc ceo qen un estatut fait en temps meisme n̄re f̄' le Roi lan de son regne quint, & en un autre estatut fait en temps laiell n̄re Seign' le Roi s' tieles prises, est contenuz plus au plein: et q̄ desore soit contenuz es cōmissions des tieux P'veours et pnours, lentent et la peine contenuz en cest estatut: et q̄ nule cōmission soit faite forsq̄, soulement souz les ḡnt ou prive sealz le Roi; ne q̄ nul hōme soit tenuz de obcier a autre cōmission nen autre mañe q̄ nest dit en avant; et q̄ meisme lestatut tiegne lieu en toutz pointz deŕs chescun pnour & p'veour, de chescune mañe des vitailles en chescune prie du Roialme de quele condition q̄ soit.

Auxint p'ceo q̄ diŕses opinions out est eintz ces heures que cas, q̄nt il avient doit estre dit treson, & en quel cas noun, le Roi a la requeste des Seign's & de la Cōe, ad fait declarissement q̄ ensuit, Cest assavoir;

AT the Parliament summoned at Westminster in the Feast of St. Hilary, the Year of the Reign of our Lord King Edward the Third [after the Conquest.] of England the Five and twentieth, and of France the Twelfth; our said Lord the King, by the assent of the Prelates, Earls, Barons, and of all the Commonalty of his Realm of England summoned to the Parliament, to the honour of God and Holy Church, and in Amendment of his said Realm. hath ordained and established the Things underwritten.

FIRST, Forasmuch as great and outrageous damage and grievance hath been done to the People by the Takers and Purveyors of Victuals, for the Houses of our Sovereign Lord the King, the Queen, and their Children; It is accorded and assented in the said Parliament, That the Takers (') of Corn for the said Houses shall take the same by Measure striked according as it is used through the Land. And that such Corn, Hay, Litter, Bestall and all other Victuals and Things, which shall be taken for the said Houses, shall be [taken '] by the very Value, by the Constable and other good People of the Towns where such Taking shall be made, without that that the Praisers by Meace or Duresse shall be driven to ser any other Price than their Oath will, and as commonly runneth in the next Markets. And that betwixt the Purveyors and them whose Goods shall be taken in the presence of the Constables and Praisers, Tallies be made incontinently, without that that the People whose Goods shall be taken, shall be drawn or travelled elsewhere, and the same Tallies sealed with the Seals of the Takers of the Things so taken, by which Tallies Gree shall be made to them whose Goods shall be so taken; and if any Purveyor or Taker for the said Houses, do in any other Manner, he shall be [maintenant '] arrested by the Town where the Taking shall be made, and brought to the next Gaol; and if he be thereof attainted, it shall be done of him as of a Thief, if the Quantity of the Goods the same require; according as in a Statute made in the Time of our Sovereign Lord the King that now is, the Fifth Year of his Reign, and in another Statute made in the Time of the King's Grandfather upon such Takings, is contained more at the full: and that from henceforth in the Commissions of such Takers and Purveyors, the Intent and Pain limited in this Statute shall be contained: and that no Commission be made, but only under the King's great Seal or Privy Seal; nor that no Man be bound to obey [any such Commissions, other or in what Manner '] than is aforesaid; and that the same Statute take place in all Points against every Taker and Purveyor of every Manner of Victual in every part of the Realm, of what Condition soever he be.

ITEM, Whereas divers Opinions have been before this Time [in what Case Treason shall be said, and in what not; '] the King, at the Request of the Lords and of the Commons, hath made a Declaration in the Manner as hereafter followeth, that is to say; When a Man

I. Corn shall be taken by Purveyors by Measure striked

Things taken by Purveyors shall be appraised at the very Value.

Tallies of the Goods taken.

Punishment for undue Purveyance as under Stat. § E. III. c. 2.

Purveyors' Commissions shall be under the Great or Privy Seal.

II. Declaration what Offences shall be adjudged Treason.

' and Purveyours ' praysed ' immediately ' any other Commissions, or in other manner MS. Tr. 2. ' what case should be adjudged Treason, and what not;



Estre ceo, come contenu soit en la g<sup>nt</sup> Chre des franchises Dengle<sup>rre</sup> q<sup>i</sup> nul soit pris ne emprisonne, ne ouste de son frank tein ne de ses franchises ne de ses franchises custumes, sil ne soit p<sup>r</sup> lei de la p<sup>r</sup>re; Acorde est, assentu & establi, q<sup>i</sup> nul desore soit pris p<sup>r</sup> petition ou suggestion faite a n<sup>r</sup>e Seign<sup>r</sup> le Roi ou a son conseil, sil ne soit p<sup>r</sup> enditement ou p<sup>r</sup>sente-ment des bones & loialx du visnee ou tiele fait se face, & en due man<sup>r</sup>e, ou p<sup>r</sup>ces fait sur brief original a la c<sup>o</sup>de lei; ne q<sup>i</sup> nul soit ouste de ses franchises ne de son frak<sup>r</sup>tein sil ne soit mesne duement en respons, & forjuge dycelles p<sup>r</sup> voie de lei; et si rien soit fait al encomf<sup>r</sup> soit redresse & tenue p<sup>r</sup> nul.

Ensement acorde est & establi, q<sup>i</sup> executours des executours eient accion des dettes, acomptes, & des biens emportez du primer testatour, & execucion des estatuz marchantz & reconissances faites en court de record au p<sup>r</sup>mer Testatour, en meisme la man<sup>r</sup>e come le p<sup>r</sup>mer testatour avoit sil fust en vie, auxi bien dacions de temps passe, come de temps avenir, en toutz cases ou juggementz ne sont pas renduz unqore entre tieux executours des executours; mes q<sup>i</sup> les juggementz a cont<sup>r</sup>ire en temps passe, estoient en leur force; et q<sup>i</sup> meismes les executours des executours respaignent as aut<sup>s</sup> de tant come ils averont reco<sup>v</sup>i des biens du p<sup>r</sup>mer testatour, sicome les p<sup>r</sup>mers executours ferroient sils feussent en pleine vie.

Auxint acorde est & assentu, q<sup>i</sup> nul p<sup>r</sup>neur de buche ou de maerisme al oeps n<sup>r</sup>e Seign<sup>r</sup> le Roi, p<sup>r</sup> o<sup>v</sup>eyns ne p<sup>r</sup> aut<sup>s</sup> choses faire, coupe, ne abate les arbres de nully cressantz entour ou dedeinz sa mansion; et si nul face au cont<sup>r</sup>ire face gre a la p<sup>r</sup>tie du damage au treble, & eit la prisone dun an, & soit forjuge de son office.

Estre ceo est acorde & establi, q<sup>i</sup> nul Forester ne Gardin des forestes, ou des chaces, ne nul autre Ministre, ne face ne coille put<sup>r</sup>e ne nul autre coilect des vitailles ne de nul autre chose, p<sup>r</sup> colour de son office contre nully volonte, deinz leur baillie ne dehors, forspris ce qest due dauncien droit.

Auxint acorde est & assentu, q<sup>i</sup> nul h<sup>o</sup>me soit arte de trover gentz darmes, hobellers narchers aut<sup>s</sup> q<sup>i</sup> ceux q<sup>i</sup> tiegnent p<sup>r</sup> tiele vice, sil ne soit de c<sup>o</sup>de assent & g<sup>nt</sup> fait en plement. Ensement p<sup>r</sup>ce q<sup>i</sup> tresgrant damage & desceit est fait au poeple, p<sup>r</sup> tant q<sup>i</sup> plus<sup>s</sup> marchantz usent dachater & poiser leines & aut<sup>s</sup> marchandises p<sup>r</sup> une pois qest appelle Aunsel, acorde est & establi, q<sup>i</sup> celle pois appelle Aunsel entre achatour et vendour soit del tout oste, & q<sup>i</sup> chescun vend & achate p<sup>r</sup> balances, issint q<sup>i</sup> les balances soient owels & les leines & aut<sup>s</sup> marchandises owelment poisez p<sup>r</sup> droit pois; et q<sup>i</sup> le sak de leine ne poise q<sup>i</sup> vint & sys peres, & chescun pere poise quatorze livres, & q<sup>i</sup> lestat<sup>r</sup>e de la balance ne encline ne a lune p<sup>r</sup>tie, ne al autre, & q<sup>i</sup> le pois soit acordant al estandard del Eschequer: et si nul achatour face al encontre, soit grevousment puny si bien a la seute de p<sup>r</sup>tie come a la seute n<sup>r</sup>e Seign<sup>r</sup> le Roi.

Auxint come contenue soit en la g<sup>nde</sup> Ch<sup>r</sup>e q<sup>i</sup> une mesure soit usee p<sup>r</sup>my tout Engle<sup>rre</sup>, la quele chartre nad mie este tenu bien en ceo point avant ces heures; si est acorde & assentu, q<sup>i</sup> touz les mesures cest asavoir bussel, di bussel, & peck, galon, potel & quart, p<sup>r</sup> toute Engle<sup>rre</sup> deinz franchise & dehors soient accordantz al estandard n<sup>r</sup>e Seign<sup>r</sup> le Roi; & contiegne le quart oet bussel p<sup>r</sup> lestandard & nient plus; & soit chescune mesure de blee rase saunz comble, sauvez les rentes & fermes des Seign<sup>r</sup>s, queles soient mesurez p<sup>r</sup> tiele mesure come eles soleient avant ces heures:

de mensur  
& pond.

ITEM, Whereas it is contained in the Great Charter of the Franchises of England, that none shall be imprisoned nor put out of his Freehold, nor of his Franchises nor free Custom, unless it be by the Law of the Land; It is accorded assented, and stablished, That from henceforth none shall be taken by Petition or Suggestion made to our Lord the King, or to his Council, unless it be by Indictment or Presentment of good and lawful People of the same neighbourhood where such Deeds be done, in due Manner, or by Process made by Writ original at the Common Law; nor that none be out of his Franchises, nor of his Freeholds, unless he be duly brought into answer, and forejudged of the same by the Course of the Law; and if any thing be done against the same, it shall be redressed and holden for none.

IV.  
None shall be taken upon Suggestion without lawful Presentment;

nor disfranchised, but by Course of Law.

ITEM, It is accorded and stablished, That Executors of Executors shall have Actions of Debts, Accompts, and of Goods carried away of the first Testators, and Execution of Statutes Merchants and Recognizances made in Court of Record to the first Testator, in the same Manner as the first Testator should have had if he were in Life, as well of Actions of the Time past, as of the Time to come, in all Cases where Judgement is not yet given betwixt such Executors ('); but that the Judgements given to the contrary to this Article in Times past shall stand in their Force; and that the same Executors of Executors shall answer to other of as much as they have recovered of the Goods of the first Testators, as the first Executors should do if they were in full Life.

V.  
Executors of Executors shall have the same Rights and Duties as the first Executors.

ITEM, It is accorded and stablished, That no Taker of Wood nor of Timber to the King's Use for work, nor for to make other thing, shall cut or cast down the Trees of any Man growing about or within his House; and if any do to the contrary, he shall make Grece to the Party of his Treble Damage, and to have one year's Prison and to be forejudged of his office.

VI.  
Purveyors shall not take Trees about the Mansion.

MOREOVER It is accorded and stablished, That no Forester, nor Keeper of Forest or Chase, nor any other Minister, shall make or gather Sustenance, nor other Gathering of Vi<sup>s</sup>uals, nor other Thing, by colour of their Office, against any Man's Will, within their Bailliwick nor without, but that which is due of old Right.

VII.  
Keepers of Forests shall not exact Pature, &c. by colour of Office.

ITEM, It is accorded and assented, That no Man shall be constrained to find Men of Arms, Hoblers, nor Archers, other than those which hold by such Services, if it be not by common Assent and Grant made in Parliament.

VIII.  
No finding of Men of Arms, but by Tenure, or Grant in Parliament.

ITEM, Whereas great Damage and Deceit is done to the People, for that divers Merchants use to buy and weigh Wools and other Merchandises, by a Weight which is called Auncel; It is accorded and established, That this Weight called Auncel betwixt Buyers and Sellers, shall be wholly put out; and that every Person do sell and buy by the Balance, so that the Balance be even, and the Wools and other Merchandizes evenly weighed by right Weight; so that the Sack of Wool weigh no more but xxvi Stones, and every Stone to weigh xiv l. and that the Beam of the Balance do not bow more to the one part than to the other; and that the Weight be according to the Standard of the Exchequer: And if any Buyer do the contrary, he shall be grievously punished, as well at the Suit of the Party, as at the Suit of our Lord the King.

IX.  
Auncel Weight abolished.  
Goods shall be weighed by Balance.

ITEM, Whereas it is contained in the Great Charter, that one Measure shall be throughout England, which Charter hath not been well kept and holden in this point in Times past; It is accorded and assented, That all the Measures, that is to say, Bushels, Half-bushels, Peck, Gallon, Pottle, and Quart, throughout England, within Franchises and without, shall be according to the King's Standard; and the Quarter shall contain Eight Bushels by the Standard, and no more; and every Measure of Corn shall be stricken without Heap, saving the Rents and Fermes of Lords, which shall be measured by such Measures as they were wont in Times past.

X.  
Magna Carta, chapter 25. respecting Measures created and enforced.

<sup>1</sup> of Executors

And the Purveyors of the King, of the Queen, and all other, shall make their Purveyances by the same Measure striked in the same manner; and at all Times that shall be needful, [and] our Lord the King shall assign certain Justices in every County to inquire, hear, and determine upon the Points aforesaid, and upon the same to do Punishment according to the Trespass, as well at the Party's Suit as at the King's; so always, that all Manner of Franchises be saved to the Lords in all Points without Blemish to be made in any Manner.

Justices shall inquire of and punish the Offenders.

Saving of Franchises.

XI. Aid to make the King's Son Knight, or to marry his Daughter.

ITEM, It is assented, That reasonable Aid to make the King's eldest Son Knight, and to marry his eldest Daughter, shall be demanded and levied after the Form of the Statute thereof made, and not in other Manner, that is to say, of every (1) Fee holden of the King without mean, Twenty Shillings and no more, and of every twenty pound of Land holden of the King without mean in Socage twenty Shillings and no more.

XII. None shall take Profit by Exchange of Gold or Silver.

ITEM, It is accorded, That it shall be lawful for every Man to exchange Gold for Silver, [or Silver for Gold, or for Gold and Silver,] so that no Man hold [the same as exchanged,] nor take no Profit for making such Exchange, upon Pain of Forfeiture of the Money so exchanged; except the King's Exchangers, which take Profit of such Exchange, according to the Ordinance afore made.

XIII. The current Coin shall not be impaired.

ITEM, It is accorded, That the Money of Gold and Silver which now runneth, shall not be impaired in Weight nor in Allay; but as soon as a good way may be found, the same be put in the antient State, as in the Sterling.

XIV. Process against Persons indicted of Felony.

ITEM, It is accorded, That after any Man be indicted of Felony before the Justices in their Sessions to hear and determine, it shall be commanded to the Sheriff to attach his Body by Writ or by Precept, which is called a Capias; and if the Sheriff return in the same Writ or Precept, that the Body is not found, another Writ or Precept of Capias shall be incontinently made, returnable at three weeks after; and in the same Writ or Precept it shall be comprised, that the Sheriff shall cause to be seized his Chattels, and safely to keep them till the Day of the Writ or Precept returned; and if the Sheriff return, that the Body is not found, and the Indictment cometh not, the Exigent shall be awarded, and the Chattels shall be forfeit, as the Law of the Crown ordaineth; but if he come and yield himself, or be taken by the Sheriff, or by other Minister, before the Return of the second Capias, then the Goods and Chattels shall be saved.

XV. The Penalty of Purveyors taking more Sheep before shearing Time than are wanted.

ITEM, Forasmuch as the Takers and Buyers of the King's Prises, do take Sheep from the People betwixt Easter and the Feast of Saint John Baptist, with their Wools, and prise the same at a small Price, and after send them to their own Houses, and do them to be shorn to their own Profit, in deceit of the King, and great Oppression of the People; It is accorded, that no such Taker, Purveyor, nor Buyer, shall take any Sheep before the Time of shearing, but as much as may reasonably suffice till the Time of shearing; and after that Time they shall take as many Sheep shorn, and not other, that may reasonably suffice them for the Time to come: And if any Taker, Purveyor, or Buyer of the Realm, do against the same, and be thereof attainted at the Suit of the King, or of the Party, it shall be done of him as of a Thief or a Robber; and the pain shall be contained in every Commission of such Purveyors.

XVI. Exception of Nontenure of Parcel.

ITEM, It is accorded, That by the Exception of Nontenure of Parcel no Writ shall be abated, but for Quantity of the Nontenure which is alleged.

XVII. Process of Exigent in Debt, Detinue, and Replevin.

ITEM, It is accorded, That such Process shall be made in a Writ of Debt, and Detinue of Chattels, and taking of Beasts, by Writ of Capias, and by Process of Exigent [by] the Sheriff's Return, as is used in a Writ of Accompt.

<sup>1</sup> Omit this Word.

<sup>2</sup> or for Gold, or Silver for Silver or for Gold.

<sup>3</sup> a common Exchange

<sup>4</sup> Knight's

upon

et facent les p'veours le Roi, ma dame la Roigne, & toutz autres, leurs p'veances p meismes les mesures rases, & en meisme la maniere; & a toutes les foitz q mestier sera, n're Seign' le Roi assignera deines Justices en chescune Countee, denqueer & doier & p'miner s' les pointz suisditz, & de faire s' ce due punissement, solonc chescun p'pas, si bien a la seute de p'tie, come a la seute le Roi; Issint totes foitz q toutes maneres des franchises soient sauvez as Seign's en touz pointz saunz nul embleissement ent faire en qcumq manere.

Estre ceo acorde est & assentu q renable cid, p' faire leisme fitz le Roi Chivaler, & sa eisnesce fill marier, soit demande & leve solonc la forme del estatut ent fait, & nemie en autre manere, cest assavoir de chescun fee (1) tenue du Roi saunz meen, vint souldz & nient plus; & de chescun vint livre de p're tenue du Roi saunz meen en sokage vint souldz & nient plus.

Ensement acorde est & establi, q bien lise a chescun home de chaunger or p' argent ou p' or, ou argent p' argent ou p' or, issint q nul home tiegne cde eschange, ne rien p'igne de p'it p' tiel eschange faire, s' peine de forfait'e de la monie issint changee, forprises les Changeours le Roi, les queux p'ignent p'it p' tiel eschange solonc lordenance avant faite.

Auxint acorde est & establi, q la monie dor & dargent qore coert, ne soit mie empire, en pois nen alai; mes au plus tost q home puisse trouver bone voie quele soit mys en laancien estat, come en esterling.

Et auxint est acorde & assentu, q ap's ceo q aucun home soit endite de felonie devant Justices en leur sessions doier & p'miner, soit comande au viscont d'attach son corps, p' brief ou p'cept qest appelle Capias, & le viscont retourne en le dit brief ou p'cept q le corps soit mie trovee, maintenant soit autre brief ou p'cept de Capias fait, retournable as trois symeignes ap's; & en meisme le brief ou p'cept soit compris q le viscont face seisir les chateux & les sauvement garder tant, a jour de brief ou p'cept retournable; et si le viscont respaigne q le corps nest pas trovee, ne lendite vient point, soit lexigend agarde & soient les chateux forfaitz, sicome la lei de la corone demand; Mes sil viegne & se rend ou soit pris p viscount ou p autre Ministre devant le retourri del s'ide Capias, adonq's soient les biens & les chateux sauvez.

Ensement p'ce q les achatours & pnours des prises le Roi p'ent berbitz du poeple, pentre la Pasch et la fest de Seint Johan od les leines, & les fount preiser a [mene] pris, & puis les mandent a leurs mesons demesne & les fount tounder a leur p'it demesne, en deceit du Roi & g'nt opp'ssion du poeple, Si est acorde & assentuz, q nul des tieux Purveyours, pnours & achatours ne p'igne nules berbitz devant la seison du toundeson, fors q tantz q p'ront suffire resonablement tantq au temps du toundison, & ap's cel temps p'igne il a tantz de berbitz tounduz & nemie auts, come p'ront suffire resonablement p' le temps avenir; et si nul P'veour, pnour ou achatour du Roialme, face al encontre, & de ceo soit atteint a la seute le Roi ou de p'tie, soit fait de lui come de laron ou de robbour, & soit la peine contenue en chescune comission des tieux p'veours.

Auxint acorde est & assentue, q p' exception de nouten'e de pcell null brief soit abatu fors q p' la quantite de la nouten'e qest allegge. Ensement acorde est & assentue, q auiele pces soit fait en brief de dette, deteneu des chateux, & en prises des avers p' brief de Capias, & p' pces dexigend, p' retourri de viscount, sicome est usee en brief dacompt.

<sup>1</sup> de Chivaler Rot. Parl. 25 E. III. P. II. nu. xix. (29.)

<sup>2</sup> petit Printed Capias—mesne Rot. Parl. xxxj. (41.)

Estre ceo acorde est & assentue, q̄ nient contre-estant adjournement faite en Eire p̄ brief de libtate p̄banda p̄chacee en favour des neifs, p̄ delaiier les Seign's de leurs accions deŷs tieux neifs, soient les Seign's receux dalegger excepciens de villenage contre leurs vileins en toutz briefs le quel q̄ les ditz briefs de libtate p̄banda soient p̄chacez p̄ deceit ou en autre manere, et q̄ les Seign's pussent seisir les corps de leurs vileins, auxi bien come ils p̄oient devant q̄ tieux briefs de libtate p̄banda furent ordenez & p̄chacez.

Auxint come nre Seign' le Roi eit avant ces heures fait p̄tecciens as diŷses gentz q̄ lui estoient tenuz en ascun manere des dettes, q̄ls ne vront mie empledez des dettes queles ils doivent as aut's, tanq̄ ils eussent fait gre a nre Seign' le Roi de ceo q̄ lui estoit due p̄ eux p̄ reson de sa p̄rogative, & issint durantes tieles p̄tecciens nul hōme ad este osece demplerer tieux dett's; acorde est & assentue, q̄ nient contreestant tieles p̄tecciens les p̄tes quont accions a lours detours, soient respouduz en la Court le Roi p̄ lours detours, et si jugement soit sur ceo rendu p̄ le pleintif ou demandant, soit lexecucion de cel jugement mys en suspens tanq̄ gre soit fait au Roi de sa dette; et si les Creansours voillent emp̄ndre p̄ la dette le Roi, soient ils a ceo receuz, & outre eient execucion deŷs lours detours de dette a eux due, & auxint recoivent deŷs eux tant come ils paieront p̄ eux au Roi.

Ensement acorde est & assentue, q̄ les Moneours, & aut's gardeins & Ministres de la monie, reuevent plat dor & dargent p̄ pois, & en meisme la manere deliuent les monies q̄nt eles vront faitz p̄ pois, & nemie p̄ nombre, saunz nully targer. Estre ce, come avant ces heures les Bouillers nre Seign' le Roi & leurs deputees soleient p̄ndr̄, & p̄nent de jour en autre, moult plus des vyens, p̄ colour de leur office al oeps nre Seign' le Roi q̄il ne boisoigneroit, des queux les plus fiebles ils deliuent al oeps nre f' le Roi, & les meillours en ḡnt nombre ils resiegnent deŷs eux a vendre & a faire ent leur p̄fit, & alafloit ils relessent as marchantz ceo q̄ls out pris de eaux, p̄ fines & donnes q̄ls p̄ignent de meismes les marchantz p̄ extortion, en ḡnt damage & empouissement des ditz marchantz; si est acorde & establi q̄ le Seneschal del Hostiel le Roi, & le Tresorer de la Garderobe, mandent as touz les portz Dengleterre la ou vyens sont a p̄ndr̄ al oeps le Roi le c̄tein nombre q̄ le Botiller p̄ndra en chescun port, si q̄ rien soit pris outre cel nombre; et q̄ Meir & Baillifs des ditz portz difient les ditz Seneschal & Tresorer le nombre des toneux issint prises p̄ le Botiller ou ses lieutenantz, souz les seals des ditz Meir & Baillifs, & p̄ endenture faite entre eaux & les p̄nours des ditz vyens; et en cas q̄il soit trove q̄ le Botiller ou ses lieu tenantz p̄ignent plus ou p̄ignent lower de nully ou delaiie nully p̄ colour de son office, come p̄ arest, face gre de double a la p̄tie & soit ouste de son office, & eit la prison & soit reint a la volunte le Roi; et le Roi assignera ses Justices q̄nt lui plerra denquere sur cestes choses; & respoigne le Botiller sibien p̄ ses deputees come p̄ lui meismes, la ou ils ne sont mie sufficeantz.

Auxint p̄ ce q̄ aucuns p̄chacent a la Court de Rome p̄visions, davoit Abbeies & Pories en Engleterre, en destruction du Roialme & de seinte religion, acorde est & assentue q̄ chescun q̄ p̄chace tieles p̄visions dabbeie ou de priorie, q̄ lui & ses executours & p̄curatours q̄ suent & fount execucion de tieles p̄visions, soient hors de la p̄teccion nre Seign' le Roi; & q̄ hōme puisse faire

ITEM, It is accorded and assented, that notwithstanding adjournment made in Eyre, by Writ of Libtate probanda, purchased in favour of Villaines to delay the Lords of their Actions of such Villaines, the same Lords shall be received to alledge the Exception of Villainage against their Villaines in all Writs, whether that the said Writs of Libtate probanda were purchased by deceit or in other manner; and that the Lords may seise the Bodies of their Villaines, as well as they might before that the Writs of Libtate probanda were ordained or purchased.

XVIII. Villainage may be pleaded, and a Villaine seized, pending a Writ of Libtate probanda.

ITEM, Forasmuch as our Lord the King hath made before this Time Protections to divers People, which were bounden to him in some manner of Debt, that they should not be impleaded of the Debts which they owed to other, till they had made Gree to our Lord the King of that which to him was due by them, by reason of his Prerogative; and so during such Protections no Man [hath used, nor] durst implead such Debtors; It is accorded and assented, That notwithstanding such Protections, the Parties which have Actions against their Debtors, shall be answered in the King's Court by their Debtors; and if Judgement be thereupon given for the Plaintiff or Demandant, the Execution of the same Judgement shall be put in Suspence till Gree be made to the King of his Debt; and if the Creditors will undertake for the King's Debt, they shall be thereunto received, and shall have Execution against the Debtors of the Debt due [and adjudged] to them, and also shall recover against them as much as they shall pay to the King for them.

XIX. The King's Debtors unable notwithstanding Protections.

Stay of Execution, until Payment of King's Debt; or the Creditors undertake for it.

ITEM, It is accorded and assented, That the Moneyors, and other Wardens and Ministers of the Money, shall receive Plate of Gold and Silver by the Weight; and in the same Manner shall deliver the Money when it shall be made, by Weight, and not by Number, without any tarrying.

XX. Plate shall be received at the Mint, and Coin delivered, by Weight.

ITEM, Whereas before this Time the King's Butlers and their Deputies were wont to take, and dally do take much more Wine, by Colour of their Office, to the King's Use, than they shall need, whereof the worst they deliver to the King's Use, and the best in great Number they retain to themselves, to sell and make thereof their Profit; and sometime they release to Merchants that which they have taken of them, for Fines and Gifts, which they take of the same Merchants by Extortion, to the great Damage and Impoverishment of the said Merchants; It is accorded, That the Steward of the King's House, and Treasurer of the Wardrobe, shall send to all the Ports of England, where Wines be to be taken to the King's Use, the certain number which the Butler shall take in every Port, so that nothing be taken over this Number; and that the Mayor and Bailiffs of the said Ports certify the said Steward and Treasurer of the Number of all the Tuns so taken by the Butler or his Lieutenant, under the Seal of the said Mayor and Bailiffs, by indentures made betwixt them and the Takers of the said Wines; and in case that it be found, that the Butler or his Lieutenant take more, or take Reward of any, or delay any by Colour of his Office, as by arrest, he shall make Gree to the Party of the double, and shall be put out of his Office, and have Imprisonment, and be ransomed at the King's Will; and the King shall assign his Justices when it shall please him, to enquire upon these Things; and the Butler shall answer as well for his Deputies as for himself, where they be not sufficient.

XXI. Abuses by the King's Butlers in Purveyance of Wine.

Regulations therein.

Punishment of the Butlers.

ITEM, Because that some do purchase in the Court of Rome Provisions, to have Abbeies and Pories in England, in Destruction of the Realm, and of Holy Religion; It is accorded, That every Man that purchaseth such Provisions of Abbeies or Pories, that he and his Executors and Procurators, which do sue and make Execution of such Provisions, shall be out of the King's Protection; and that a Man may do with them as of

XXII. Penalties on purchasing Provisions at Rome, for Abbeies, or Pories.

Old Printed Copies omit these Words.

Enemies of our Sovereign Lord the King and his Realm; And he that offendeth against such Provisors in Body or in Goods, or in other Possessions, shall be excused against all People, and shall never be impeached nor grieved for the same at any Man's Suit.

XXIII.  
Companies  
of Lombards  
answerable  
for the Debts  
of their  
Fellows.

ITEM, Whereas much People of the Realm, which have made Contracts with Lombards, that be named of the Companies dwelling in the same Realm, which Lombards after that they have made their Obligations to their Creansours, have suddenly escaped out of the Realm without Agreement made to their said Creansours, in deceit and great damage of the People: It is accorded and assented, That if any Merchant of the Company, knowledge himself bound [by the Manner,] that the Company shall answer of the Debt. So that another Merchant which is not of the Company, shall not be thereby grieved or impeached.

<sup>1</sup> in that manner,

Of the  
proclaiming  
the Statute.

The King to the Sheriff of Kent, Greeting. Certain Statutes passed in our Parliament assembled at Westminster in the Feast of St. Hilary last past, by Us, the Prelates, Dukes, Earls, Barons, and others of the Commonalty of our Realm of England, summoned to the said Parliament, We do send to you under our Seal; charging you to cause the said Statutes to be read in your full County Court, and the same to be strictly observed, and holden. Witness the King at Westminster, the sixth day of March.

Like Writs are directed to all the Sheriffs through England, under the same date.

A like Writ is directed to the Justice of Ireland, changing what ought to be changed, under the same date.

Like Writs are directed to the Persons under-written, under the same date; that is to say:

William de Sharesull and his Companions, Justices assigned to hold Pleas before the King himself:

John de Stonore and his Companions, Justices of the Common Bench:

The Treasurer and Barons of the Exchequer.

de lui come de enemy du Roi et du Roialme; et q̄ celui q̄ face contre tiels p̄visours en corps ou biens ou en aut's possessions, soit excuse de v's touz gentz, & p̄ tant ne soit james greve nempeschee au seute de nully.

Auxint p'ce q̄ plusurs gentz du Roialme, qont fait contractes ove Lumbardz q̄ sont nomez des compaignies demorantz en meisme le Roialme, queux Lombardz ap̄s qils ont fait leurs obligacions a leurs Creansours, se sont sodeinement eschapez hors du Roialme, saunz gre faire a les ditz Creansours, en deceit & g'nt damage du poeple; acorde est & assentuz q̄ si nul marchant de compaignie conue se oblige p la man're, q̄ la compaignie respaigne de la dette. Issint q̄ autre marchant qi nest mie de la compaignie ne soit p tant greve nempeschez.

¶ Vñ Kanč, saltm. Quedam statuta, in pliamento nro apud Westm̄ in festo sc̄i Hillař p̄ p̄rito convocato, p nos Prelatos Duces Comites Barones & alios de cõitate regni nri Angt ad dcm pliamentum sũmonitos, edita, tibi mittim<sup>9</sup> sub pede sigilli nri, mandantes qd statuta p̄dca in pleno Com̄ tuo legi & ea firmi<sup>9</sup> observari & teneri fac. T. R. apud Westm̄ vi. die Marč.

Conš bria dirigunt' singulis vicecomitibz p Angt sub eadem data.

Conš bre dirigit' Justic̄ Hibũ mutatis mutand sub eadem data.

Conš bria dirigunt' subscriptis sub eadem data videlt. Wilto de Sharesull & sociis suis Justic̄ ad p̄ita coram rege tenend assigni.

Joh de Stonore & sociis suis Justic̄ de cõi Banco.

Theš & Baronibz de scaccio.

D' pelamaõde  
Statuti.

### Ordinacio p' Clero

fc'a apud Westm̄, anno r. R. E. l'cii vicesimo quinto.

AN ORDINANCE FOR THE CLERGY,

Made at Westminster in the Twenty-fifth Year of the Reign of K. EDWARD III.

In Margine  
Rotuli.

#### STATUTE THE SIXTH.\*

OUR Lord the King, seeing and examining by good Deliberation the Petitions and Articles delivered to him in his Parliament holden at Westminster in the Feast of St. Hilary, the Year of his Reign of England the Five and twentieth, and of France the Twelfth, by the Honourable Father in God, Simon Archbishop of Canterbury, and other Bishops of his Province, upon and for certain Grievances, which they alledged to be done to Holy Church, and to the Clergy, against the Privileges of Holy Church; and then they prayed, that

Ex magno Rot. Stat. in Turr. Lond. m. 16 d.

Nre Seignour le Roi, veues & examinez p bone deliberacion les peticions & articles a lui bailliez en son plement, tenuz a Westmonster en la feste de saint Hillař lan de son regne Denglepre vintisme quint, & de France duszisme, p Lon'able piere en Dieu Simon Ercevesq, de Cant'bers et aut's Evesqs de sa pvince, s' & p' d'heines grevances queles ils disoient estre faites a sainte eglise et a la clergie, encontre les privileges de sainte eglise, & dunk ils prierent q̄ cove-

\* Statute the Third in all former Printed Copies; and entitled "Statutum pro Clero. A Statute for the Clergy."—It is entered on the Back of the Statute Roll. See the Note to Statute the First of this Year.

to the manifest Destruction and Injury of the said People, and against Justice and the Form of the Statute aforesaid: We will and stedfastly command that our Justice of Ireland for the Time being, in every County and Place through which he shall pass, associating with him a Prelate of the Place, and some Earl or other Nobleman or Knight of that Neighbourhood, concerning the aforesaid Deccits, Extortions, Oppressions, Grievances, and Excesses, and all the Matters aforesaid by those Farmers howsoever committed, and of all their acts and doings in this Behalf, as well at the Suit of Us as of any others whomsoever who shall complain thereof, as well for the Time past as for the Time to come, shall make Enquiry; and against them shall proceed, and the Contempts, Deccits, Extortions, Oppressions, Grievances, and Excesses, and other the Matters aforesaid shall hear and determine, and the Delinquents and Offenders when they shall be found such, shall punish and chastise, according to the Law and Custom of our Land of Ireland before mentioned; and nevertheless to Us and our Council in England, the Names of those so offending, and the Deccits, Extortions, Oppressions, and Grievances and other Matters aforesaid, under the Seals of him the said Justice and of the others associated with him, distinctly and openly, from Time to Time, for good Cause shall certify.

In Witness whereof, &c. Witness the King at Westminster, the Twenty-fifth Day of October.

By the King Himself and Council.

¶ Judiciū, & ipius populi destructōem & injuriam manifestas, ac cont' justiciam & formā statuti p̄d̄ci: Volum' & firmū p̄cipim' qd' Justic' n̄r' Hib̄n qui p̄ tempe fuit, in singulis Com̄ & p̄ibz p̄ quos t̄nsierit, associatis sibi Prelato loci, & aliquo Comite seu alio nobili vel Milite eadēdem p̄ciū vicinaz, de p̄d̄cis falsitatibz, extorsionibz, opp̄ssionibz, g'vaminibz, & excessibz, & om̄ibz sup̄d̄cis p̄ ip̄os firmarios quomodolibet p̄p̄rtis, & de ip̄oz sc̄is & gestibz in hac p̄te, tam ad sectam n̄ram q'm alioz quozcūq, inde conquiri volentiū tam de tempe p̄rito q'm futuro inquirat; & vsus eos p̄cedat, & contemptus, falsitates, extorsiones, opp̄ssiones, g'vamina & excessus, ac alia p̄d̄ca audiat & p̄minet, necnon delinquentes & culpabiles cum tales inventi fūint castiget & puniat, sc̄dm legem & consuetudinem p̄re n̄re Hib̄n anted̄cas; & nos & consiliū n̄m in Angl de n̄obz sic culpabiliū, ac de falsitatibz, extorsionibz, opp̄ssionibz & g'vaminibz & aliis p̄d̄cis sub sigillis ip̄ius Justic' & sibi associator, distincte & apte de tempore in tempus nichilomin' d̄ificet ex d̄ca causa. [In ejus, &c. T. k. apud Westm̄ xxv. die Octobr. p̄ ip̄m Regem & Cons'.]

<sup>1</sup> In ejus rei testimoniū has lras n̄ras fieri fecim' patentes. Teste me ip̄o apud Westm̄ vicesimo quinto die Octobr, anno regni n̄ri Angl' vicesimo p̄mo, regni v̄o n̄ri Fran̄e decimo octavo.

Nos autem Ordinacōes Voluntates & p̄cepta p̄d̄ca, ac om̄ia alia & singla in his p̄d̄cis cōtēta rata hentes & ḡta, ea p̄ nob' & heredibz n̄ris quantum in nob' est, acceptam' approbamus, ratificam' & confirmam', put lre p̄d̄ce rationalit' testant'. In ejus, &c. T. R. apud Westm̄ xxvj die Junii.

Rat. Pat. 17 Ric. II.

Anno 34° EDWARDI, III. A.D.1360-1.

Statutū fc'm in p̄l'amēto tento apud Westm̄; anno xxxiiii°.

A STATUTE MADE IN THE PARLIAMENT HOLDEN AT WESTMINSTER; IN THE THIRTY-FOURTH YEAR.

In Margue Rout.

THESE be the Things which our Lord the King, the Prelates, Lords, and the Commons have ordained in this present Parliament, holden at Westminster, the Sunday next before the Feast of the Conversion of St. Paul, to be holden and published openly through the Realm (<sup>1</sup>)

1. Who shall be Justices of the Peace. Their Jurisdiction over Offenders; Rioters; Barrators;

Vagabonds;

They may take Surety for good Behaviour;

FIRST, That in every County of England shall be assigned for the keeping of the Peace, one Lord, and with him three or four of the most worthy in the County, with some learned in the Law, and they shall have Power to restrain the Offenders, Rioters, and all other Barators, and to pursue, arrest, take, and chastise them according their Trespass or Offence; and to cause them to be imprisoned and duly punished according to the Law and Customs of the Realm, and according to that which to them shall seem best to do by their Discretions and good Advisement; and also to inform them, and to inquire of all those that have been Pillors and Robbers in the Parts beyond the Sea, and be now come again, and go wandering, and will not labour as they were wont in Times past; and to take and arrest all those that they may find by Indictment, or by Suspicion, and to put them in Prison; and to take of all them that be [not] of good Fame, where they shall be found, sufficient Surety and Mainprise of their good

<sup>1</sup> that is to say;

<sup>2</sup> All Translations read thus.

Ex magno Rot. Stat. in Tur. Lond. m. 10.  
CES sont les choses queles n̄r' Seign' le Roi Prelatz Seign's & la cōmune ont ordinez en cest p̄sent plement, tenuz a Westm̄stier le Dymenge p̄chein devant la feste de la Convisiō de Saint Paul, a tenir & publier v̄ntement p̄my le Roialme; Cestassavoir:

P̄l̄d̄ement q̄ en chescun Countee Dengele're soient assignez, p' la garde de la p̄ces, un Seign', & ovesq, lui trois ou quatre des meultz vauz du Countee, ensemblement ove aucuns sages de la ley, & cient poer de restrindre les mesfesours, rioters, & touz aut's baretors, & de les p'suir, arerster, p̄ndre, chastier, selonc leur t̄spas ou mesp̄rison; & de faire emprisonner, & dueument punir selonc la ley & custumes du Roialme, & selonc ce q̄ils v̄ront mieltz affaire p' lo' discrecions & bon avisement; & auxint de eux enformer & denquere de touz ceux q̄ ont este pilours & robeours es p̄ties de dela, & sont ore reveruz & vont vagantz, & ne voillent t'vailler come ils soloient avant ces hours; & de p̄ndre & arerster touz ceux q̄ils p̄ront trov' p̄ndicement, ou p̄ susp̄cion & les mettre en prisonne & de p̄ndre de touz ceux [q̄ sont] de bone fame, ou ils s̄ront trov̄ez, souffisant seurete & mainprise de

<sup>1</sup> q̄ ne sont lab. Sc̄cs. Westm. IX; MS. Cott. Nero C. I; and the Old Printed Copies.

lo' bon port, de<sup>v</sup>s le Roi & son poeple, & les au<sup>t</sup>s duement punir; au fin q̄ le poeple ne soit p̄ tieux riot's trouble nendamage ne la pees enblemy, ne marchantz nau<sup>t</sup>s passantz p̄ les hautes chemyns du Roialme destourbez ne abaiez du pil q̄ p'ra avenir de tieux mesfessours: & auxint doier & p'miner a la suite le Roi, tote ma<sup>n</sup>de de felonies & v'spas faites en meisme le Countee, selonc les leys & custumes avantdites; & q̄ briefs doier & p'miner soient g'ntes selonc les estatuz ent faites, mes q̄ les Justices q̄ enserront assignez soient nomez p̄ la Court, & nemie p̄ la p'tie. Et le Roi voet q̄ totes g'chales enquerres avant ces heures g'ntez deinz seign'ries queconqes p' les meschiefs & opp'ssions q̄ ont este faites au poeple p̄ tieles enquerres, cessent outriement & soient repellez: Et q̄ fins q̄ sont affaire devant Justices, p' v'spas fait p̄ aucune p'sone, soient resonables & justes, eant regard au q'ntite du v'spas & les causes p' queles eles sont faites.

Item acorde est q̄ prises desore ne soient faites p̄ au<sup>t</sup>s q̄ p̄ les p'veours le Roi, ma Dame la Roine & le Prince leur eisme filtz; & q̄ si Purveyours des au<sup>t</sup>s facent tieu prises soit fait de eux come des gentz q̄ fount sanz garaunt, & leur fait jugge come chose faite contre la pees & la ley de la tre; & soient tieux q̄ se fount p'veours en la ma<sup>n</sup>de duement puniz.

Item des p'veances faites al oep's la Roine & du Prince, du polait & d'autres menuz choses, soit paiement fait en poigne s' la prise; & des au<sup>t</sup>s grosses p'veances deinz le Mois ou sis simaignes es Countees ou ils s'ront prises; & q̄ le nombre de tieux p'veours soit abregge, en tant come bonement p'ra p' eide & quiete du cōmune poeple.

Item porce q̄ viscontes & au<sup>t</sup>s ministres sovent araient leur panels en tote ma<sup>n</sup>de denquestes des gentz p'ceure & pluis lointifs du Countee, q̄ nont conissance du fet dount lenqueste s'ra prise; Acorde est, q̄ tieu panels soient faites des plus p'scheins gentz, q̄ ne sont pas suspectes, ne p'ceure; & q̄ les viscontes, Coroners & au<sup>t</sup>s ministres q̄ font alencontre soient puniz devant les Justices q̄ la dite enqueste p'ndra, selonc la q'ntite de leur v'spas, sibien de<sup>v</sup>s le Roi come de<sup>v</sup>s la p'tie, p' la q'ntite du damage q̄il ad suffert en tieu ma<sup>n</sup>de.

Item est acorde, q̄ ceux q̄ s'ront assignez de garder la pees eient poair denquere des mesures & auxint des pois, selonc lestatut ent fait lan du regne n're Seign' le Roi vint & quint, en quel est contenu la forme q̄ sensuit. Porce q̄ v'sg'nt damage & desceit est fait au poeple p̄ tant q̄ pluseurs Marchantz usent dachater & poiser leines & au<sup>t</sup>s marchandises p̄ une pois q'est appelle Aunsel; Acorde est & establi, q̄ celle pois appelle Aunsel entre achatour & vendour soit de tout ouste, & q̄ chescun vende & achate p̄ balances; issint q̄ les balances soient owels & les leins & au<sup>t</sup>s marchandises owellement poisee p̄ droit pois, et q̄ le sac de leine ne poise q̄ vint & sis peres, & chescun perc poise quatorze livres, & q̄ lestatut de la balance ne incline ne a lune p'tie ne al autre, & q̄ le pois soit acordant al estandard del Eschequer; et si nul Achatour face al encontre, soit grevouement puny sibien a la suite de p'tie come a la suite n're Seign' le Roi.

Item come contenu soit en la g'nt Ch're, q̄ une mesure soit use pmy tut Engle<sup>t</sup>re, la quele Ch're nad mie este tenue bien en ce point avant ces heures; si est acorde & assentu, q̄ totes les mesures, cest assavoir bussel demy bussel & Peck, galon potel & quart, p̄ tout Engle<sup>t</sup>re deinz franchise & dehors

Behaviour towards the King and his People, and the other duly to punish; to the Intent that the People be not by such Rioters or Rebels troubled nor endamaged, nor the Peace blemished, nor Merchants nor other passing by the Highways of the Realm disturbed, nor [put in the Peril which may happen'] of such Offenders: And also to hear and determine at the King's Suit all Manner of Felonies and Trespasses done in the same County according to the Laws and Customs aforesaid; and that Writs of Oyer and Determiner be granted according to the Statutes thereof made, and that the Justices which shall be thereto assigned be named by the Court, and not by the Party. And the King will, that all general Inquiries before this Time granted within any Seigniories, for the Mischiefs and Oppressions which have been done to the People by such Inquiries, shall cease utterly and be repealed: and that Fines, which are to be made before Justices for a Trespass done by any Person, be reasonable and just, having Regard to the Quantity of the Trespass, and the Causes for which they may be made.

and may hear and determine Felonies and Trespasses.

Commissions of general Inquiries shall cease.

Fines for Trespasses shall be reasonable.

ITEM, It is accorded, That [Taking'] shall not be from henceforth made by other than the Purveyors of the King, of the Queen, and of the Prince their eldest Son; and that if any other Man's Purveyors make such Takings, it shall be done of them as of People which do without Warrant, and their Deed judged as a Thing done against the Peace and the Law of the Land; and such as do make themselves Purveyors in such Manner shall be duly punished.

II. No Purveyance except for the King, the Queen, and the King's eldest Son.

ITEM, Of Purveyances made to the Use of the Queen, and of the Prince, of Poultry and of other small Things, Payment shall be made in Hand upon the Taking; and of other great Purveyances within the Month or Six Weeks, in the Counties where they shall be taken; and that the Number of such Purveyors be abridged in as much as conveniently may, for the Aid and Quietness of the Common People.

III. When Purveyances for the Queen &c. shall be paid for.

ITEM, Because that the Sheriffs and other Ministers often do array their Panels in all Manner of Inquests, of People procured, and most far off [from:] the Counties, which have no Knowledge of the Deed whereof the Inquest shall be taken; It is accorded, That such Panels shall be made of the next People, which shall not be suspect nor procured; and that the Sheriffs, Coroners, and other Ministers which do against the same shall be punished before the Justices that take the said Inquest according to the Quantity of their Trespasses, as well against the King as against the Party, for the Quantity of the Damage which he hath suffered in such Manner.

IV. Panels of Inquests shall be of the Neighbourhood.

ITEM, It is accorded, That they which shall be assigned to keep the Peace shall have Power to inquire of Measures, and also of Weights, according to the Statute thereof made the five-and-twentieth Year of the Reign of our Lord the King, wherein is contained the Form that followeth; "Whereas great Damage and Deceit is done to the People, for that divers Merchants use to buy and weigh Wools and other Merchandises, by a Weight which is called Auncel; It is accorded and established, That this Weight called Auncel betwixt Buyers and Sellers, shall be wholly put out; and that every Person do sell and buy by the Balance, so that the Balance be even, and the Wools and other Merchandizes evenly weighed by right Weight, so that the Sack of Wool weigh no more but xxvi. Stones, and every Stone to weigh xii. l. and that the Beam of the Balance do not bow more to the one Part than to the other; and that the Weight be according to the Standard of the Exchequer; and if any Buyer do the contrary, he shall be grievously punished, as well at the Suit of the Party, as at the Suit of our Lord the King."

V. Justices of the Peace shall inquire of Weights and Measures, according to the Statute 25 Edw. III. stat. 5. ch. 9.

ITEM, Whereas it is contained in the Great Charter, that one Measure be used through the Realm, which Charter hath not been holden well in this Point before this Time; It is accorded and assented, That all the Measures, that is to say, Bushel, Half Bushel, Peck, Gallon, Pottle, and Quart, through (°) England, within

VI. All Measures shall be according to the King's Standard, &c.

\* put in fear by peril which might happen  
\* Takings, of \* all

Application of the Forfeitures.

be present, or of the Lords of the Fairs and Markets, and other Places where such Cloths shall be found defective, or of their Stewards or Bailiffs, or of the Constables of the Towns and Places aforesaid, by Indenture betwixt them duly to be made; which Indentures shall be every Year at the Feast of St. Michael delivered into the Exchequer, by them which so shall make the said Delivery, to the Intent there to charge the Aulnegers and Collectors aforesaid, by whom such Defaults ought to have been searched, corrected, and mended, and be not, but commonly maintained and concealed in all Parts; for which Third Part that pertaineth to the King as his Forfeiture by force of the Statutes made in Times past, the Aulnegers and Collectors aforesaid, in every County and Place where such Cloths defective shall be found, for the Pain against the said Offences and Concealment, shall make Gree of their own Money to our Lord the King in his Exchequer, of the Value of the same Third Part; so that as well of the same Third Part as of the Remnant of the said Cloth, the King shall be wholly answered at his said Exchequer.

X. Trial of Assize for Rent out of Lands lying in Two Counties.

ITEM, It is ordained and assented, That an Assise of Novel Disseisin shall be from henceforth granted and made of Rent behind, due of Tenements being in divers Counties, to be holden in the Confine of the Counties, within which the Tenements be; and thereupon the Assise taken and tried by People of the said Counties in the same Manner as is done of a Common of Pasture being in one County, and appendant to Tenements in another County; and that as well of Disseisins done in Time past, as of Disseisins yet to be done; and that Writs thereupon at the Suit of the Plaintiffs be made from henceforth in the Chancery without any Manner of Contradiction, in a due Form.

XI. The Statutes 5 Ric. II. c. 4, 5, and 6 Ric. II. c. 7, 11, 12, concerning Fishmongers, Victuallers, and Vintners, repealed.

ITEM, Whereas in divers Parliaments holden at Westminster, the Fifth and Sixth Years of our said Lord the King, divers Ordinances and Statutes of Fishers of London and other Victuallers were made, and also of Vintners, and of the Sale of Wines, and thereupon the same Ordinances and Statutes, with the Pains in them contained, were published and proclaimed throughout the Realm, as in the said Statutes and Ordinances more plainly may appear: Nevertheless for certain Causes, at the Request of the Commons of England thereupon specially made, It is assented and agreed, That the same Ordinances and Statutes of Fishers, Vintners, and Victuallers, made in the Years aforesaid, shall be wholly annulled and repealed, and shall lose their Effect and Strength: Nevertheless saving to the King all the Forfeitures of Wines for the Time past that to him pertaineth by virtue of the same Ordinances and Statutes: Provided always, that all the [Vintners and'] Victuallers, as well Fishers as other coming with their Victuals to the City of London, shall be from henceforth under the Governance and Rule of the Mayor and Aldermen of the said City for the Time being, as in Time past it hath been used.

Victuallers of London shall be under the Rule of the Mayor and Aldermen.

XII. Stat. 3 Ric. II. c. 3. recited;

ITEM, Whereas late in the Parliament holden at Westminster, the Third Year of the Reign of our said Lord the King, at the Request of the Commons, and by the Assent of the Lords Temporal, it was ordained and assented, and upon a grievous Pain prohibited, that no Subject of the King nor other Person, of what Estate or Condition he were, should take, neither receive from thenceforth, within the Realm of England, Procuracy, Letter of Attorney, ne Ferm, nor any other Administration by Indenture, or in any other Manner, of any Person concerning any Benefice of Holy Church within the Realm, but only of the King's Subjects of the same Realm, without the especial Grace and express Licence of our said Lord the King, upon a certain Pain contained in the said Statute; It is assented and agreed by the same Lords, That the same Statute shall keep his

confirmed and extended to Aliens holding Benefices in England;

Wines, and the

soient pventz ou des f's des feires & marches, & aus lieux ou tielz draps defectives vront trovez, ou de lo's Seneschalx & Bailiffs ou des Conestables des villes & lieux avantiditz p endentures ent entre eux duement affaires; les queles endentures soient chescun an a le feste de Seint Michel l'ivez en lescheqir p ceux qeni ferront la dite l'ivee, al effect de charger illoeqs les Alneours & coillours avantiditz p queux tielz defautes deussent estre vchez chastiez & amendez & ne sont my einz cõement maintenez ou concelez toutz ptz; pur quele tierce ptie pappient au Roi come sa forfaiture p force de lestatutz devant ore faitz les alneo' & coillo' avantiditz, en chescun Countee & lieu ou tielz draps defectives vront trovez p' peine encontre lo's ditz mal fait & concelement, facent gree de lo's ppres deniers a n're dit f' le Roi en son Escheqir de la value de celle tierce ptie, issint q' s'bn de mesme la tierce ptie come del remenant du dit drap n're f' le Roi soit entierement responduz a son Escheqir avantiditz.

Item est ordeigne & assentuz qassise de Novele Disseisine soit desore gnte & faite de rent aderiere, due des teiz esteantz es divses Countees a tenir en la confyne des Countees deinz queux les teiz sont, & sur ce lassise prise & trie p gentz des ditz Countees en mesme la manere come est fait du cõe de pasture esteantz en un Countee & appendante as teiz en autre Countee, & ce auxi avant des disseisines faites devant ceste heure, come de disseisines unqore affaire, & q' brieis sur ceo a la p'suyte des pleintifs soient desore faitz en la Chancellerie sanz nulle manere de cont'diccion en due forme.

Item combn q' nadgairs en divses plementz tenez a Westm̄ les ans du regne n're dit f' le Roi quint & sisme, furent faitz divses ordnances, & estatutz des psoners de Londres & dau's vitailers & auxint des vineters & la vente des vins, & sur ce mesmes les ordnances & estatutz ovesq, les peynes en ycelles contenuz furent publiez & pclamez pmy le Roialme sicome en les ditz ordnances & estatutz plus plement purra apparoir; Nientmeyns p' ðeins enchesons a la requeste des Cões Dengleterre sur ceo especialment faite, est assentuz & accordez q' mesmes les ordnances & estatutz des Pessoners Vineters & Vitailers, faitz en les ans desuisditz, soient de tout anientiz & repellez & pdent lour force & v'ue; Sauvez nientmeins a n're f' le Roi toutz les forfaitures des vins a lui apptenantes p' v'ue de mesmes les ordnances & estatutz qantal temps passez. Purvez toutz foitz q' toutz les [vins'] & vitailers s'bn Pessoners come aus' ove leur vitailles venantz a la d'ce Citee de Londres, soient desore desouz le go'vnaile [& reulle'] des Meir & Aldermannes de la Citee avand'ce p' le temps esteantz come aucienement y soleient estre.

Item come nadgairs en plement tenez a Westm̄ lan du regne n're f' le Roi tierce, a la requeste des Cões & p assent des f's temporels, estoit ordeigne & assentuz & sur grevouse peyne defunduz q' null liege le Roi nautre psonne quelconq' de quel estat ou condiccion qil fuist, pndroit ne reseivoit delors enavant deinz le Roialme Dengleterre pcuracie, tre datto'ne, ne ferme, nautre administracoin p endenture nen autre manere quelconq, de nulle psonne dascun benefice de Seinte Eglise deinz le dit Roialme fors tansoulement des lieges n're f' le Roi de mesme le Roialme sanz especiale g'ce & exp'sse congie de n're f' le Roi sur ðeine peine comprise en lestatut avantiditz, assentuz est ore & accordez p mesmes les f's q' mesme lestatut tiegne ses

1 Vintners Old Printed Copies.

2 Interlined on the Roll.

x.

xj.

M. 18.

xij.

force & Vne en toutz pointz; et outre ceo est auxint assentuz q̄ si aucun alien eit purchacez ou desore purchace aucun benefice de Sainte Eglise Dignite ou autre & en ppre psonne pigne possession dicelle ou loccupie de fait, deinz mesme le Roialme, soit il a son oeps ppre, ou al oeps dautri sanz especiale congie du Roi, soit il compris en mesme lestatut, & outre ceo encourage en toutz pointz tielx peines & forfaiture come sont ordeignez p un autre estatut fait en lan xxv<sup>e</sup> del regne luy noble Roi E. aiel nre f<sup>r</sup> le Roi qore est, contre ceux q̄ purchacent gvisions dabbetes ou Pories; et enoutre au fyn q̄ tielx licences ne se facent desore enavant, le Roi voet & comande a toutz ses lieges & autres q̄ils lour abstiegnent de cy enavant de luy prier dascuns tielx licences doner; et si voet auxi le Roi luy mesmes abstiegnre de doner aucune tielle licence, durantes les guerres horpris au Cardinal de Naples ou a autre especiale psonne a q̄ le Roi soit p especiale cause tenuz.

xiiij. Item est ordeignez & assentuz & le Roi defende q̄ desoremes null hōme chivache deinz le Roialme armez, encontre la forme de lestatut de Northampton sur ce fait, ne ovesq̄ lancegay deinz mesme le Roialme, les queux lancegayes soient de tout outez deinz le dit Roialme come chose defendue p nre f<sup>r</sup> le Roi, sur peine de forfaiture dicelx lancegayes armures & aut's herneys quelconques es mayns & possession de celluy q̄ les port'a desore deinz mesme le Roialme contre cestz estatut & ordinaances sanz especiale congie de Roi nre f<sup>r</sup>.

xiiij. Item es briefs de p̄munire fac̄ est assentuz & accordez q̄ ceux vs queux tielx briefs sont portez, & q̄ sont de p̄sent hors de Roialme & sont de bone fame & aient faitz lo' gehalx atto'nes devant lo' deupir, q̄ le Chauceller [Dengleterre'] pur le temps estean, p ladvis des Justices purra ḡntier q̄ mesmes les psones purront apparoir & respondre & faire & reseivre ce q̄ la ley demande, p lo' gehalx atto'nes avantdiz siavant come es autres cas & queeles; et ceux psones q̄ decy enavant passeront p licence nre f<sup>r</sup> le Roi & soient auxint de bone fame, q̄ a lo' requeste le dit Chauceller p ladvis des Justices lour purra ḡntier defaire lo' gehalx atto'nes en la Chancellerie p patent du Roi devant lo' passer, [a respondre'] sibn es ditz briefs de p̄munire fac̄, come en aut's queeles en quel cas toutes voies soit exp̄sse mencion [faite'] des briefs & queeles de p̄munire fac̄; et celle patente ensi faite, purront des lors les ditz atto'nes en absence de lo' Meistres, respondre p eux & aut's atto'nes desouz eux, devant quelconq̄ juge du Roialme & faire & reseivre el dit cas, siavant come en null autre cas nientcontrestean aucun estatut fait a contrie avant ces heures.

Item sur la grevouise pleinte qest faite des meyn-teno's des queeles & chaumpo'ts; est ordeignez & assentuz q̄ lestatutz ent faitz en les ans du regne le Roi Edward aiel nre dit f<sup>r</sup> le Roi primer & quart, et auxint en lan de nre f<sup>r</sup> le Roi qore est primer, soient tenuz & gardez & duement executz en toutz pointz.

Item est assentuz & le Roi defende estreitement q̄ decy enavant nulle psonne aliene ou denszein de quelconq̄ estat ou condicion qil soit amene ou envoie ou face amesner ou envoier p pre ou p meer hors du Roialme Dengleterre as accunes ptes Descoco en prive ne en appt aucune mable darmure de blee de breez ne dautre vitaille ou dautre refreshchement queconq̄, sur peine de forfaiture de mesmes les vitailles armures & des autres choses avantdites ensemble avec les niefs vesselx charettes & chivalx q̄ les portent ou amesnent, ou de la v̄oie value dicelles, si ensi ne soit q̄ le

\*\*\* Interlined on the Roll.

Force and Effect in all Points; and moreover it is assented, That if any Alien have purchased, or from henceforth shall purchase any Benefice of Holy Church, Dignity, or other Thing, and in his proper Person take Possession of the same, or occupy it himself within the Realm, whether it be to his own proper Use, or to the Use of another, without especial Licence of the King, he shall be comprised within the same Statute; and moreover shall incur all Pains and Forfeitures in all Points as is before ordained by another Statute made the Five and twentieth Year of the noble King Edward the Third, Grandfather to our Lord the King that now is, against them that purchase Provisions of Abbeyes or Pories; and to the Intent that such Licences shall not be from henceforth made, the King wilteih and commandeth to all his Subjects and other, that they shall abstain them from henceforth to pray him for any such Licence to be given; and also the King himself will refrain to give any such Licence during the Wars, except to the Cardinal of Naples, or to some other special Person to whom the King is beholden for a special Cause.

ITEM, It is ordained and assented, and also the King doth prohibit, That from henceforth no Man shall ride in Harness within the Realm, contrary to the Form of the Statute of Northampton thereupon made, neither with Launcegay within the Realm, the which Launcegayes be clearly put out within the said Realm, as a Thing prohibited by our Lord the King, upon Pain of Forfeiture of the said Launcegayes, Armour, and other Harness, in whose Hands or Possession they be found that bear them within the Realm, contrary to the Statutes and Ordinaances aforesaid, without the King's special Licence.

ITEM, In Writs of Præmunire facias, It is assented and agreed, That they against whom such Writs be sued, and who at this Time be out of the Realm, and be of good Fame, and have made their general Atturnies before their departing, that the Chancellor of England for the Time being, by the Advice of the Justices, may grant, that the same Persons may appear to answer, to do, and to receive that Thing which the Law demandeth, by their general Atturnies aforesaid, as well as in other Causes and Quarrels; and those Persons which from henceforth shall pass by the King's Licence, and be of good Fame, that at their Request the Chancellor, by the Advice of the Justices, may grant to them to make their general Atturnies in the Chancery by the King's Patent, before their Passage, to answer as well in the said Writs of Præmunire facias, as in other Writs and Plaints; in which Case express Mention shall be made at all Times of the Writs and Plaints of Præmunire facias; and this Patent so made, the said Atturnies from henceforth, in Absence of their Masters, may answer [for them, and make'] other Atturnies under them, before any Judge of the Realm, [to'] do and receive in the said Case as much as in any other Case or Matter, notwithstanding any Statute made to the contrary heretofore.

ITEM, For the grievous Complaint that is made of Maintainers of Quarrels, and Champertors; It is ordained and assented, That the Statutes thereof made in the First and Fourth Years of King Edward, Grandfather to our Lord the King that now is, and also in the First Year of our Lord the King that now is, shall be holden and kept, and duly executed in all Pointz.

ITEM, It is assented, and the King straitly defendeth, That from henceforth no Person, Alien nor Denizen, of whatsoever Estate or Condition that he be, shall carry nor send, nor do to be carried nor sent, by Land nor by Sea, out of the Realm of England, to any Parts of Scotland, privily nor apertly, any Manner of Armour, Corn, Malt, or other Victuals, or any other refreshing, upon Pain of Forfeiture of the same Victuals, Armour, and other Things aforesaid, together with the Ships, Vessels, Carts, and Horses which shall bring or carry the same, or of the very Value of the same, except so it be

\* by themselves and \* and

who shall also be liable to the Penalties of 25 Ed. III. st. 5. c. 22.

The King's Licences to the contrary shall not be asked for.

XIII. No Man shall ride armed contrary to the Statute 2 Edw. III. chapter 3.

XIV. For enabling Parties out of the Realm to appoint Attornies in Writs of Præmunire.

XV. Statutes 1 Edw. III. st. 2. c. 14; 4 E. III. c. 11; 1 Ric. II. c. 4; against Maintainer, &c. confirmed.

XVI. No Armour or Victual shall be sent into Scotland without Licence of the King; on Pain of Forfeiture thereof.

that the King do give his special Licence to the contrary. And to the Intent that these Ordinances be duly kept and put in due Execution, It is also assented, that he which after Proclamation thereof made, espy and prove that any hath offended or forfeit in any Point against the Form of this Ordinance, shall have the Third Part of the said Forfeitures wholly to his own Use (').

XVII. When Mainperners shall be liable in Damages by Delay.

ITEM, It is assented and accorded, That in Writs of Debt, Trespass, and Account, and in all other Cases where Mainprise and Writs of Supersedas be grantable, that if the Persons [comprised'] come not before the Judges at a Day comprised in the same Mainprise, and by so much the Plaintiff is put to Delay and Loss, the said Mainperners shall be answerable to the Plaintiffs of a certain Sum of Silver, to be limited by the Discretion and Advice of the said Judges, having Consideration to the Quality and Quantity of the Damages of the Parties, and of the Things in Demand. And this Ordinance of Mainperners shall endure in Assay till the next Parliament only.

['] And therefore We command you that as well the said Statute of Winchester, four times in each Year from henceforth, in Manner as above is ordained, as the other Statutes and Ordinances above written, in all the Cities, Boroughs, Market Towns, and other notable laces within your Bailiwick, where it shall seem to you most expedient, within Franchise and without, you do cause to be proclaimed on our behalf, and to be published and duly kept and observed according to the Form and Effect of the same. Given under the Witness of our Great Seal at our Palace of Westminster the Twentieth Day of November, in the Seventh Year of our Reign.')

Like Commands of the King are directed to the several Sheriffs throughout England, under the same Date.

1 for his labour 1 mainprised  
2 Former Translations read only thus:  
And therefore We command you, &c. Dated, &c.

Roi nre s' nent donne sa licence speciale a contrie. Et au fyn q ceste ordonnance soit duement gardez & mys en bone execucion est auxint assentuz q celluy qi apd q proclamacion ent soit faite purra espier & pver qascun eit mespris, ou forfait en ascun point contre la forme de ceste ordonnance, eit la tierce pte des dites forfeitures entement a son ppre oeps p' son r'vaille.

Item est assentuz & accordez qen briefs de dette trespas & de accompte, & en toutz autres cas ou maynprise & brief de Supsedas sont g'ntables, si les psones maunprizez ne viegnent mye devant les Juges au jo' compris en mesme la meynprise, & p tant le pleiniuf soit mys en delay & pde, soient les ditz meingnours respaignables as pleintifs dune steine s'ome, (') a limiter p la discrecion & avis des ditz Juges, eiantz consideracion a la qualitee & quantitee des damages du pte & de la chose en demande. Et si durera ceste ordonnance des mainpno's en assaie, tanq, al pchein plement tantoulement.

Et purce vous mandons q s'ibn le dit Estatut de Wyncestre quatre foitz chescun an decy enavant p maide q dessus est ordeignez, come les autres Estatutz & ordonnances dessusescritz en toutz les Citees Burghs villes marches & autres lieux notables deinz v're bailleie ou vous verrez q mieutz soit affaire deinz franchise & dehors, facez pclamer dep nous & publier & duement garder & tenir selonc la forme & effect dicelles. Doñ p tesmoignance de nre g'nt Seal a nre Paleys de Westm avantdit le xxij<sup>m</sup> jour de Novembre lan de nre regne septisme.

Consimilia mandata R dirigunt' singulis Vicecomitub' p Angl' sub eadem dat.

1 datgent Old Printed Copies.

Anno 8° RICARDI, II. A.D. 1384.

Statutu apud Westm̄ anno octavo editu.

In Margine Rotuli.

STATUTE MADE AT WESTMINSTER IN THE EIGHTH YEAR.

Ex Rot. Stat. in Turr. Lond. II. m. 18.

TO the Honour of God, and at the Request of the Commonalty of the Realm of England made to our Lord the King in his Parliament holden at Westminster in the Morrow of St. Martin, the Eighth Year of his Reign; the same our Lord the King of the Assent of the Prelates, Great Men, and Commons aforesaid, hath caused to be made in the same Parliament, a certain Statute for the common Profit of the said Realm, and especially for the good and just Governance, and due Execution of the Common Law, in the Form following.

I. Liberties of the Church, and Statutes confirmed.

FIRST, It is [ordained and enacted,'] that Holy Church have all her Liberties; and that the Great Charter, and the Charter of the Forest, the Statutes of Purveyors and Labourers, and all other Statutes and Ordinances heretofore made and not repealed, shall be holden and observed, and put in due Execution according to the Form and Effect of the same.

II. No Lawyer shall be a Judge in his own Country.

ITEM, It is [ordained and assented,'] That no Man of Law shall be from henceforth Justice of Assises, or of the common Deliverance of Gaols in his own Country; and that the Chief Justice of the Common Bench be assigned amongst other to take such Assises, and deliver Gaols; but as to the Chief Justice of the King's Bench, it shall be as for the most part of an hundred Years last past was wont to be done.

11 accorded and statuted MS. Tr. 2.

AD honorem dei & requisicōem cōitatis regni Angl' sc̄am dño Regi in pliamto suo tento apud Westm̄ in Crastino S̄c̄i Martini anno regni sui octavo, idem dñs Rex de assensu Prelatoꝝ Magnatū & Cōitatis p̄d̄ce quoddam statutu in eodem pliamto p cōi utilitate dñi regni & p̄sertim p bona & justa gubnacōe ac debita execuōe cōis legis fieri fecit in forma subsequenti:

In primis concordatu est & statutu qd s̄ca ecclia heat om̄es libtates suas, & qd Magna Carta & Carta de Foresta, Statuta de p̄visoribꝝ & laboratoribꝝ & om̄ia alia statuta & ordinacōes ante hec tēpora edita & minime revocata teneant' observent' & execuōi debite demandent' juxta formam & eff̄m eorūdem.

Item concordatu est & statutu qd nullus homo de lege sit decet'o Justic̄e assisaz vel cōis delibacōis gaolaz in p̄pria p̄ria sua et qd capitalis Justic̄e de cōi Banco assignet' in p̄ alios ad h̄p̄i assisas capiend' & ad gaolas deliband set quoad capitalem Justic̄e de Banco Regis fiat sicut p majori pte Centū annoꝝ p̄ p̄litoꝝ fieri consuevit.

Ward of Farringdon-Within may elect an Alderman, wise, sufficient, and able to govern the said Ward Within, and to be named the Aldermen of the Ward of Farringdon-Within; and that between this and the said Feast of Saint Gregory the People of the Ward of Farringdon-Without may elect another Alderman, wise, sufficient, and able to govern the said Ward Without; and to be named the Alderman of the Ward of Farringdon-Without: And that the said Two Aldermen so elected may be established and not removed, except for Cause reasonable, as is ordained and granted by our said Lord the King in this Parliament, of the other Aldermen of the said City.

For the  
proclaiming  
the Statute.

THE King to the Sheriff of Kent, Greeting. A certain Statute, in our last Parliament holden at Westminster, by Us with the Assent of the Great Men and Commons of our Realm of England there assisting Us, made, We do send to you in Form Patent; Commanding that the same Statute and all and singular the Articles in the same contained, in the Cities, Boroughs, Market Towns, and other Places within your Bailwick, where you shall see it to be most expedient, you do cause to be publicly proclaimed, and as far as in you lieth, to be firmly and inviolably observed. Witness the King at Westminster, the first Day of June.

By the King Himself and Council.

Like Writs are directed to the several Sheriffs throughout England; and to John Duke of Aquitain and Lancaster, or to his Chancellor in the same Duchy of Lancaster, under the same Date.

garde de Farndon dedens puissent eslire un Alderman sage sufficient & able p' govner mesme la garde dedens, & estre nome lalderman de la garde de Farndon dedens; et q̄ pentre cy & le dit fest de Seint Gregoire les gentz de la garde de Farndon dehors puissent eslire un autre Alderman sage sufficient & able p' govner mesme la garde dehors, & estre nomes lalderman de la garde de Farndon dehors. Et q̄ les ditz deux Aldermans issint esluz puissent estre establiz & nemye remoez si noun p cause resonable, come ordeinez est & g'ntez p nre dit le Roi en cest plement des auŕs Aldermans du dite Citee.

Et Viŕ Kanŕ, salm. Quoddam statutum in ultimo D pclamatoe statu-  
pliameto nro apud Westm̄ tento p nos de assensu tutoꝝ pclamand.  
Magnatum & Cōitatis regni nri Angl nobiscum ibidem  
tunc assistentiū editū tibi mittim⁹ in forma patenti;  
Mandantes qđ Statutum illud & omēs & singulos arti-  
culos in eodem contentos, in Civitatibus Burgis Villis  
Mecatoriis & aliis locis infra ballivā tuam ubi melius  
expediri videris, publice pclamari & quantum ad te  
pinet firmi⁹ & inviolabili⁹ observari fač. T. R. apud  
Westm̄ primo die Junii.

p ipm Regem & consilium.

Consimilia bria dirigunt' singulis Vicecomitib; p  
Angl; ac Johi Duci Aquit & Lancast' vel ejus Cancel-  
lario in eodem Ducatu Lancast' sub eadem data.

Anno 20° RICARDI, II. A.D. 1396 - 7.

Statutu de Anno vicesimo.

STATUTE OF THE TWENTIETH YEAR.

In Margine  
Rotuli.

Ex Rot. Stat. in Turr. Lond. II. m. 4.

THE KING at his Parliament holden at Westmister in the Feast of Saint Vincent, the Twentieth Year of his Reign, by the Assent of the Prelates, Lords, and Commons of his Realm [of England,] assembled in the same present Parliament, for the Quietness and Tranquillity of his People, hath made certain Statutes and Ordinances in the Form which followeth:

Recital of St.  
7 R. II. c. 13:

FIRST, Whereas in a Statute made the Seventh Year of the Reign of the King that now is, it is ordained and assented, That no Man shall ride armed within the Realm, against the Form of the Statute of Northampton thereupon made, nor with Launcegays within the same Realm; and that the said Launcegays shall be utterly put out within the said Realm, as a Thing prohibited by the King, upon Pain of Forfeiture of the same Launcegays, Armour, or any other Harness, in the Hands and Possession of them that bear them, from henceforth within the same Realm against the same Statutes and Ordinances, without the King's special Licence:

LE ROY en son parlement tenuz a Westm̄ en la feste de Seint Vincent lan de son roialme vintieme, del assent des Prelatz & Cōmunes de son roialme en mesme le parlement, pur quiete & tranquillite de son poeple ad fait c̄cains estatutz & ordenances q̄suivent.

Premierement, come en un estatut fait lan septieme du regne nre Seignur le Roy soit ordeigne & assentuz q̄ null hōme chivache deins le Roialme armez contre la fourme de l'estatut de Northampton sur ce fait, ne ovesq lancegaye deins mesme le roialme, et q̄ les ditz lancegayes soient de tout oustez deins le dit Roialme, come chose defendue par le Roy sur peyne de forfaiture dicelles lancegayes armures & auŕs hermoys quelconques, es mayns & possessioni dycelx qui les porta delors deinz mesme le Roialme encontre ycelles estatutz & ordenances sanz espale congie du Roy:

A.D.1396-7.

20° Ric. II. c. 1—5.

93

Nre Seignur le Roy considerant le g'nt clamour a luy fait en cest p'sent plement de ce q' le dit estatut nest mye tenuz, Si ad ordeignez & establis en mesme le plement q' les ditz estatutz soient pleinement tenuz & gardez & dueiment executz; et q' les ditz lancegayes soient tout ournement oustez sur la peine contenue en le dit estatut de Northampton & outre de fair fyn & ranceon au Roy. Et outre ce q' nult f', Chivaler nautre petit ne g'nt aile ne chivache p noet ne jour armez ne porte Palet ne chapett de ferre nautre armure sur la peine susdte; Sauvez & exceptz les offic's & Ministres du Roy enfaisantz leur offices. Et outre ce le Roy voet & ad ordeignez q' lestatut fait lan de son regne privee de livree des Chaperons soit tenuz & gardez sur la peine contenue en mesme lestatut & sur peine destre emprisonnez & de fair fyn & ranceon au Roy.

Item q' Vadletz appellez Yomen ne nult aut de meindre estat qesquier ne use ne porte nult signe ne livree appellee livree de compaignie dascun f' deins le roialme, sil ne soit menial & familier ou officer continual de son dit f' et q' les Justices de la paix aient poair denquer de ceux qi font a lencontre & de les punir selonc leur discrecion.

Item le Roy voet & defende q' nult f' nautre du pais petit ne g'nt ne soit seant en Bank ovesq, les Justices as assises pndre en leur sessions es Countees Dengleterre sur grief forfaiture vs le Roy; Et ad chargez ses ditz Justices q'ils ne soeffrent le contraire estre fait.

Item q' come il soit contenuz en un estatut de f' Edward nadgairs Roy Dengleterre Aiel a nre f' le Roy qorest lan de son regne vynt & oetisme, q' nulle man'e de nef q' soit frette dev's Engleterre ou ailours soit artez de venir a nul port Dengleterre ne y dem'er contre le gree des Mestres & Marins dicelle, ou des Marchantz as queux les biens sont, et si tielz niefs veignent de gree ou soient chacez p tempeste ou aut infortune ou meschief a ascun port Dengleterre & les Meistres & marins ou Marchantz de mesmes les niefs voillent vendre & deliv'er p'ie de leur marchandises p loure bone voluntee, bien lise a chescuny tieles marchandises achatre franchement sanz empeschement en le port ou tieles niefs viendront, tout ne soient les marchandises mises a la pre pur vendre; Et q' les Meistres Marins & Marchantz, ap's ce q'ils a'vont issint venduz ce q' leur pierra de leur ditz biens & paie ent la custume, puissent l'unquement dep'ier & aler ove leur niefs & tout le remenant de leur bis pla ou leur pierra sanz custume ent paier: Nre Seignur le Roy p' la quiete & ease de son poeple voet q' le dit estatut soit tenuz & gardez en toutz pointz & dueiment executez nient contreteant ascune ordeignance ou usage a contr'rie.

Item pur ce q' les Cömunes cunt fait compleint q' plusours g'ntz meschiefs extorsions & disease sont faitz p div'ses gentz de mauveis condicion q' de leurs auctoritee demesne p'ignont & font pndre roialment chivalx & aut's choses & bestes hors de leur charues charettes & mesons, disantz & imaginantz q'ils sont a chivaucher en hastifs messages ou bosoiignes, la ou en vite ils ne sont aucunement privez de nulle bosoiigne ou message, mes soulement en deceite & subülite p' pndre chivalx

Our Lord the King, considering the great Clamour made to him in this present Parliament, because that the said Statute is not holden, hath ordained and established in the said Parliament, That the said Statutes shall be fully holden and kept, and duly executed; and that the said Launcegayes shall be clear put out upon the Pain contained in the said Statute of Northampton, and also to make Fine and Ransom to the King. And moreover, that no Lord, Knight, nor other, little nor great, shall go nor ride by Night nor by Day armed, nor bear [Sallet'] nor Skull of Iron, nor [of'] other Armour, upon the Pain aforesaid; save and except the King's Officers and Ministers in doing their Office. And Moreover, the King will and hath ordained, that the Statute made the First Year of his Reign, of Liveries of Hats, shall be holden and kept upon the Pain contained in the same Statute, and upon Pain to be imprisoned, and make Fine and Ransom to the King.

ITEM, That no Varlets called Yeomen, nor none other of less Estate than Esquire, shall use nor bear no [Sign of Livery'] called Livery of Company of any Lord within the Realm, unless he be menial and familiar or continual Officer of his said Lord. And that the Justices of the Peace shall have Power to enquire of them, which do to the contrary, and them to punish according to their Discretion.

ITEM, The King doth will and forbid, That no Lord, nor other of the Country, little nor great, shall sit upon the Bench with the Justices to take Assises, in their Sessions in the Counties of England, upon great Forfeiture to the King; and hath charged his said Justices, that they shall not suffer the contrary to be done.

ITEM, Whereas it is contained in a Statute of the late King Edward, Grandfather to the King that now is, the xxviiij Year of his Reign, That no Manner of Ship, which is freighted toward England, or elsewhere, shall be compelled to come to any Port of England, nor there to tarry against the [Agreement'] of the Masters and Mariners of the same, or of the Merchants to whom the Goods be; and if such Ships come of their own Good-will, or be driven by Tempest, [Casualty, or other Misfortune,'] to any Port of England, and the Masters or Mariners, or Merchants of the same Ships, will sell or deliver Part of their Merchandizes with their Good-will, it shall be lawful to every Person to buy such Merchandizes freely without Impeachment in the Port where such Ships shall come, albeit the Merchandizes be not [put to Sale to the Land;'] And the Masters, Mariners, and Merchants, after that they have so sold so much as pleaseth them of their said Goods, and the Custom thereof paid, may freely depart and go with their Ships, and all the Remnant of their Goods, where it shall please them, without paying thereof Custom: Our said Lord the King, for the Quietness and Ease of his People, willeth, That the said Statute shall be holden and kept in all Points, and duly executed, notwithstanding any Ordinance or Usage to the contrary.

ITEM, Forasmuch as the Communons have made Complaint, that many great Mischiefs, Extorsions, and Oppressions be done by divers People of evil Condition, which of their own Authority take and cause to be taken royally Horses and other Things, and Beasts out of their Wains, Carts, and Houses, saying and devising that they be to ride on hasty Messages and Business, where of Truth they be in no wise privy of any Business or Message, but only in Deceit and Subtily by such Colour

<sup>1</sup> Pull <sup>2</sup> Omit this word. <sup>3</sup> Badge or Livery <sup>4</sup> Will or other Misfortune or Mischiefe, <sup>5</sup> put to land, to sell.

Confirmation thereof.

No Man shall ride or go armed.

The Statute Ric. II. c. 7. touching giving of Liveries, confirmed.

II. Liveries of Companies restrained.

III. None shall sit upon the Bench with Justices of Assise.

IV. Recital of St. 28 Edw. III. chapter 13, concerning Merchants Strangers.

Confirmation thereof.

V. Penalty for taking Horses, &c. for the King's Service, without Warrant.

1400.

*Membrane 24d—cont.*

Jan. 20. To the sheriffs of London. Writ of *supersedeas*, and order by  
Westminster. mainprise of William Carneby, John Laweson, William Clifford  
and Henry Cotes, each of London 'wever,' to set free Adam  
'Jonesservant Boston cooke,' if taken at the several suits of  
Richard Meryot of London 'goldsmyth' and Thomas Totenham  
averring threats.

Jan. 26. John Bolyngbroke esquire to Master John Kyngton clerk,  
Westminster. William Wilyngham parson of Ketilthorp and Simon Fouler.  
Recognisance for 40*l.*, to be levied etc. in Notynghamshire.

Feb. 7. To the sheriff of York. Order upon sight etc. to cause procla-  
Westminster. mation to be made, that no man of whatsoever estate or condition  
shall under pain of forfeiture take over wool, corn or other mer-  
chandise in any places by the sea called 'crykes' or any other  
places, known ports excepted, without special licence of the king.

Like writs to the sheriffs of the following counties etc. :

Kent.	Devon.
Suthampton.	Cornwall.
Essex.	Somerset.
Norfolk and Suffolk.	Bristol.
Surrey and Sussex.	

Also to the chancellor of the county palatine of Lancastre.

*MEMBRANE 23d.*

Jan. 25. To the sheriffs of Norwich. Writ of *supersedeas*, and order by  
Westminster. mainprise of John Alderforde, William Champeneys, Thomas  
Dounham and William Folkys of Norfolk to set free Alan Buntrell  
of Norwich 'coursour,' if taken at suit of the king and Nicholas  
Castel esquire for leaving the service of Nicholas Castel before the  
term agreed.

Feb. 4. To the sheriffs of London. Writ of *supersedeas*, by mainprise of  
Westminster. John Jay, Robert Aby, William Skendelby and Thomas Lefe of  
Suthwerke co. Surrey, in favour of John Welles of Suthwerke  
'whittawer' at suit of John Fuller of London 'glover' averring  
threats.

Jan. 30. To the mayor and sheriffs of London. Order upon sight etc. to  
Westminster. cause proclamation to be made, on the king's behalf forbidding any  
man of whatsoever estate or condition to go armed within the city  
and suburbs, or any except lords, knights and esquires with a  
sword, and the king's will is that one sword and no more be borne  
after each of these, under pain of forfeiting armour and swords, or  
there to make unlawful assemblies, disputes, affrays or riots, and  
order to arrest all whom they may find so doing after the proclama-  
tion, with their armour and swords, and commit them to the  
nearest prison, there to abide until the king shall take order for  
their deliverance ; as the king has information that great number  
of disputes etc. are made within the city by certain lieges gathering

1409.

*Membrane 23d—cont.*

in such assemblies with hauberks, swords and other arms and armour contrary to divers statutes and other ordinances, and in these days more than were used to be in times past, in contempt of the king, to the terror and disturbance of the people and contrary to the peace, and his will is that peace be cherished there and elsewhere within the realm. By K. and C.

Edmund Hamden, John Buktoft clerk, Walter Gayton, John Skrevan and John Kenwoldmerssh to Elizabeth la Vache late the wife of Philip la Vache knight. Grant that she shall not be troubled by them, their heirs or assigns for any waste now or hereafter made in the manor of Hognorton co. Oxford, whereof she is tenant for life with reversion to them, but shall be discharged of all action for waste therein. Dated 1 January 10 Henry IV.

*Memorandum of acknowledgment, 6 February.*

Henry ate Grene, otherwise 'Leycestre heraude,' to Thomas Fereby clerk and John de Pokelynton, their heirs and assigns. Charter indented with warranty of the three messuages, lands, wood etc. in the town and county of Hertforde which he had by feoffment of Maud Blakwelle his mother, sometime wife of Robert Blakwelle, and the reversion thereof after the death of William Blakwelle and Joan his wife, reserving to the grantor and his assigns during his life, with remainder to the grantees, the chamber on the right hand side just within the gate of one of those messuages wherein his mother lately dwelt, and a stable to that chamber adjacent, also the chamber there between the kitchen and the garden, with free ingress and egress, under a condition for defeasance of this grant if John de Pokelynton, his heirs and assigns, pay not 30*l.* to the grantor or his attorney, namely 10*l.* at Easter next, 10*l.* at Michaelmas following and 10*l.* at the Purification following, any clause in this charter and any money paid notwithstanding. Witnesses: Nicholas Schosse bailiff of Hertforde, Master Thomas Ferrour, John Carpenter, Henry Fuller, John Flecher, William Lythyng. Dated Hertforde, 2 February 1408, 10 Henry IV.

*Memorandum of acknowledgment, 7 February.*

Feb. 9. To the treasurer and the barons of the exchequer. Writ of  
Westminster. *supersedeas omnino* in respect of any process against William Banastre, appointed with others, upon an information that John Kyghlay and John Kent banished Englishmen, Wybert Fretton a banished Frenchman, the captain of Boulogne, John Burnet, William Ryncelyn and the captain of Normandy of France, and Uter Jonessone banished from Flanders committed and attempted at sea great number of robberies and misdeeds, contrary to the truce between England and France and to the appointment made at Lenlyngham by the ambassadors of England and France, whereby war might be like to arise, to arrest those robbers and evildoers, their accomplices and partisans and others of Saint

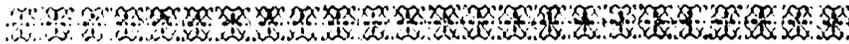
Anno Regni Quarto Gulielmi & Mariae.

One Half of the Fines and Forfeitures to be unto Their Majesties, and the other Half to the Informer.

AND further it is Enacted by the Authority aforesaid, That all Fines, Penalties, and Forfeitures arising by force and virtue of this Act, shall be, the one Half to Their Majesties, towards the Support of the Government of this Province, and the other Half to him or them that shall inform and sue for the same in any of Their Majesties Courts of Record within this Province.

Measurer of Salt, and Culler of Fish.

BE it further Enacted by the Authority aforesaid, That there be a Measurer of Salt, and Culler of Fish in every Sea-port Town within this Province, to be appointed, as aforesaid, who being likewise sworn for the faithful Discharge of that Office, shall cull all merchantable Fish, and measure all Salt that shall be imported and sold out of any Ship or other Vessel, and shall have Three-half Pence for every Hoghead of Salt by him so measured, to be paid, the one Half by the Buyer, the other Half by the Seller; and One Peny per Quintal for every Quintal of merchantable Fish by him culled, to be paid, one Half by the Buyer, and the other Half by the Seller.



Ch. 6.

Confirmed 22 Aug. 1695.

An Act for the Punishing of Criminal Offenders.

Swearing.

BE it Enacted and Ordained by the Governor, Council, and Representatives, in General Court Assembled, and by the Authority of the same, That if any Person or Persons shall prophanely Swear or Curse in the hearing of any Justice of the Peace, or shall be thereof convicted by the Oaths of Two Witnesses, or Confession of the Party, before any Justice or Justices of the Peace, every such Offender shall forfeit and pay unto the Use of the Poor of the Town where the Offence shall be committed, the Sum of Five Shillings; and if the Offender be not able to pay the said Sum, then to be set in the Stocks, not exceeding Two Hours: And if any Person shall utter more prophane Oaths or Curses at the same time, and in hearing of the same Person or Persons, he shall forfeit and pay to the Use aforesaid, the Sum of Twelve Pence for every Oath or Curse after the first, or be set in the Stocks Three Hours.

Drunkennes.

PROVIDED, That every Offence against this Law shall be complained of, and proved, as aforesaid, within Thirty Days next after the Offence committed.

Drunkennes.

FURTHER it is Enacted by the Authority aforesaid, That every Person convicted of Drunkenness by View of any Justice of Peace, Confession of the Party, or Oaths of Two Witnesses, such Person so convicted, shall forfeit and pay unto the Use of the Poor of the Town where such Offence is committed, the Sum of Five Shillings for every such Offence; and if the Offender be unable to pay the said Sum, to be set in the Stocks, not exceeding Three Hours, at the Discretion of the Justice or Justices before whom the Conviction shall be: And upon a second Conviction of Drunkenness, every such Offender, over and above the Penalty aforesaid, shall be bound with Two Sureties in the Sum of Ten Pounds, with Condition for the good Behaviour; and for want of such Sureties, shall be sent to the Common Goal until he find the same.

PROVIDED, That no Person shall be impeached or molested for any Offence against this Act, unless he shall be thereof Presented, Indicted, or Convicted, within Six Months after the Offence committed; and the Justice or Justices before whom Conviction of any of the aforesaid Offences shall be, are hereby impowered and authorized to restrain or commit the Offender, until the Fine imposed for such Offence be satisfied; or to cause the same to be levied by Distress and Sale of the Offender's Goods, by Warrant directed to the Constable, returning

*Anno Regni Quarto Gulielmi & Mariae.*

II

returning the Overplus ( if any be. ) All such Fines to be levied within One Week next after such Conviction, and delivered to the Select-men, or Overseers of the Poor, for the Use of the Poor, as aforesaid.

It is further Enacted and Ordained by the Authority aforesaid, That who-<sup>Theft,</sup> soever shall steal or purloin any Money, Goods, or Chattels, being thereof convicted by Confession, or sufficient Witness upon Oath, every such Offender shall forfeit treble the Value of the Money, Goods, or Chattels so stoln or purloined, unto the Owner or Owners thereof; and be further punished, by Fine or Whipping, at the Discretion of the Court or Justices that have Cognizance of such Offence, not exceeding the Sum of Five Pounds, or Twenty Stripes: And if any such Offender be unable to make Restitution, or pay such Threefold Damages, such Offender shall be enjoined to make Satisfaction by Service; and the Prosecutor shall be, and hereby is impowered to dispose of the said Offender in Service to any of Their Majesties Subjects, for such Term as shall be assigned by the Court or Justices before whom the Prosecution was. And every Justice of the Peace in the County where such Offence is committed, or where the Thief shall be apprehended, is hereby authorized to hear and determine all Offences against this Law: Provided, that the Damage exceed not the Sum of Forty Shillings. And if any Person shall commit Burglary<sup>Burglary and Robbery.</sup> by breaking up any Dwelling-house, Ware-house, Shop, Mill, Malt-house, Barn, Out-house, or any Ship or other Vessel lying within the Body of the County, or shall rob any Person in the Field or High-ways, every Person so offending shall, upon Conviction, be branded on the Forehead with the Letter B; and upon a second Conviction, shall be set upon the Gallows for the space of One Hour, with a Rope about his Neck, and one End thereof cast over the Gallows, and be severely Whipt, not exceeding Thirty nine Stripes; and upon a third Conviction of the like Offence, shall suffer the Pains of Death, as being Incorrigible; and shall likewise, upon the first and second Convictions, pay treble Damages to the Party injured, as is provided in case of Theft.

AND it is further Enacted by the Authority aforesaid, That if any Man<sup>Fornication.</sup> commit Fornication with any single Woman, upon due Conviction thereof, they shall be fined unto Their Majesties, not exceeding the Sum of Five Pounds; or be corporally punished by Whipping, not exceeding Ten Stripes apiece, at the Discretion of the Sessions of the Peace, who shall have Cognizance of the Offence. And he that is accused by any Woman to be the Father of a Bastard<sup>Reputed Father of a Bastard.</sup> Child, begotten of her Body, she continuing constant in such Accusation, being examined upon Oath, and put upon the Discovery of the Truth in the time of her Travail, shall be adjudged the Reputed Father of such Child, notwithstanding his Denial, and stand charged with the Maintenance thereof, with the Assistance of the Mother, as the Justices in the Quarter-Sessions shall order, and give Security to perform the said Order, and to save the Town or Place where such Child is born, free from Charge for its Maintenance; and may be committed to Prison until he find Sureties for the same, unless the Pleas and Proofs made and produced on the behalf of the Man accused, and other Circumstances, be such as the Justices shall see reason to judge him innocent, and acquit him thereof, and otherwise dispose of the Child: And every Justice of the Peace, upon his Discretion, may bind to the next Quarter-Sessions him that is charged or suspected to have begotten a Bastard Child; and if the Woman be not then delivered, the Sessions may order the Continuance or Renewal of his Bond, that he may be forth-coming when the Child is born.

FURTHER it is Enacted by the Authority aforesaid, That every Justice of the Peace in the County where the Offence is committed, may cause to be<sup>Power of the Justice of Peace.</sup> staid and arrested all Affrayers, Rioters, Disturbers, or Breakers of the Peace, and such as shall ride or go armed Offensively before any of Their Majesties Justices, or other Their Officers or Ministers doing their Office, or elsewhere, by

Add. 20

by Night or by Day, in Fear or Af fray of Their Majesties Liege People ; and such others as shall utter any Menaces or Threatning Speeches ; and upon View of such Justice or Justices, Confession of the Party, or other legal Conviction of any such Offence, shall commit the Offender to Prison, until he find Sureties for the Peace and good Behaviour, and seize and take away his Armour or Weapons, and shall cause them to be apprized and answered to the King as forfeited : And may further punish the Breach of the Peace, in any Person that shall smite or strike another, by Fine to the King, not exceeding Twenty Shillings, and require Bond with Sureties for the Peace, or bind the Offender over to answer it at the next Sessions of the Peace, as the Nature or Circumstance of the Offence may be ; and may make Enquiry of forcible Entry and Detainer, and cause the same to be removed, and make out Hue and Cries after Runaway Servants, Thieves, and other Criminals.

**Breach of the Peace.**

**Forcible Entry and Detainer.**

**Treason and Libelling.**

AND it is further Enacted by the Authority aforesaid, That if any Person or Persons of the Age of Discretion (which is accounted Fourteen Years, or upwards) shall wittingly and willingly make or publish any Lye or Libel, tending to the Defamation or Damage of any particular Person, make or spread any false News or Reports, with Intent to abuse and deceive others, every such Person or Persons offending in any of the Particulars before mentioned, and being duly convicted thereof before One or more Justices of the Peace, shall be fined according to the Degree of such Offence, not exceeding the Sum of Twenty Shillings for the first Conviction, and find Sureties for the good Behaviour : And if the Party be unable to pay the said Fine, then to be set in the Stocks, not exceeding Three Hours, or be corporally punished by Whipping, at the Discretion of the Justice or Justices before whom the Conviction shall be, according as the Circumstances or Nature of the Offence shall be ; and the said Justice or Justices may restrain and commit the Offender until he pay the said Fine, and find Sureties for the good Behaviour, or may cause the Fine to be levied by Distress and Sale of the Offender's Goods ; and the Party or Parties grieved or injured by reason of any of the Offences aforesaid, shall or may take his or their Suit against any such Offender or Offenders in any Court of Record.

**Forgery.**

It is further Enacted by the Authority aforesaid, That if any Person or Persons, upon his or their own Head or Imagination, or by false Conspiracy and Fraud with others, shall wittingly, subtilly, and falsely forge or make, or subtilly cause, or wittingly assent to be forged or made, any false Deed, Conveyance, or Writing sealed, or the Will of any Person or Persons in Writing, to the Intent that the Estate of Free-hold or Inheritance, Right, Title, or Interest of any Person or Persons, of, in, or to any Lands, Tenements, or Hereditaments, shall or may be molested, troubled, defeated, recovered, or charged, or shall, as is aforesaid, forge, make, or cause or assent to be made or forged, any Obligation, or Bill Obligatory, Letter of Attorney, or any Acquittance, Release, or other Discharge of any Debt, Account, Action, Suit, Demand, or other Thing Personal ; or if any Person or Persons shall pronounce, publish, or shew forth in Evidence, any such false and forged Deed, Conveyance, Writing, Obligation, Bill Obligatory, Letter of Attorney, Acquittance, Release, or Discharge, as true, knowing the same to be false and forged, as is aforesaid, to the Intent above remembred, and shall be thereof convicted, either upon Action or Actions of Forger of false Deeds to be founded upon this Act at the Suit of the Party grieved, or otherwise according to the Order and due Course of Law, or upon Bill or Information, that then every such Offender shall pay unto the Party grieved his double Costs and Damages, to be found and assessed in such Court where the said Conviction shall be ; and also shall be set upon the Pillory in some Market-Town, or other open Place, and there to have One of his Ears cut off, and also shall have and suffer Imprisonment by the Space of One whole Year without Bail or Mainprize ; and the Party or Parties grieved by reason

## LAWS OF NEW HAMPSHIRE.

AN ACT FOR ESTABLISHING AND REGULATING COURTS OF PUBLIC JUSTICE WITHIN THIS PROVINCE. — PASS'D IITH OF WM. 3. WITH ADDITIONAL PARAGRAPHS OF OTHER ACTS RELATIVE THERETO.

Whereas the establishing and regulating courts of justice, doth very much tend to the honour and dignity of the crown, and to the ease and benefit of the Subject :

*Be it therefore Enacted by the Governor, Council, and Representatives, in General Assembly convened, and by the Authority of the same :*

That every justice of the peace in this province, is hereby authorized and impower'd, to take cognizance of, hear, try, and determine, any criminal offence against any penal law not exceeding the sum of forty shillings, and to issue all necessary process, and award execution thereon with legal cost ; as well as in all other cases where he is, or shall be so authorized by particular laws. But any person against whom such sentence shall be given, by one or more justices of the peace, out of the court of general sessions of the peace, may appeal from the same, to the next court of general sessions of the peace, to be held in and for said province ; the appellant recognizing with sureties, in a reasonable sum, not exceeding five pounds, for his appearance at the court appealed to, and prosecuting his appeal there with effect, and for performing and abiding the order or sentence of said court thereon, which shall be final ; and in the mean time to be of the good behaviour. The appellant in such cases is to observe the same rules in bringing forward the appeal, as is hereafter directed in civil cases, and to pay the same fee for entering such appeal ; and to the jury, if it shall be tried by them, as is paid for cases so tried at the inferior court — *Provided* such liberty of appealing shall not be construed to extend to such cases as by the particular laws aforesaid, are otherwise order'd.

And every justice of the peace within this province, may cause to be stayed and arrested, all affrayers, rioters, disturbers or breakers of the peace, or any other who shall go armed offensively, or put his Majesty's subjects in fear, by menaces or threatening speeches : And upon view of such justice, confession of the

Justices power in criminal cases, by virtue of a paragraph of an act passed 4th of G. 1. relating to sureties upon mean process, &c.

Appeal granted.

Provisò.

Justices power to stay affrayers, rioters &c. and to punish the breach of the peace ; by virtue of a paragraph in an act past

13th of W. 3d,  
for punishing  
criminal offend-  
ers.

offender, or legal proof of any such offence, the justice may commit the offender to prison, until he or she find such sureties for the peace and good behaviour, as is required, according to the aggravations of the offence; and cause the arms or weapons so used by the offender, to be taken away, which shall be forfeited and sold for his Majesty's use. And may also punish the breach of the peace in any person, who shall smite, or strike another, by fine to the King, not exceeding twenty shillings; and require bond with sureties for the peace, till the next court of general sessions of the peace, or may bind the offender over to answer for said offence at said court, as the nature and circumstances of the offence may require.

An act of 13th of  
W. 3d, for giving  
aid to sheriffs,  
&c.

That any of said justices, for the preservation of the peace, upon view of the breach thereof, or of any other transgression of the law proper to his cognizance, done, or committed by any person, or persons whatsoever, shall, and hereby is, impowered, in the absence of a sheriff, under-sheriff, or constable, to require any person, or persons, to apprehend and to bring before him, such offender or offenders: And every person, or persons that shall neglect, or refuse to obey any justice, or justices, in apprehending such offender, or offenders, being thereunto required as aforesaid, shall incur and suffer the like pains and penalties as is provided for refusing or neglecting to assist any sheriff, under-sheriff, or constable, in the execution of his office.

Justices power  
in civil cases by  
virtue of the act  
for establishing  
courts of justice  
in this province,  
past the 11th  
of W. 3d.

And every justice of the peace in this province, in the town or parish where he dwells, shall be, and hereby is, authorized and impowered to take cognizance of, hear, try, and determine, any civil action, wherein the demand is for any sum not exceeding forty shillings, arising within this province, in which the title of land, or any real estate is not concerned. And to give judgment for the debt, or damage, according to the nature of the action, with the legal cost, and grant execution thereon — And for that purpose to issue all necessary processes, which with the execution aforesaid, shall be in the forms prescribed by law. All writs issued by any justice of the peace, shall be directed to the sheriff of said province, his under-sheriff or deputy, or to any constable of the town or parish where the person, on whom any such writ is to be served, resides; and shall be executed seven days before the day therein appointed for the trial, and return'd to the justice who issued the same, at or before the time of trial. And all pleas in abatement, and bar, in any such action, shall be made and enter'd, before any issuable plea is given.

Direction of  
writs by 4th of G.  
r. prescribing  
forms. To be  
served 7 days be-  
fore the time of  
trial.

Pleas in abate-  
ment and bar to  
be first made.

Judgment may  
be given on de-  
fault of appear-  
ance.

And in case any person, on whom any writ issued by a justice of the peace, has been duly serv'd and return'd, shall not appear at the time of trial, either by himself or attorney, the justice may enter judgment, in the absence of such party, according to the nature of the action and evidence produced by the plaintiff — And may also give judgment, where any Plaintiff shall become non-suit, or discontinue his suit for the defendant, for his legal cost — *Provided*, nevertheless, that any party aggrieved at the judgment or sentence of any justice of the peace, in any of the cases aforesaid, may appeal from the same, to the next inferior

Liberty of ap-  
pealing.

OF NEW HAMPSHIRE.

court of common pleas, to be held in and for said province ; the party appealing, giving security before said justice, in a reasonable sum, to the appellee, to prosecute his appeal with effect, and to answer and pay such cost and damage, as shall be awarded against the appellant thereon, at the said court. And the party so appealing, shall observe the same rule in bringing forward his appeal, as is prescribed in this act, to appellants from judgments of the inferior court, and have the same advantage.

How the appeal is to be bro't forward, &c.

And be it further Enacted, That there shall be held and kept, by the justices of the peace within this province, or so many of them as shall be limited by the commission of the peace, to make a quorum, a court of general sessions of the peace at Portsmouth in said province, quarterly, every year ; to begin on the second Tuesdays of March, June, September, and December : Who are hereby empower'd to hear and determine all matters relating to the conservation of the peace, and punishment of offenders, appeals from the sentences of justices in the criminal cases triable by them as aforesaid, and whatsoever is by said court cognizable according to law ; and to give judgment and award execution therein.

Court of general sessions of the peace by virtue of the said act of the 11th of W. 3d. The time now stated by the act of the 31st of G. the 2d, for altering the times for holding the several courts of justice, &c.

And any person aggrieved at the sentence of the justices, in the court of general sessions of the peace, may appeal from such sentence, the matter being originally heard and tried in the said court, unto the next court of assize and general goal delivery, in said province, there to be finally issued. — Provided that no appeal shall be granted, unless it be claimed at the time of declaring the sentence, and the appellant enter into recognizance, with two sureties within the space of two hours next after, in a reasonable sum for his personal appearance at the court appealed to, and prosecution of his appeal there with effect, and to perform and abide by the order or sentence of the said court thereon, and to be of good behaviour in the mean time. And the party appealing is to remain in the hands or custody of an officer, until he or she shall have given such security, and the officer not to be allowed above twelve pence an hour for his time and attendance.

Liberty to appeal to the court of assize, by virtue of a paragraph in said act of 4th of G. 1st, relating to sureties upon mean process, &c.

Time and conditions of granting said appeal.

And such appellant shall, at his or her own cost, take out and present unto the court appealed to, an attested copy of the sentence, and of all the evidences, upon which the same was grounded : and the appellant shall pay the like fee, for the entry of his appeal in the court appealed to, as is by law required for entry of a civil action, and the like fee to the jury that shall try the same.

How the appellant shall bring forward his appeal.

And be it further Enacted, That there shall be held and kept at said Portsmouth, at four terms, an inferior court of common pleas, by four justices, to be appointed and commissioned thereto, by the Governor or Commander in chief for the time being, any three of whom to make a quorum : The said terms to begin on the first Tuesdays of March, June, September, and December, annually. Which said inferior court shall have cognizance of, hear, try, and determine, all civil actions, matters, and causes, triable at the common law, of what nature, kind, or quality soever, appeals from judgments of justices of the peace in civil actions, triable by them as aforesaid — Excepting that no action for the value of forty shillings, and under, shall be commenced at the said

Inferior court established by the said act of the 11th of W. 3d.

Time of the beginning of each term by said act, 31st of G. 2.

Actions of 40s. value and under, to be commenced elsewhere, title of land excepted, by virtue of the act for regulating trials in civil causes, past 13th of W. 3.

inferior court, unless the title of land, or any real estate, is concern'd.

Appeal granted by virtue of the act of 13th of W. 3, for regulating trials in civil causes.

And any party aggrieved at the judgment given in any inferior court of common pleas (the matter being originally heard and tried there) may appeal from such judgment, to the next superior court of judicature, to be held within and for this province. The appellant entering into a recognizance with sufficient sureties, to prosecute his appeal there with effect, and to answer and pay all intervening damages occasion'd to the appellee by such appeal, with additional costs, in case the judgment shall be affirmed. And no execution shall be awarded or issued, on any judgment, from which an appeal is granted. The said recognizance shall be taken before the said inferior court of common pleas whilst sitting, or before one or more of the justices of the same, with the clerk, out of court, at any time within seven days, next after the judgment given, if the appeal is claimed in court. But if the security for prosecuting such appeal, shall not be so given, the clerk of said court may issue execution as he may do, where no appeal is claimed.

Execution stayed

Security to be given to prosecute, &c.

The time when it may be given.

In default thereof execution may issue.

Appellant to produce a copy of the case.

And the appellant shall produce and give into the court where such appeal is to be tried, attested copies of the writ, judgment, and all the evidence filed in the inferior court of common pleas. And each party shall be allow'd the benefit of any new and farther plea or argument, in the trial on the appeal, and also any new evidence.

What shall be done if the appellant shall not produce it.

And in default of producing such copies, in manner and form aforesaid, the appellant shall be non-suited, and judgment shall be enter'd for the appellee, upon his producing the copies and evidence necessary for that purpose, according to the nature of the case.

Superior court of judicature, court of assize, &c. so called by several acts viz. 10th Ann against forging the bills of credit; the 4th of Geo. 1st relating to sureties, &c. another of the 4th of Geo. 1. relating to the office & duty of a coroner, &c. The beginning of each term now stated by the said act of 31st of Geo. 2.

And be it further Enacted, That there shall be held and kept at Portsmouth aforesaid, at two terms in every year, a superior court of judicature, court of assize and general goal delivery, by one chief justice, and three other justices, to be appointed and commissioned thereto by the Governor or Commander in chief for the time being, any three of whom to make a quorum. The one of said terms to begin on the third Tuesday of May, and the other on the second Tuesday of November, annually. Which court shall have cognizance of all pleas, real, personal, or mixt, or any civil action or cause, as well between his Majesty and any of his subjects as between one subject and another; whether the same do concern the realty, and relate to any right of freehold and inheritance, or whether the same do concern the personalty, and relate to matter of debt, contract, damage, or personal injury. And all mixt actions, which concern both realty and personalty, which shall be brought before them, by appeal, review, writ of error, certiorari, or in any legal way whatsoever. And all pleas of the crown, criminal actions, and causes, and whatsoever relates to the conservation of the peace, and punishment of offenders, whether the same be brought into said court by appeal, or any original process, according to law. And generally all other matters, as fully and amply to all intents and purposes whatsoever, as

The power of the King's Bench, &c.

## OF NEW HAMPSHIRE.

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the courts of King's Bench, common pleas and exchequer, within his Majesty's kingdom of England have, or ought to have. And are hereby impowered to give judgment therein, and award execution thereupon.

And any party, aggrieved at the judgment given in the said superior court, in any civil action, may appeal from the same, unto the Governor and Council, as a court of appeals, to hear and determine such cases—*Provided* the value appealed for, or matter in controversy, exceed the sum of one hundred pounds sterling. And that sufficient security be given by recognizance or otherways, before the said superior court, to prosecute the said appeal with effect, and to pay all intervening damages as aforesaid, in case the judgment appealed from, shall be affirmed, with additional costs.

Liberty of appeal to the Governor and Council as a court of appeals for £100 sterling.

And in civil actions tried at the said superior court, if the matter in controversy exceeds the true value of the sum of three hundred pounds sterling, either party to the suit, may appeal from the judgment of said court, to his Majesty in council, whether the said judgment be given on the appeal, or review at said court. And such appeals may be made at any time within fourteen days after sentence or judgment is given, sufficient security being given by the appellant, as the court shall direct, to the appellee, to answer such cost and damage as shall be sustain'd by the appeal, in case the judgment appealed from shall be affirm'd.

Liberty to appeal from the superior court to the King in council for £300 sterling.

*And be it further Enacted,* That all original writs, or writs of review, for bringing any civil actions or suits to trial, in the said inferior court of common pleas, or superior court of judicature, shall be summons, capias or attachment, and shall be issued in the form directed in and by an act of this province, entituled "An act prescribing forms of writs in civil causes"; and shall be under the seal, and signed by the clerk, of the court, to which it shall be returnable, and shall be executed by the officer to whom it is directed, fourteen days at least before the day of the sitting of the court to which it is to be returned.

Security to be given.

Original writs what sort to be.

Writs how issued and executed. Pass'd 4th of G. 1.

And the justices of the several courts aforesaid, are hereby authorized to make necessary rules, for the more orderly practice, and management of the business of said courts respectively: *Provided* such rules are not repugnant to the laws of this province, nor to the rules of common law in use here.

Courts power to make rules, by 13th W. 3.

And also as often as they shall judge it necessary and proper, to chuse and appoint a clerk, to officiate in such court, and to do all things belonging to that office, who shall be under oath, well and truly to execute and discharge the same.

And to chuse their clerk, by the 13th W. 3.

*And be it further Enacted,* That in all cases that are or shall be brought for trial in the said superior court of judicature, or inferior court of common pleas, where the forfeiture of the penalty of any obligation, with a condition, or penalty annexed to any articles, agreement, covenant, contract, charter-party or other specialty: or the forfeiture of any estate granted on condition, executed by deed of mortgage, or bargain and sale with defeazance, shall be found by verdict of a jury, or by default or confession of the obligor, mortgager, or vender, the justices of

Courts power of chancery.

the said courts respectively where the trial is had, are hereby im-  
 powered, and authorized, to moderate the rigour of the law, and  
 in consideration of such cases, according to equity and good con-  
 science, to chancer such forfeiture, and to enter up judgment for  
 the just debt and damages, and to award execution accordingly.  
 Only in real actions, upon mortgage, or bargain and sale with  
 defeazance, the judgment to be conditional ; that the mortgager  
 or vender, his heirs, executors, administrators, or assigns, pay to  
 the plaintiff, such sum as the court shall determine to be justly  
 due thereon, within two months, to be computed from the date  
 of the judgment in such case. And in default thereof that the  
 plaintiff recover possession of the estate sued for, and have exe-  
 cution for the same accordingly.

Justices of each  
 court to be  
 sworn.

And each of the justices of the superior court of judicature,  
 court of assize and general goal delivery, and each of the justices  
 of the inferior court of common pleas, shall, before their enter-  
 ing upon the execution of their respective offices, take the follow-  
 ing oath, to be administred by the Governor or Commander in  
 chief for the time being, or such as shall be by him thereunto  
 appointed.

Oath.

You swear, that well and truly you shall serve our sovereign Lord  
 the King, and his people, in the office of a justice of the \_\_\_\_\_ court of  
 \_\_\_\_\_ and that you will do equal law and execution of right, to all people,  
 poor and rich, according to the laws in force within this province, and usage  
 within the same; and in such cases as the law doth specially provide to be  
 relieved in equity, and good conscience, without having regard to any person  
 whomsoever. So help you God.

Pass'd 13th of  
 W. 3.

AN ACT FOR REGULATING OF TRIALS IN CIVIL CASES.

*Be it Enacted by the Lieutenant Governor, Council, and Repre-  
 sentatives, convened in general assembly, and by the authority  
 of the same:*

Actions for more  
 than 40s. to be  
 commenced at  
 the inferior court,  
 excepting causes  
 wherein the King  
 is concern'd,  
 which may be at  
 either inf. or sup-  
 court. All pro-  
 cess to be in  
 English. Not to  
 abate for circum-  
 stantial errors.

That all actions triable at the common law, for any matter or  
 demand above forty shillings value, as also titles of land, shall be  
 first brought to the inferior court of common pleas, (excepting  
 only actions or causes relating to the Crown, which may be tried  
 at either the inferior court of common pleas, or the superior  
 court of judicature.) And that all writs, processes, declarations,  
 indictments, pleas, answers, replications, and entries, in the  
 several courts of justice within this province, shall be in the  
 English tongue, and no other. And that no summons, process,  
 writ, judgment, or other proceedings in court, or course of justice,  
 shall be abated, or arrested, or reversed for any kind of circum-  
 stantial errors, or mistakes, where the person and case may be  
 rightly understood and intended by the court, nor through defect  
 or want of form only; and the justices on motion made in court  
 may order amendment thereof.

Costs to be grant-  
 ed on non-suits.

*And it is further Enacted by the Authority aforesaid, That if  
 any person shall cause process to be served upon another on pre-*

1786.

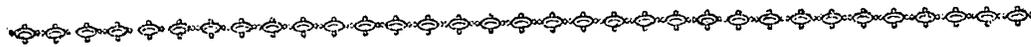
terposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them :

II. *BE it enacted by the General Assembly,* That no man shall be compelled to frequent or support any religious worship, place, or Ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

No man compelled to frequent or support any religious worship. All men free to profess, and by argument to maintain their religious opinions.

III. *AND* though we well know that this Assembly elected by the people for the ordinary purposes of legislation only, have no power to restrain the Acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this Act to be irrevocable, would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted, are of the natural rights of mankind, and that if any Act shall be hereafter passed to repeal the present, or to narrow its operation, such Act will be an infringement of natural right.

Declaration that the rights by this Act asserted, are of the natural rights of mankind.



*General Assembly, begun and held at the Public Buildings, in the City of Richmond, on Monday, the 16th Day of October, in the Year of our Lord, 1786.*

C H A P. XXI.

*An Act forbidding and punishing Affrays.*

[Passed the 27th of November, 1786.]

**B***E it enacted by the General Assembly,* That no man, great nor small, of what condition soever he be, except the Ministers of Justice in executing the precepts of the Courts of Justice, or in executing of their office, and such as be in their company assisting them, be so hardy to come before the Justices of any Court, or other of their Ministers of Justice, doing their office, with force and arms, on pain, to forfeit their armour to the Commonwealth, and their bodies to prison, at the pleasure of a Court; nor go nor ride armed by night nor by day, in fairs or markets, or in other places, in terror of the Country, upon pain of being arrested and committed to prison by any Justice on his own view, or proof by others, there to abide for so long a time as a Jury, to be sworn for that purpose by the said Justice, shall direct, and in like manner to forfeit his armour to the Commonwealth; but no person shall be imprisoned for such offence by a longer space of time than one month.

Punishment of persons going armed before Courts of Justice, or the Ministers of Justice, or in fairs or markets in terror of the Country

C H A P. XXII.

*An Act against Conspirators.*

[Passed the 27th of November, 1786.]

**B***E it declared and enacted by the General Assembly,* That Conspirators be they that do confederate and bind themselves by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously, to move or cause to be moved any indictment or information against another on the part of the Commonwealth, and those who are convicted thereof at the suit of the Commonwealth, shall be punished by imprisonment and amercement, at the discretion of a Jury.

Who shall be deemed conspirators.

24627

North Carolina. Laws, Statutes, etc., 1792.

A Collection of the Statutes of the Parliament of England  
in Force in ... North Carolina.

Newbern, 1792. xxvi, 424, [ 3 ] pp.

AAS copy.

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A  
COLLECTIO  
OF THE  
STATUTES  
OF THE PARLIAMENT OF  
ENGLAND  
IN FORCE IN THE STATE OF  
NORTH-CAROLINA.

---

PUBLISHED ACCORDING TO A RESOLVE OF THE GENERAL ASSEMBLY  
BY FRANCOIS-XAVIER MARSHALL, Esq.  
COUNSELLOR AT LAW.

---

NEW BERN:  
FROM THE EDITOR'S PRESS.

---

1792.

( 60 )

C H A P. VIII.

*Nothing shall be taken for Beaupleader.*

**I**TEM, Whereas some of the realm have grievously complained, that they be grieved by Sheriffs, naming themselves the King's approvers, which take money by extortion for Beaupleader, the King will, that the statute of Marlebridge shall be observed and kept in this point.

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C H A P. XIV.

*None shall commit Maintenance.*

**I**TEM, Because the King desireth that common right be administered to all persons, as well poor as rich, he commandeth and defendeth, that none of his Counsellors, nor of his house, nor none other of his Ministers, nor no great man of the realm by himself, nor by other, by sending of letters, nor otherwise, nor none other in this land, great nor small, shall take upon them to maintain quarrels nor parties in the country, to the let and disturbance of the common law.

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Statutes made at Northampton, tribus Septimanis Paschae, in the Second Year of the Reign of Edward the Third, and in the Year of our Lord 1328.

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C H A P. I.

*A Confirmation of the Great Charter and the Charter of the Forest.*

[Unnecessary to be inserted.]

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C H A P. III.

*No Man shall come before the Justices, or go or ride armed.*

**I**TEM, It is enacted, that no man great nor small, of what condition soever he be, except the King's servants in his presence, and his Ministers in executing of the King's precepts, or of their office, and such as be in their company assisting them, and also upon a cry made for arms to keep the peace, and the same in such places where such acts happen, be so hardy to come before the King's Justices, or other of the King's

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( 61 )

Ministers doing their office with force and arms, nor bring no force in an affray of peace, nor to go nor ride armed by night nor by day, in fairs, markets, nor in the presence of the King's Justices, or other ministers, nor in no part elsewhere, upon pain to forfeit their armour to the King, and their bodies to prison at the King's pleasure. And that the King's Justices in their presence, Sheriffs and other ministers, in their bailiwicks, Lords of Franchises, and their bailiffs in the same, and Mayors and Bailiffs of cities and boroughs, within the same cities and boroughs, and borough-holders, constables and wardens of the peace within their wards shall have power to execute this act. And that the Justices assigned, at their coming down into the country, shall have power to enquire how such officers and lords have exercised their offices in this case, and to punish them whom they find that have not done that which pertain to their office.

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C H A P. V.

*The Manner how Writs shall be delivered to the Sheriff to be executed.*

**I**TEM where it was ordained by the statute of Westminster the second, that they which will deliver their writs to the Sheriff shall deliver them in the full county, or in the rere county, and that the Sheriff or Under-Sheriff shall thereupon make a bill: it is accorded and established, that at what time or place in the county a man doth deliver any writ to the Sheriff or to the Under-Sheriff, that they shall receive the same writs, and make a bill after the form contained in the same statute, without taking any thing therefore. And if they refuse to make a bill, others that be present shall set to their seals, and if the Sheriff or Under-Sheriff do not return the said writs, they shall be punished after the form contained in the said statute. And also the Justices of Assize shall have power to enquire thereof at every man's complaint, and to award damages, as having respect to the delay, and to the loss and peril that might happen.

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C H A P. VI.

*Justices shall have Power to punish Breakers of the Peace.*

**I**TEM, as to the keeping of the peace in time to come, it is ordained and enacted that the statutes made in time past, with the statute of Winchester, shall be observed and kept in every point: and where it is contained in the end of said statute of Winchester, that the Justices assigned shall have power to enquire of defaults, and to report to the King in his next parliament, and the King to remedy it, which no man hath yet seen, the same Justices shall have power to punish the offenders and disobeyers.

Q

*In the Year of our LORD, 1795.*

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Criminal Offenders.

on said fence, till it comes to the land improved by *George Sumner*; then through said land nearly the same course, till it comes to the south-west corner of said *George Sumner's* home meadow, so called; then turning and running easterly in said meadow, as the ditch which forms the fence is made, till it comes to the south end of *Benjamin Hawes's* meadow; then in the line between said *Hawes's* meadow, and the land of *William Richards*; then in the line between said *Richards's* home lot, and the meadow lots, till it comes to *Cumming's* brook, so called; thence on said brook, till it comes to the line between *Stoughton* and *Sharen*; thence on said line till it comes to *Neponset river*; thence westerly on said river, till it comes to *Trapbale brook*; thence on said brook, till it comes to the bounds first mentioned—shall be considered as *one Common and General Field*; and that the proprietors of said lands, their heirs and successors be, and they hereby are incorporated and invested with all the powers and privileges which the proprietors of Common and General Fields by Law are invested with.

[This Act passed January 22, 1795.]

C H A P. II.

An Act for repealing an Act, made and passed in the year of our Lord, one Thousand six Hundred and Ninety-two, entitled, "An Act for punishing Criminal Offenders," and for re-enacting certain Provisions therein.

AS repealed.

**B**E it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the said Act be, and hereby is repealed, and made wholly null and void.

Justices of the Peace empowered.

And be it further enacted by the authority aforesaid, That every Justice of the Peace, within the county for which he may be commissioned, may cause to be said and arrested, all affrayers, rioters, disturbers, or breakers of the peace, and such as shall ride or go armed offensively, to the fear or terror of the good citizens of this Commonwealth, or such others as may utter any menaces or threatening speeches, and upon view of such Justice, confession of the delinquent, or other legal conviction of any such offence, shall require of the offender to find sureties for his keeping the Peace, and being of the good behaviour; and in want thereof, to commit him to prison until he shall comply with such requisition: And may further punish the breach of the Peace in any person that shall assault or strike another, by fine to the Commonwealth, not exceeding *twenty shillings*, and require sureties, as aforesaid, or bind the offender, to appear and answer for his offence, at the next Court of General Sessions of the Peace, as the nature or circumstances of the case may require.

[This Act passed January 29, 1795.]

C H A P.

**1804.** co unty, shall proceed against such offender, in the same manner as is heretofore prescribed for vagrants.

Keepers of certain gaming tables deemed vagrants. 1811, c. 112, s. 1, 2.

3. *Be it enacted*, That all and every keeper or keepers, exhibitor or exhibitors, of either of the gaming tables commonly called A. B. C. or E. O. tables, or faro bank, or of any other gaming cloth table, or bank of the same, or like kind, under any denomination whatever, shall be deemed and treated as a vagrant, and moreover it shall be the duty of any judge or justice of the peace, by warrant under his hand, to order such gaming table or cloth to be seized and publicly burned or destroyed; said warrant shall be directed to some one constable within the county, whose duty it shall be, forthwith to execute the same: *Provided*, That nothing herein contained, shall be so construed as to extend to billiard tables.

Penalty for harboring vagrants. April 1784, c. 34, s. 4.

4. *Be it enacted*, That it shall not be lawful for any house keeper to harbor any idle person of the character aforesaid, for any longer time than is heretofore specified, under the penalty of twenty dollars for every such offence, to be recovered by warrant before any justice of the peace of the county where the offence is committed.

Duty of the justices herein. Apl. 1784, c. 34. 1811, c. 112, s. 1, 2.

5. *Be it enacted*, That it shall be the duty of each justice of the peace, on information being made on oath to him or them, that there is a person or persons of the aforesaid description, loitering in his or their county, then and in that case he or they shall issue his or their warrant against such person or persons agreeable to this act: *And provided*, he or they shall neglect or refuse so to do, it shall be deemed a misdemeanor in office, for which he or they shall be impeachable, and on conviction be removed from office.

Penalty for failing.

Proceedings against persons going armed contrary to this act.

6. *Be it enacted*, That if any person or persons shall publicly ride or go armed to the terror of the people, or privately carry any dirk, large knife, pistol or any other dangerous weapon, to the fear or terror of any person, it shall be the duty of any judge or justice, on his own view, or upon the information of any other person on oath, to bind such person or persons to their good behaviour, and if he or they fail to find securities, commit him or them to jail, and if such person or persons shall continue so to offend, he or they shall not only forfeit their recognizance, but be liable to an indictment, and be punished as for a breach of the peace, or riot at common law.

Felony to maim or disfigure any person, &c. Dec. 1754, ch. 15. 1807, ch. 73, s. 13.

7. *Be it enacted*, That if any person or persons shall unlawfully cut out or disable the tongue, put out an eye, slit a nose, bite or cut off a nose, ear or lip, or cut off or disable any limb or member, or stab any person whatsoever, in doing so, to maim, wound or disfigure in any of the manners before mentioned, such person or persons so offending, their counsellors, aiders and abettors, knowing of, and privy to the offence, shall be and are hereby declared to be felons, and shall suffer as in case of felony: *Provided nevertheless*, he or they shall be entitled to benefit of clergy, and be further liable to an action of damages to the party injured.

POWER OF JUSTICES.

CHAPTER LXXVI.

An Act describing the power of Justices of the Peace in Civil and Criminal Cases.

SEC. 1. **BE** it enacted by the Senate, and House of Representatives, in Legislature assembled, That it shall be within the power, and be the duty of every Justice of the Peace within his county, to punish by fine not exceeding five dollars, all assaults and batteries that are not of a high and aggravated nature, and to examine into all homicides, murders, treasons, and felonies done and committed in his county, and commit to prison all persons guilty, or suspected to be guilty of manslaughter, murder, treason or other capital offence; and to cause to be staid and arrested, all affrayers, rioters, disturbers or breakers of the peace, and such as shall ride or go armed offensively, to the fear or terror of the good citizens of this State, or such others as may utter any menaces or threatening speeches; and upon view of such Justice, confession of the delinquent, or other legal conviction of any such offence, shall require of the offender to find sureties to appear and answer for his offence, at the Supreme Judicial Court, or Circuit Court of Common Pleas, next to be held within or for the same county, at the discretion of the Justice, and as the nature or circumstances of the case may require; and for his keeping the peace, and being of the good behaviour, until the sitting of the Court he is to appear before; and to hold to bail all persons guilty or suspected to be guilty of lesser offences which are not cognizable by a Justice of the Peace; and require sureties for the good behaviour of dangerous and disorderly persons; and commit all such persons as shall refuse so to recognize, and find such surety or sureties as aforesaid; and take cognizance of, or examine into all other crimes, matters and offences, which by particular laws are put within his jurisdiction.

*General jurisdiction of Justices of the Peace, and their duty in criminal cases, in arresting, trying, recognizing and committing offenders.*

SEC. 2. *Be it further enacted,* That all fines and forfeitures accruing for the breach of any bye-law, in any town within this State, may be prosecuted for, and recovered before any Justice of the Peace in the town or county where the offence shall be committed, by complaint or information, in the same way and manner other criminal offences are prosecuted before the Justices of the Peace within this State.

*Breaches of the bye-laws of towns may be prosecuted before Justices of the Peace.*

SEC. 3. *Be it further enacted,* That any person aggrieved at the sentence given against him, by any justice of the Peace, may appeal therefrom to the next Circuit Court of Common Pleas to be held within the same county, and shall, before his appeal is granted, recognize to the State in such reasonable sum, not less than twenty dollars, as the Justice shall order, with sufficient surety or sureties for his prosecuting his appeal; and shall be held to produce the copy of the whole process, and all writings filed before the Justice, at the Court appeal-

*Persons aggrieved may appeal to the C. Court of Com. Pleas.*

*Must recognize with sureties,*

*and produce copies of case at C. C. Common Pleas.*

POWER OF JUSTICES.

Failing to prosecute his appeal, his default, to be entered.

Court may order such case to be laid before Grand Jury, or arrest appellant, and affirm sentence, &c.

Justices may command assistance of sheriff, deputies and constables at riots, affrays, &c.

Justices may, on their own view, (in absence of sheriff, deputies or constables,) require any person to apprehend offenders.

Penalty for refusing to obey such Justice.

If the Justice be known or declared—plea of ignorance of his office not admissible.

Justices may grant subpoenas for witnesses in criminal cases:

But not on behalf of the State without consent of Attorney General, or County Attorney, except before himself.

Justices to account annually to State, County and Town Treasurers for all fines, &c.

Penalty for neglect.

ed to. And if he shall not there prosecute his appeal, and produce the copies as aforesaid, the Court shall order his default to be noted upon their record. And the said Court may order the same case to be laid before the Grand Jury, or may issue an attachment against the body of such appellant, and cause him thereby to be brought before them, and when he is so in Court, shall affirm the sentence of the Justice against him, with all additional costs.

SEC. 4. *Be it further enacted,* That each Justice shall have authority to command the assistance of every Sheriff, Deputy Sheriff, Constable, and all other persons present at any affray, riot, assault or battery, and may fine any person refusing such assistance, in a sum not exceeding six dollars; to be disposed of for the use of the town where the offence shall be committed; and levied by warrant of distress on the offender's goods and chattels, and for want thereof on his body.

SEC. 5. *Be it further enacted,* That any Justice of the Peace for the preservation thereof, or upon view of the breach thereof, or upon view of any other transgression of law, proper to his cognizance, done or committed by any person or persons whatever, shall have authority, (in the absence of the Sheriff, Deputy Sheriff or Constable,) to require any person or persons to apprehend and bring before him such offender or offenders. And every person so required, who shall refuse or neglect to obey the said Justice, shall be punished in the same manner as for refusing or neglecting to assist any Sheriff, Deputy Sheriff or Constable in the execution of his office as aforesaid. And no person who shall refuse or neglect to obey such Justice, to whom he shall be known, or declare himself to be a Justice of the Peace, shall be admitted to plead excuse on any pretence of ignorance of his office.

SEC. 6. *Be it further enacted,* That Justices of the Peace within their respective counties, be, and they are hereby authorized and empowered to grant subpoenas for witnesses in all criminal causes pending before the Supreme Judicial Court and Circuit Court of Common Pleas, and before themselves or any other Justice: *Provided,* That no Justice of the Peace shall grant subpoenas for witnesses to appear in any Court, except before himself, to testify on behalf of the State, unless by the request of the Attorney General or County Attorney. And all Sheriffs, Constables and other officers are directed and empowered to serve any warrant issuing from a Justice of the Peace.

SEC. 7. *Be it further enacted,* That the Justices of the Peace shall account annually with the Treasurer of the State, the Treasurer of their respective counties, and the town Treasurer, as the case may be, for all fines by them received or imposed, upon pain of forfeiting the sum of thirty dollars, to be sued for and recovered by the Treasurer of the State, the county or town Treasurer for the time being, to which the said fines may respectively belong.

## POWER OF JUSTICES.

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SEC. 8. *Be it further enacted,* That all civil actions, where- Justice's juris-  
 in the debt or damage does not exceed twenty dollars, (and diction in civil  
 wherein the title of real estate is not in question, and special actions, (where  
 ly pleaded by the defendant,) shall, and may be heard, tried, title to real es-  
 adjudged and determined by any Justice of the Peace within tate is not in  
 his county; and the Justices are severally empowered to grant question,) to  
 summons, *capias* and attachment, at the request of any per- extend to 20  
 son applying for the same, directed to some proper officer dollars.  
 within the same county, empowered by law to execute the Justices may is-  
 same. And such summons or *capias* and attachment shall be sue summons,  
 duly served by such officer, seven days at the least before the *capias*, attach-  
 day therein set for trial, otherwise the party sued shall not ment, &c.  
 be held to answer thereon; and if after such process shall be —to be served  
 duly served, the party sued, after being duly called, shall not seven days be-  
 appear to answer to the same suit, the charge against him in fore trial.  
 the declaration shall be taken to be true, and the Justice shall Proceedings be-  
 give judgment against him for such damages as he shall find fore Justice.  
 the plaintiff to have sustained, with costs; and if the person Judgment, &c.  
 sued shall appear to defend the suit or oppose the same, the if plaintiff pre-  
 Justice shall award such damages as he shall find the plaintiff vail.  
 to have sustained: *Provided,* That no more damages than the Damages not to  
 sum of twenty dollars shall be awarded in any action origin- exceed 20 dol-  
 ally brought or tried before a Justice of the Peace; but if the lars.  
 plaintiff shall not support his action, shall fail to prosecute, or Judgment in  
 become nonsuit, the Justice shall award to the party sued, his case defendant  
 reasonable costs, taxed as the law directs. And upon all prevail.  
 judgments given by a Justice of the Peace in civil actions, he Execution.  
 shall award execution thereon in form by law prescribed.

SEC. 9. *Be it further enacted,* That the amount of the sum Justice to have  
 or several sums, specified, expressed or supposed to be de- jurisdiction  
 manded by the plaintiff in his declaration, shall not be con- where the *ad*  
 sidered as any objection against the Justice's jurisdiction, pro- *damnum* does  
 vided the *ad damnum*, or damage is not laid or stated to ex- not exceed 20  
 ceed twenty dollars. dollars.

SEC. 10. *Be it further enacted,* That any party aggrieved Party aggriev-  
 at the judgment of any Justice of the Peace, in a civil action, ed may appeal  
 where both parties have appeared and plead, may appeal to C. C. Com-  
 therefrom to the next Circuit Court of Common Pleas to be Pleas.  
 held within the same county; and shall before his appeal is —Must recog-  
 allowed, recognize with a surety or sureties, in such reason- nize to prose-  
 able sum as the Justice shall order, not exceeding thirty dol- cute.  
 lars, to pay all intervening damages and costs, and to prose- and produce co-  
 cute his appeal with effect; and shall be held to produce a pies at C. C. C.  
 copy of the whole case, at the Court appealed to, and both Pleas.  
 parties shall be allowed to offer any evidence upon the trial Proceedings in  
 at the Circuit Court of Common Pleas, in the same manner as that Court.  
 if the cause had been originally commenced there. And no No further ap-  
 other appeal shall be had on such action after one trial at the peal.  
 Circuit Court of Common Pleas. And the Circuit Court of Defendant in  
 Common Pleas, when any person recognized as before men- trespass failing  
 to bring for-

ward the action according to his recognizance.—Plaintiff to have his damages.

Appellant failing to prosecute, on complaint judgment may be affirmed.

In action of trespass when defendant pleads title to real estate—mode of proceeding before Justice.

Appeal allowed in such cases from C. C. C. Pleas to S. J. Court.

General issue may be plead in all actions before Justices and special matter given in evidence except where title to real estate is relied on by defendant.

Justices may grant subpoenas in all civil actions.

May adjourn their Courts by proclamation:

No Justice to be of counsel in any suit before himself.

tioned to bring forward an action of trespass, doth neglect to do it, upon complaint thereof made in writing by the plaintiff, shall give judgment for such sum in damages, as the plaintiff hath declared for, together with all reasonable costs which accrued both in the same Court and before the Justice. And the Circuit Court of Common Pleas shall, when any appellant thereto shall fail to prosecute his appeal, or if he shall neglect to produce a copy of the case, affirm the former judgment upon the appellee's complaint, and award such additional damages as shall have arisen in consequence of the said appeal, and cost.

SEC. 11. *Be it further enacted*, That when an action of trespass shall be brought before any Justice of the Peace, and the defendant shall plead the general issue, he shall not be allowed to offer any evidence that may bring the title of real estate in question. And when the defendant in any such action shall plead the title of himself or any other person in justification, the Justice upon having such plea plead, shall order the defendant to recognize to the adverse party in a reasonable sum, with sufficient surety or sureties to enter the said action at the next Circuit Court of Common Pleas to be holden within the same county, and to prosecute the same in the same manner as upon an appeal from a Justice's judgment; and if such pleader shall refuse so to recognize, the Justice shall render judgment against him, in the same manner as if he had refused to make answer to the same suit. And either party in such cause, shall be allowed to appeal from the judgment of the Circuit Court of Common Pleas, in the same manner as if the suit had been originally commenced there.

SEC. 12. *Be it further enacted*, That in all civil actions triable before a Justice of the Peace, except such actions of trespass wherein the defendant means to avail himself, by pleading the title of himself or any other person under whom he claims in justification of the trespass or trespasses alleged to be committed on real estate; the defendant shall be entitled to all evidence, under the general issue, which by law he might avail himself of under any special plea in excuse or justification, any law, usage or custom to the contrary notwithstanding.

SEC. 13. *Be it further enacted*, That each Justice of the Peace may grant subpoenas for witnesses in all civil actions and causes pending before the Supreme Judicial Court, Circuit Court of Common Pleas, Court of Sessions, and before him or any other Justices, and in all civil actions and causes pending before arbitrators or referees. And every Justice of the Peace shall have power by public proclamation to adjourn the trial of any action brought before him, from time to time, when equity may require it; but he shall not be of counsel to either party, or undertake to advise or assist any party in suit before him.

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SEC. 14. *Be it further enacted,* That when an executor or administrator shall be guilty of committing waste, whereby he is rendered unable to pay the judgment recovered before any Justice of the Peace, against the goods and estate of the deceased in his hands, out of the same, the Justice may proceed against the proper goods and estate of such executor or administrator, in the same manner as the Circuit Court of Common Pleas are empowered to do.

In case of waste by executor or administrator, Justice may proceed as C. C. C. Pleas may in such cases.

SEC. 15. *Be it further enacted,* That each Justice of the Peace shall keep a fair record of all his proceedings; and when any Justice of the Peace shall die before a judgment given by him is paid and satisfied, it shall be in the power of any Justice of the Peace in the same county to grant a scire facias upon the same judgment, to the party against whom such judgment was rendered up, for him to show cause if any he hath, why execution should not be issued against him. And although the costs and debt awarded by the deceased Justice when added together, shall amount to more than twenty dollars, it shall be no bar upon such scire facias, but judgment shall be given thereon for the whole debt and cost, together with the cost arising upon the scire facias. *Provided always,* That either party may appeal from the judgment as in other personal actions, where judgment is given by a Justice of the Peace. And every Justice of the Peace who shall have complaint made to him, that a judgment given by a Justice of the same county then deceased, remains unsatisfied, shall issue his summons to the person in whose possession the record of the same judgment is, directing him to bring and to produce to him the same record; and if such person shall contemptuously refuse to produce the same record, or shall refuse to be examined respecting the same, upon oath, the Justice may punish the contempt by imprisonment, until he shall produce the same, or until he submits to be examined as aforesaid; and when the Justice is possessed of such record, he shall transcribe the same upon his own book of records, before he shall issue his scire facias; and shall deliver the original back again to the person who shall have produced it, and a copy of such transcription, attested by the transcribing Justice, shall be allowed in evidence in all cases, where an authenticated copy of the original might be received.

Justice to keep record of his proceedings.

When Justice shall die before a judgment given by him is satisfied, what proceedings to be had.

Appeal allowed to either party.

Justice to whom complaint is made in such cases, may summon the person possessing the record to produce it.

Punishment for refusal so to do.

Duty of the Justice when the record is produced, to transcribe it into his own records. Copy of such transcript to be evidence.

SEC. 16. *Be it further enacted,* That all Justices of the Peace before whom actions may be commenced under former commissions, and such commissions shall expire before judgment shall be rendered thereon, or judgment being rendered, the same remains in whole or in part unsatisfied, such Justices of the Peace who shall hereafter have their said commissions seasonably renewed, and being duly qualified agreeably to the Constitution of this State, to act under such commissions, be and they hereby are authorized and empowered to render judgment, and issue execution on all such ac-

Justices, whose commissions expire before judgment or satisfaction, may proceed, under a new commission, seasonably obtained, to render judgment, &c.

RECOVERY OF DEBTS.

tions, commenced as aforesaid, in the same manner as if the commissions under which such actions may be commenced, were in full force.

[Approved March 15, 1821.]

—:00:—

CHAPTER LXXVII.

An Act providing a speedy Method of recovering Debts, and for preventing unnecessary costs attending the same.

Justices may take recognizances for debts. SEC. 1. BE it enacted by the Senate and House of Representatives, in Legislature assembled, That every Justice of the Peace in this State shall have power within his county to take recognizances for the payment of debts of any person who shall come before him for that purpose: which recognizance may be in substance as follows:—

Form of recognizance. Know all men, that I, A. B. of , in the County of , do owe unto C. D. of , the sum of , to be paid to the said C. D. on the day of ; and if I shall fail of the payment of the debt aforesaid, by the time aforesaid, I will and grant that the said debt shall be levied of my goods and chattels, lands and tenements, and in want thereof of my body. Dated at , this day of , in the year of our Lord . Witness, my hand and seal A. B.

ss. Acknowledged the day and year last abovesaid. Before E. F. Justice of the Peace.

To be recorded by the Justice. SEC. 2. Be it further enacted, That every Justice of the Peace taking any such recognizance, shall immediately record the same at large in a book to be kept by him for that purpose; and after the same is recorded, may deliver it to the Conusec; and upon the Conusee's lodging the same with the said Justice, at any time within three years from the time when the same is payable, and requesting a writ of execution, it shall be the duty of such Justice to issue a writ of execution thereon for such sum as shall appear to be due on the same; which writ of execution shall be in substance as follows:

Execution may issue thereon within 3 years.

State of Maine.

(SEAL.) To the Sheriff of the County of , or his deputy, or either of the Constables of the town of , in said County, Greeting.

Form of execution.

Because A. B. of , in the County of , on the day of , in the year of our Lord before E. F. Esq. one of the Justices of the Peace for the said County of , acknowledged that he was indebted to C. D. of , in the county of in the sum of which he ought to have paid on the day of , and remains unpaid as it is said

: We command you therefore, that of the goods, chattels or real estate of the said A. B. within your precinct, you cause to be paid and satisfied unto the said C. D. at the value

**TITLE FIFTEENTH.**

**Of Justices of the Peace.**

- CHAPTER 97. General powers, duties and jurisdiction of justices in criminal cases.
- 98. Jurisdiction in bastardy cases.
- 99. Justices' jurisdiction in civil cases of debt.
- 100. Justices' jurisdiction in trespass cases.
- 101. Justices' jurisdiction in cases of forcible entry and detainer; and of holding over.

**CHAPTER 97.**

**GENERAL POWERS, DUTIES AND JURISDICTION OF JUSTICES IN CRIMINAL CASES.**

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|--|--|
| <p>SEC. 1. Number in the several counties.</p> <p>2. Power to issue process.</p> <p>3. To keep records. Adjournments.</p> <p>4. To issue subpoenas.</p> <p>5. To administer oaths.</p> <p>6. To punish contempts.</p> <p>7. To arrest without warrant.</p> <p>    To commit or bind to appear.</p> <p>    Form of commitment.</p> <p>    Form of binding TO KEEP THE PEACE.</p> <p>8. Power to punish assaults and batteries.</p> <p>    Form of binding to ANSWER CHARGE.</p> <p>    Binding witnesses to appear.</p> <p>9. To permit parties to settle cases of assault and battery.</p> <p>10. Not to receive fine or costs.</p> <p>    To put it in charge of a constable.</p> <p>11. To certify fines to the auditor. Penalty.</p> <p>12. Power to BIND OVER FOR THREATS.</p> <p>13. To cause arrests of peace breakers, &amp;c., &amp;c.</p> <p>14. To fine drunkards and swearers.</p> <p>15. To punish those who resist authority.</p> <p>16. Mode of proceeding in criminal cases.</p> <p>17. After arrest.</p> <p>18. The examination.</p> <p>19. The commitment or binding to appear.</p> <p>    Binding witnesses.</p> <p>20. To deliver recognizances to clerk of the peace. Fee.</p> | <p>SEC. 21. To indorse the names of witnesses.</p> <p>22. To arrest persons complained against.</p> <p>23. Warrant may be executed in any county.</p> <p>24. Bail for appearance; how taken; by whom.</p> <p>    Commitment in default of bail.</p> <p>25. How discharged from prison on bail.</p> <p>26. Capital cases; when bail may be taken.</p> <p>27. Bail in other cases; how determined.</p> <p>28. How taken by sheriff. &amp;c.</p> <p>29. SEARCH WARRANTS, when and how to be issued.</p> <p>    Complaint must be in writing.</p> <p>    Warrant; how directed.</p> <p>    When it may be executed at night.</p> <p>30. Power of justice to try certain offences by slaves.</p> <p>31. Power of two justices to try slaves.</p> <p>    Order on master to pay restitution, &amp;c.</p> <p>    Service of notice on master; verification.</p> <p>32. Power to punish Sabbath breaking.</p> <p>33. Duty of representatives of a deceased justice to deliver records; penalty.</p> <p>34. Duty of justice to give transcripts, copies, &amp;c.; penalty.</p> <p>    Originals may be required by the court.</p> <p>35. Duty to attend elections; penalty.</p> |
|--|--|

*Number.*

2003  
Number.

New Castle.

Kent.  
Sussex.

SEC. 1. The number of justices of the peace now allowed by the constitution and laws, shall, two-thirds of each house of the legislature concurring, continue to be in the several counties, as follows: in New Castle county twenty, of whom one shall reside in Red Lion hundred, within one mile of Delaware City, one in the town of St. Georges, and one in Christiana hundred; in Kent county eighteen; and in Sussex county twenty, one of whom shall reside within two miles of Cannon's Ferry.

*General powers and duties.*

2004  
May issue  
process.  
Forms.

SEC. 2. Justices of the peace may issue all writs; warrants and process proper to carry into effect the powers granted to them; and when no form is prescribed by statute, they shall frame one in cop-

STATE OF DELAWARE.

formity with the law, in substance; and, when substantially right, such process shall not be invalid for any defect in form. All sheriffs, deputy-sheriffs, coroners and constables are required duly to serve all legal writs, warrants and process to them directed by any justice of the peace.

SEC. 3. Each justice of the peace shall keep a record of all his judicial proceedings in criminal as well as civil cases. 2005  
Records.

He shall have power to adjourn cases on trial before him, taking security for the appearance of the party complained against. 2006  
Adjourn-  
ments.

SEC. 4. He may issue summonses for witnesses in all cases pending before himself, and in all civil cases pending before any magistrates, referees, arbitrators, or other persons authorized to examine witnesses. 2007  
Subpoenas.

SEC. 5. He may administer oaths in all cases where an oath is required by law. 2008  
Oaths.

SEC. 6. Every justice of the peace may punish such disorderly conduct as shall interrupt any judicial proceedings before him, or before referees appointed by him, or which shall be a contempt of his authority, by fine not exceeding ten dollars, or by imprisonment in the jail of the county not exceeding ten days. 2009  
Power to  
punish con-  
tempts.

SEC. 7. Every justice of the peace may, as a conservator of the peace, upon view of any affray, riot, assault, or battery, within his county, without any warrant in writing command the assistance of any sheriff, deputy-sheriff, coroner, or constable, and of all other persons present, for suppressing the same, and arresting all who are concerned therein, and may commit or bind them to surety of the peace and for their appearance at the proper court. 2010  
Power to ar-  
rest without  
warrant.

A commitment may be in this form:—

———— County, ss. *The State of Delaware: To A. B., constable, and to the keeper of the jail of said county: this is to command you the said constable forthwith to convey and deliver into the custody of the keeper of said jail the body of C. D. charged, before E. F. a justice of the peace for said county, on oath by G. H. with (here state the offence), and you the said keeper of the jail are hereby required to receive the said C. D. into your custody in said jail, and him there safely keep until he be thence delivered by due course of law.*

{ L. S. } Given under my hand and seal this ——— day of ———  
A. D., 18—. J. P.

Binding to keep the peace and for appearance at court may be in this form: 2012  
Binding to  
KEEP THE  
PEACE.

———— County, ss. *State of Delaware. BE IT REMEMBERED, that C. D., of ——— hundred, and R. S. and T. W., of ——— hundred, in said county, personally appeared before E. F., a justice of the peace for said county, and acknowledged to owe the State of Delaware the sum of ——— dollars, to be levied on their goods and chattels, lands and tenements respectively, for the use of the said State: UPON CONDITION, that if the above bound C. D. be and appear before the next Court of General Sessions of the Peace and Jail Delivery, to be held* Add. 42



## STATE OF DELAWARE.

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and if the fine and costs be not paid, the constable shall convey said defendant to jail, for which a copy of the judgment shall be a sufficient warrant.

SEC. 11. Every justice of the peace shall transmit to the auditor of accounts, by mail, on the first Tuesday of April and October in each year, a duly certified list of the cases in which any fine, or forfeiture, has been imposed by him before that time; stating the party, the fine, and the name and place of residence of the constable chargeable. Any neglect of this duty shall be deemed a misdemeanor, and shall be punished by fine not exceeding one hundred dollars; and the court shall, on conviction of such justice, transmit a copy of the record to the general assembly. 2018 To certify fines to auditor. Penalty.

SEC. 12. Whoever shall threaten to kill, or wound, another, or to injure him in person, or estate, shall, on proof of such threats, before a justice of the peace, either by the oath of the party threatened, or otherwise, and on affidavit, by the said party, that he believes, from such threatening, he is in danger to be hurt in body, or estate, be bound to surety of the peace, and for his appearance at the next Court of General Sessions for the county. 2019 Power to bind over for THREATS

SEC. 13. Any justice of the peace may also cause to be arrested and bind to surety of the peace all affrayers, rioters, breakers and disturbers of the peace, and all who go armed offensively to the terror of the people, or are otherwise disorderly and dangerous. 2020 To cause arrests.

SEC. 14. He may also cause to be arrested any drunken person, or any person who, in his hearing, shall profanely swear by the name of God, Christ Jesus, or the Holy Spirit; and such person, being thereof convicted by view of the justice, or other proof, shall be fined by him fifty cents for every such profane oath, and fifty cents for every such offence of being drunk. 2021 Drunkards; swearers.

SEC. 15. If any person, arrested by warrant, or order, of any court of justice, magistrate, or justice of the peace, shall use abusive, railing, or threatening speeches against such court, magistrate, or justice, or shall resist, or assault, any person executing, or aiding in the execution of any such warrant, or order, he shall be fined by such court, magistrate, or justice, any sum not exceeding fifteen dollars. 2022 To punish those who resist authority.

SEC. 16. When complaint is made in due form to a justice, alleging that an offence has been committed, the justice shall carefully examine the complainant on oath, or affirmation, and if he considers there is probable ground for the accusation, he shall issue his warrant. 2023 Proceedings in criminal cases; complaint.

A warrant of arrest may be in this form: 2024 Warrant of arrest.

— County, ss. *The State of Delaware,*  
To any constable of said county, greeting:

Whereas G. H. of — hath upon oath (or affirmation) before me, a justice of the peace of said county declared that on the — day of — at — (state the offence charged) and that he hath just cause to suspect and doth suspect C. D. of — hundred, of committing the said offence: You are therefore hereby commanded to take the said Add. 44

*C. D. and bring him before me, or some other justice of the peace of the county, forthwith, to answer said charge.*

{ L. S. } *Witness the hand and seal of the said justice, the* \_\_\_\_\_  
 { } *day of* \_\_\_\_\_ *A. D. 18*—.

2025  
How di-  
rected.

In case of emergency, the warrant may be directed to the sheriff, or coroner, or to any person the justice may name.

2026  
Proceeding  
on arrest.

SEC. 17. Upon the arrest of any person so charged, the justice, before whom he is brought in the county where the offence was committed, shall try the case so far as to determine whether the defendant ought to be discharged, or bound for his appearance at court, or held to answer finally before the justice; in which last case, the justice shall proceed to hear fully and to determine the case. But if the matter be not properly cognizable before the justice for final decision, he shall commit, or bind the party for his appearance at the court having cognizance of the case.

2027  
Examina-  
tion.  
Voluntary  
declarations

SEC. 18. He shall examine the party accused, taking his voluntary declarations, without threats, or promises, and shall also examine the witnesses in the presence of the accused.

2028  
In felonies  
to be in writ-  
ing.

If the offence is a felony, he shall reduce the examination of the accused to writing, and read it to him, and offer it for his signature. The justice shall sign it.

2029  
Testimony  
in writing.

He shall also reduce to writing the testimony of each witness, if material, read it to him in the presence of the accused, sign it, and require the witness to sign it. In case of the death of the witness, it shall be evidence on the trial.

2030  
Commit-  
ment; or  
binding to  
appear.

SEC. 19. If he considers there is probable ground for the accusation, he shall, in case of a capital crime, commit the accused for trial, and in any other case bind him, with sufficient surety, for his appearance at the next Court of General Sessions of the Peace and Jail Delivery for the county where the offence is alleged to have been committed; and, if he do not give such surety, shall commit him for trial. But when the accused is carried before a justice in another county than that wherein the warrant was issued, he shall be held to surety for his appearance, of course.

2031  
Binding the  
witnesses.

He shall also bind material witnesses for their appearance, without surety, unless he believes the witness will not appear, and that the loss of his testimony ought not to be risked; in which case, he may require surety and may commit the witness if it be not given.

2032  
[2014, &c.]

Such binding of the accused, and of the witnesses, shall be by recognizance, as provided in section 8.

2033  
To deliver  
recognizan-  
ces, &c.

SEC. 20. Each justice of the peace shall deliver every recognizance, examination and deposition, by him taken, touching any offence, to the clerk of the peace of his county ten days before the next Court of General Sessions, if the court do not sit sooner; and if so, then at the session of the court. For this service, he shall receive one dollar from the county if the service be rendered ten days before the court.

Fee.

2034  
Names of  
witnesses to  
be indorsed.

SEC. 21. He shall indorse on the recognizance the names of the material witnesses, and the clerk shall issue subpoenas for their ap-

## STATE OF DELAWARE.

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pearance on the first day of the court, or otherwise as the attorney general may direct.

SEC. 22. Every justice shall cause to be arrested, on proper complaint, all persons found within his county charged with any offence; and all persons who, after committing any offence in such county, shall escape out of the same.

2035  
Duty to arrest persons complained against.

SEC. 23. A warrant of arrest, issued by a justice in one county, may be executed in any county of the State; and the constable, or officer, having it in hand, may command aid as in his own county; but he shall, upon request, carry the defendant before some justice of the county, where he is arrested, to be bailed, if he offer sufficient bail and the offence is bailable; otherwise he shall convey him from the county in execution of his warrant.

2036  
Warrant, where executed.

SEC. 24. In criminal cases, bail for the appearance of the accused, except when taken by the sheriff, or officer to whom process is directed, and security for the appearance of a witness, shall be given by recognizance. Each judge of the Superior Court, and every justice of the peace shall have authority to take such recognizance; and when so taken out of court, the recognizance shall be signed by the recognizers. When a person is committed for want of bail, or security, the sum required shall be set down on the commitment.

2037  
Bail for appearance, how taken.

By whom.

Commitment.

SEC. 25. A person, so committed, shall be discharged upon giving sufficient bail, or security; and any judge, or justice, may require such person to be brought before him for that purpose.

2038  
How discharged.

SEC. 26. A capital offence shall not be bailable; but the Court of General Sessions of the Peace and Jail Delivery, when in session, or any judge thereof in vacation, may admit to bail a person accused of such offence before indictment found, if, upon full inquiry, it appears that there is good ground to doubt the truth of the accusation. On such inquiry, the justice, or officer who committed the accused, shall be summoned, and care shall be taken to hear the proper witnesses.

2039  
Capital cases.

When bail may be taken.

SEC. 27. When a person arrested by virtue of process issued upon an indictment, or presentment, except for a capital crime, and except process returnable forthwith, offers sufficient bail, it shall be taken, and the person discharged. The court awarding the process, or any judge thereof, or the attorney general, may determine the sum in which bail shall be taken, and set it down on the process; or if no sum be so determined, the officer issuing the process shall set down what sum he deems reasonable for bail.

2040  
Bail in other cases.

How determined

SEC. 28. Bail shall be taken by the sheriff, or officer to whom the process is directed, by a joint and several bond executed, by the accused and his bail, to the State, in the sum set down for bail upon the process, with condition, in substance, *that if the accused shall appear in the court, mentioned in the process, at the place and time of the return thereof, to answer as expressed therein, and shall not depart the court without leave, the said bond shall be void.* Bond so taken, shall be returned with the process, and, if default be made, it shall be recorded thereon in the same manner as in the case of a recognizance.

2041  
How taken by sheriff.

2042  
Search war-  
rants, when  
and how to  
be issued.

SEC. 29. Any justice of the peace, or other magistrate authorized to issue warrants in criminal cases, may, within the limits of his jurisdiction, issue his warrant to search any house, or place, for property stolen, or concealed, or for forged, or counterfeited coins, bank bills, or other writings, or for any instrument, or materials, for making the same, and in other cases and for persons when such search is authorized by law, in the manner prescribed by this section and not otherwise, namely:

2043  
Complaint  
in writing.

The application, or complaint, shall be in writing, signed by the complainant and verified by his oath, or affirmation. It shall designate the house, or place, to be searched, and the owner, or occupant thereof (if any), and shall describe the things, or persons sought, as particularly as may be, and shall substantially allege the offence committed by, or in relation to such person, or thing, or the cause for which said search is made, and that the complainant has probable cause to suspect, and does suspect that the same is concealed in the house, or place, designated.

2044  
How direct-  
ed.

The warrant may be directed to any proper officer, or to any other person by name, for service; it shall recite the essential facts alleged in the complaint, and may be made returnable before the magistrate, or justice, issuing it, or before any other magistrate, or justice, before whom it shall also direct to be brought the person, or thing, searched for, if found, and the person in whose custody, or possession, the same may be found, to be dealt with according to law.

2045  
When it  
may be exe-  
cuted at  
night.

A search warrant shall not authorize the person executing it to search any dwelling-house in the night time, unless the magistrate, or justice, shall be satisfied that it is necessary in order to prevent the escape, or removal, of the person, or things, to be searched for; and then the authority shall be expressly given in the warrant.

2046  
Power to try  
offences by  
SLAVES.

SEC. 30. Justices of the peace shall severally have jurisdiction to try and punish any slave who shall join, or be wilfully present at any riot, rout, or unlawful assembly, or who shall commit an assault and battery on any person, or who shall, without the special permission of his master, go armed with any dangerous weapon. In every case of conviction under this section, the justice shall give judgment against the master for the costs of the prosecution, and may issue execution thereon as upon a judgment for debt.

Judgment  
for costs.

2047  
Power of  
two justices  
to try offen-  
ces by  
SLAVES.

SEC. 31. Any two justices of the peace for the county shall have jurisdiction to try and punish any slave for the offence of stealing, taking and carrying away any goods, chattels effects, bank note, money, bill, promissory note, check, order, bond, or written contract for the payment of money, or delivery of goods, or of receiving, or concealing, any such stolen property knowing it to be stolen, or taken by robbery.

2048  
Order on  
master to  
pay costs,  
&c.

The justices, on conviction of such slave, shall assess the value of the property, so stolen or concealed, unless it shall have been restored, and tax the costs; and shall make an order that the master pay the same, and shall commit the slave until payment, or sale, as provided in chapter 80.

## STATE OF DELAWARE.

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They shall indorse on any process for the arrest of a slave under this section, an order that the constable shall serve a copy of such process on the master as provided in respect to an original summons. 2049  
Service on  
master.  
[2066]

The trial shall not proceed, without the appearance of the master, until the return of the service of such copy is duly verified. 2050  
To be veri-  
fied.

SEC. 32. Justices of the peace shall severally have jurisdiction of the several offences mentioned in section 4, of chapter 131, being violations of the Sabbath day; and may proceed therein upon their own view, or on other competent evidence. 2051  
[2902, &c.]

SEC. 33. Upon the death of a justice, or expiration of his term of office, and the appointment of another, it shall be the duty of such justice, or his executors, or administrators, to deliver all his dockets and records, within three months, to his successor in office, if appointed within that time; and if not, then with one of the nearest justices of the same county. The neglect of this duty shall be a misdemeanor punishable by fine of fifty dollars; and the Superior Court may name the justice to whom the delivery shall be made, and enforce an order for such delivery by fine and imprisonment. 2052  
Duty of ex-  
ecutors of a  
justice in  
respect to  
his records.  
  
Penalty.

SEC. 34. It is the duty of a justice of the peace, upon request and payment, or tender, of the legal fee, to make and certify, under his hand and seal, a true transcript of all the docket entries in any cause before him, or upon any record in his possession, or if specially required, a full and true copy of all the records, entries, process and papers in or touching such cause; and such transcript, or copy, shall be received in evidence in any court. 2053  
Duty of jus-  
tice to give  
TRANSCRIPT.  
  
Or full  
copies.

Upon an appeal, a transcript shall be sufficient, unless a full copy be specially requested. Upon a certiorari, the justice shall make a full copy of the entire record and proceedings. 2054  
On appeals.  
On certiora-  
ri.

If any justice of the peace shall, upon such request and payment, or tender, of the lawful fees, refuse or neglect to perform the duty above required, or shall falsely certify any such transcript, or full copy, or shall use any fraud, falsehood, or deceit, in making the same, he shall be deemed guilty of a misdemeanor, and shall be fined not exceeding one hundred dollars, and shall be liable to the party aggrieved in double damages. 2055  
Penalties.

The Superior Court may, in a proper case, supported by affidavit, require the production of the original record. 2056  
Originals  
may be re-  
quired.

SEC. 35. Every justice of the peace shall attend, at the place of election in his hundred, on the day of every general election, or special election, from the opening to the closing of the poll, and shall take care that the peace shall be kept, and that the election shall not be interrupted, or disturbed. 2057  
Duty to at-  
tend elec-  
tions.

If any justice shall refuse, or wilfully neglect, to perform this duty, or to obey the lawful commands of the inspector of such election, he shall be deemed guilty of a misdemeanor and shall be fined one hundred dollars. 2058  
Penalty.

Challenges.

SEC. 9. That in the trial of all causes under the provisions of this act, each party shall have the right to challenge peremptorily three jurors and no more.

Panel how completed.

SEC. 10. When, from any cause whatever, the panel shall not be completed, or the jurors are not present, it shall be the duty of the sheriff, by order of the court, to complete said panel by summoning such members.

SEC. 11. That all laws or parts of laws in conflict herewith are hereby repealed, and this act shall be in force from and after its passage.

[Translation.]

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*An Act prohibiting the carrying of Weapons, concealed or otherwise.*

Be it enacted by the Legislative Assembly of the Territory of New Mexico:

Carrying weapons prohibited.

SECTION 1. That, from and after the passage of this act, it shall be unlawful for any person to carry concealed weapons on their persons, of any class of pistols whatever, bowie knife (cuchillo de cinto), Arkansas toothpick, Spanish dagger, slung-shot, or any other deadly weapon, of whatever class or description they may be, no matter by what name they may be known or called, under the penalties and punishment which shall hereinafter be described.

First conviction fine.

SEC. 2. Be it further enacted: That if any person shall carry about his person, either concealed or otherwise, any deadly weapon of the class and description mentioned in the preceding section, the person or persons who shall so offend, on conviction, which shall be by indictment in the district court, shall be fined in any sum not less than fifty dollars, nor more than one hundred dollars, at the discretion of the court trying the cause, on the first conviction under this act; and for the second conviction, the party convicted shall be imprisoned in the county jail for a term of not less than three months, nor for more than one year, also at the discretion of the court trying the cause.

Second conviction. imprisonment.

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son dispuestos ántes. En los condados de San Miguel, Rio Arriba, y Bernalillo, el primer lunes de Marzo y Setiembre, y continuará una semana si los negocios no están dispuestos ántes. En los condados de Santa Ana, Socorro, y Doña Ana, el primer lunes de Mayo, Setiembre y Noviembre, y continuará una semana si los negocios no están dispuestos ántes.

SEC. 9. Que en el juicio de todas las causas bajo las pro- Recusas.  
visiones de este acto, cada una de las partes tendrán derecho de desechar perentoriamente tres jurados y no mas.

SEC. 10. Cuando, por cualquiera causa que sea, un jurado no está completo, ó no están presentes, será el deber del alguacil mayor, por órden de la corte, de llenar dicho jurado citando tales miembros. Lista, como se completa.

SEC. 11. Que todas las leyes, ó partes de leyes, en conflicto [con esto,] son por este abrogadas, y este acto tendrá efecto desde y despues de su pasaje.

Aprobado Febrero 2 de 1860.

*Un Acto prohibiendo el porte de Armas ocultas ó de otra manera.*

Decrétese por la Asamblea Legislativa del Territorio de Nuevo Méjico:

SECCION 1ª. Que desde y despues del pasaje de este acto no será legal para que ninguna persona porte armas sobre sus personas, ninguna pistola de cualesquiera clase que sea, ni bowie knife (cuchillo de cinto) Arkansas toothpick, daga española, huracana, ó cualesquiera otra arma mortífera de cualesquiera clase ó descripcion que sea, no importa el nombre que tuviere con que fuere conocida ó llamada, bajo las penas y castigos que sean en este acto despues descritas. Porte de armas prohibido.

SEC. 2. Decrétese ademas: Que si cualesquiera persona portare sobre su persona, ya sea oculta ó de otra manera, cualesquiera arma mortífera de la clase y descripcion mencionada en la seccion anterior, la persona ó personas que así ofendan, sobre conviccion, la cual será pcr querella legal en la corte de distrito, será multada en cualesquiera suma que no bajé de cincuenta pesos, ni pase de cien pesos, á la discrecion de la corte. Primera conviccion, multa.

Penalty for discharging or drawing weapons.

SEC. 3. Be it further enacted: That if any person shall discharge or draw any deadly weapon, of the class or description set forth in the first section of this act, in any baile or fandango, or in any other public assembly whatever, the person who shall so offend, on conviction thereof, which shall be by indictment in the district court, shall be fined in any sum not less than one hundred dollars, nor more than three hundred, at the discretion of the court trying the cause, or imprisoned in the county jail for a term not less than three months nor more than one year.

Penalty for cutting or wounding in assemblies.

SEC. 4. Be it further enacted: That if any person in any baile or fandango, or in any public assembly of whatever class or description it may be, shall fire off or discharge any firearm of the class mentioned in the first section of this act, or shall cut or wound any person with any description of deadly weapon mentioned in the first section of this act, in any baile or fandango, or in any other public assembly, and any death shall result from said cut or wound so given, the person who shall so wound or cut, on conviction, shall be considered guilty of murder in the first degree, and shall suffer the penalty of death in the said first degree.

In case of death, to be deemed murder

Duty of sheriffs and constables to arrest.

SEC. 5. Be it further enacted: That it shall be the duty of the sheriffs, their deputies, or constables, to arrest and take all persons who shall be found with deadly weapons of the class and description mentioned in the first section of this act, and present them to some justice of the peace, or other authority, to be examined; and it shall also be the duty of the judges of the district courts to cause, at the first term to be held in each county, the sheriffs and their deputies to take an oath that they will truly and faithfully comply with the provisions of this act, and that they will arrest at all times every person who shall violate any of the provisions of this act.

Sheriffs and constables to take oath.

Officers excused.

SEC. 6. Be it further enacted: That none of the provisions of this act shall be applied to the sheriffs, their deputies, or constables, in the execution of any process of the courts, or to conductors of the mail, or to persons when actually on trips from one town to another in this Territory; *provided*, that nothing in this act shall be so construed as to permit the conductors of mails, or travellers, to carry any deadly weapons, as mentioned

Travellers excused.

## LEYES DE NUEVO MÉJICO.

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que conozca la causa en la primera conviccion bajo esta ley ; y por la segunda conviccion, la parte convicta será encarcelada en la cárcel del condado por un término que no baje de tres meses ni pase de un año, tambien á la discrecion de la corte que conozca en la causa.

Segunda conviccion, encarcelamiento.

SEC. 3. Decrétese ademas: Que si cualesquiera persona disparare ó sacare cualquier arma mortifera, de la clase ó descripcion citada en la primera seccion de este acto, en cualesquiera baile ó fandango, ó en cualesquiera otra reunion pública, de la clase que sea, la persona que así ofenda, sobre conviccion de lo mismo, la causa será por querella legal en la corte de distrito, será multada en una suma que no baje de cien pesos, ni pase de trescientos, á la discrecion de la corte que conozca en la causa, ó será encarcelada en la cárcel del condado por un término que no baje de tres meses, ni pase de un año.

Disparando armas, pena de.

SEC. 4. Decrétese ademas: Que si cualesquiera persona en algun baile ó fandango, ó en otra concurrencia pública de la clase y descripcion que sea, disparare ó descargare alguna arma de fuego de la clase mencionada en la seccion primera de este acto, ó que cortare ó hiriere á alguna persona con cualesquiera descripcion de armas mortíferas mencionadas en la primera seccion de este acto, en algun baile ó fandango, ú otra concurrencia pública, y resultare alguna muerte de la tal herida ó cortada así dada, la persona que así hiriere ó cortare, sobre conviccion, será considerada culpada de muerte en el primer grado, y sufrirá la pena de muerte en dicho primer grado.

Hiriendo en reuniones públicas, pena de.

SEC. 5. Decrétese ademas: Que será el deber de los alguaciles mayores, sus diputados, ó condestables, de arrestar y tomar toda persona que sea hallada con armas mortíferas, de la clase y descripcion mencionadas en la primera seccion de este acto, y presentar lasá algun juez de paz, ú otra autoridad, para su examinacion ; y tambien será el deber de los jueces de distrito de causar, en la primera corte que sea tenida en cada condado, que los alguaciles mayores y sus diputados presten juramento que ellos bien y fielmente cumplirán con las provisiones de este acto, y arrestarán en todo tiempo á todas las personas que violaren cualesquiera de las provisiones de este acto.

Muerte en primer grado.

Deberes de los alguaciles, y ofensores de dar fianzas.

SEC. 6. Decrétese ademas: Que ninguno de los provisos de este acto serán aplicables al alguacil mayor, sus diputados, ó

Viajeros, &c., exceptuados.

in the first section of this act, on their persons, after they shall have arrived at the town or settlement.

Judges to give this act in charge.

SEC. 7. Be it further enacted : That it shall be the duty of the several judges of the district court to give this act specially in their charges to the grand juries at each term of the court ; and further, it shall be the duty of the grand juries, at each term of the court, to make a special report whether there has been any violation of the provisions of this act in their counties since the last term of the court.

Repealing clause.

SEC. 8. That all laws or parts of laws in conflict with this act are hereby repealed, and this act shall be in force and take effect from and after its passage.

To be published.

SEC. 9. That the Secretary of the Territory of New Mexico be required to have this law published in the Santa Fé Gazette, as soon as possible, for six successive weeks, for the information of the people.

[Translation.]

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*An Act regulating Mercantile Copartnerships.*

Be it enacted by the Legislative Assembly of the Territory of New Mexico :

Who may enter into.

SECTION 1. That any two or more persons in this Territory may, and when they shall think proper, bind themselves mutually, for a certain time and under certain conditions, to do and follow at the same time various negotiations on their own common account and risk, or at that of each one of the partners respectively, as well in the losses as in the profits that may arise from said copartnership.

Good faith to be observed.

SEC. 2. The copartners or associates shall act in good faith, placing punctually in the concern the capital or services as stipulated, under the penalty of indemnifying the others for the damages which may arise.

Articles what to contain and before whom made.

SEC. 3. The contract of copartnership should be made before any court of record, or the clerk thereof, of the several counties by means of an indenture, authorized by any court of record or the clerk thereof, which shall contain the chris-

## Laws passed in 1686. 289

ny persons as they shall think fit, not exceeding seven, to make orders from time to time, such as may be suitable and beneficial for every town, village, hamlet, or neighbourhood, for preventing all harms by swine, in town, meadows, pastures and gardens, in any respect, and to impose penalties according to their best discretions.

## Chap. VIII.

## An Act appointing some new Commissioners of the Highways.

WHEREAS there was an act made in the year 1682, for the county of Monmouth, to enable Col. Lewis Morris, John Bound, and Joseph Parker, to lay out highways, passages, ferry's, and making bridges and such like; there being three of those persons disenabled for the true performance of the said services, *be it therefore enacted* by the Governor, Council and Deputies now met and assembled, and by the authority of the same, that John Frogmerton, John Slocame, and Nicholas Brown, in the stead and room of Col. Lewis Morris, John Bound, and Joseph Parker, be made capable and hereby invested with the same power to all intents and purposes in the said premises, as the afore-said Col. Lewis Morris, John Bound, and Joseph Parker, were by the said acts.

## Chap. IX.

## An Act against wearing Swords, &amp;c.

WHEREAS there hath been great complaint by the inhabitants of this Province, that several persons wearing swords, daggers, pistols, dirks, stilladoes, skeines, or any other unusual or unlawful weapons, by reason of which several persons in this Province, receive great abuses, and put in great fear and quarrels, and challenges made, to the great abuse of the inhabitants of this Province. *Be it therefore enacted* by the Governor, and Council, and Deputies now met in General Assembly, and by authority of the same, that no person or persons within this Province, presume to send any challenge in writing, by word of mouth,

## 290      Laws passed in 1686.

or message, to any person to fight, upon pain of being imprisoned during the space of six months, without bail or mainprize, and forfeit ten pounds: and whosoever shall except of such challenge, and not discover the same to the Governor, or some publick officer of the peace, shall forfeit the sum of ten pounds: the one moiety of the said forfeiture to be paid unto the Treasurer for the time being, for the public use of the Province, and the other moiety to such person or persons as shall discover the same, and make proof thereof in any court of record within this Province, to be recovered by the usual action of debt, in any of the said courts. *And be it further enacted* by the authority aforesaid, that no person or persons after publication hereof, shall presume privately to wear any pocket pistol, skeines, stilladers, daggers or dirks, or other unusual or unlawful weapons within this Province, upon penalty for the first offence five pounds, and to be committed by any justice of the peace, his warrant before whom proof thereof shall be made, who is hereby authorized to enquire of and proceed in the same, and keep in custody till he hath paid the said five pounds, one half to the public treasury for the use of this Province, and the other half to the informer: And if such person shall again offend against this law, he shall be in like manner committed upon proof thereof before any justice of the peace to the common gaol, there to remain till the next sessions, and upon conviction thereof by verdict of twelve men, shall receive judgment to be in prison six month, and pay ten pounds for the use aforesaid. *And be it further enacted* by the authority aforesaid, that no planter shall ride or go armed with sword, pistol, or dagger, upon the penalty of five pounds, to be levied as aforesaid, excepting all officers, civil and military, and soldiers while in actual service, as also all strangers, travelling upon their lawful occasions thro' this Province, behaving themselves peaceably,

or when the amount or value thereof does not exceed twenty dollars, the same may be prosecuted for by complaint before a police court or a justice of the peace, who shall have jurisdiction thereof, concurrently with the court of common pleas and the municipal court.

Benefit of clergy and petit treason abolished. 1784, 56 & 69.

SECT. 15. The plea of benefit of clergy, and the distinction between murder and petit treason, are abolished, and the last named offence shall be prosecuted and punished as murder.

## TITLE II.

### Of proceedings in criminal cases.

- CHAPTER 134. Of proceedings to prevent the commission of crimes.
- CHAPTER 135. Of the arrest and examination of offenders, commitment for trial, and taking bail.
- CHAPTER 136. Of indictments and proceedings before trial.
- CHAPTER 137. Of trials in criminal cases.
- CHAPTER 138. Of appeals, new trials, and exceptions, in criminal cases.
- CHAPTER 139. Of judgments in criminal cases, and the execution thereof.
- CHAPTER 140. Of coroners inquests.
- CHAPTER 141. Of the taxation, allowance and payment of costs in criminal prosecutions.
- CHAPTER 142. General provisions concerning proceedings in criminal cases.

## CHAPTER 134.

### OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

- | SECTION                                    | SECTION   |
|--|---|
| 1. Officers, authorized to keep the peace. | 13. Persons committed for not recognizing, how discharged.                    |
| 2. Complaint, how made.                    | 14. Recognizances to be transmitted to the court.                             |
| 3. Arrest.                                 | 15. " when to be required, on view of the court or magistrate.                |
| 4. Trial—Recognizance to keep the peace.   | 16. Persons who go armed, may be required to find sureties for the peace, &c. |
| 5. Party, when to be discharged.           | 17. Court may remit part of penalty forfeited.                                |
| 6. Refusing to recognize, to be committed. | 18. Surety may surrender his principal, who may recognize anew.               |
| 7. Complainant, when to pay costs.         |   |
| 8. Payment of costs in other cases.        |   |
| 9. Appeal allowed.                         |   |
| 10. On appeal, witnesses to recognize.     |   |
| 11. Proceedings upon an appeal.            |   |
| 12. Recognizance, when to remain in force. |   |

SECTION 1. The justices of the supreme judicial court, the justices of the court of common pleas, justices of police courts, in vaca-

Officers' authorized to keep the peace.

tion as well as in open court, and also all justices of the peace, shall have power to cause all laws, made for the preservation of the public peace, to be kept, and in the execution of that power, may require persons to give security to keep the peace, or for their good behavior, or both, in the manner provided in this chapter.

SECT. 2. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offence against the person or property of another, the magistrate shall examine the complainant, and any witnesses who may be produced, on oath, and reduce such complaint to writing, and cause the same to be subscribed by the complainant.

Complaint, how made.

SECT. 3. If, upon examination, it shall appear that there is just cause to fear that any such offence may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer, to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate or court having jurisdiction of the cause.

Arrest.  
1794, 26, § 2.

SECT. 4. When the party complained of is brought before the magistrate, he shall be heard in his defence, and he may be required to enter into a recognizance, with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of this Commonwealth, and especially towards the person requiring such security, for such term as the magistrate may order, not exceeding six months, but shall not be bound over to the next court, unless he is also charged with some other offence, for which he ought to be held to answer at such court.

Trial.

Recognizance to keep the peace.  
4 Mass. 497.  
8 Mass. 73.  
2 B. & A. 278.  
1833, 63, §§ 1, & 2.

SECT. 5. Upon complying with the order of the magistrate, the party complained of shall be discharged.

Party, when to be discharged.

SECT. 6. If the person, so ordered to recognize, shall refuse or neglect to comply with such order, the magistrate shall commit him to the county jail, house of correction, or house of industry, during the period for which he was required to give security, or until he shall so recognize; stating, in the warrant, the cause of commitment, with the sum and the time for which security was required.

Refusing to recognize, to be committed.  
1833, 63, § 1

SECT. 7. If, upon examination, it shall not appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he may order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees, as for his own debt.

Complainant when to pay costs.

SECT. 8. When no order respecting the costs is made by the magistrate, they shall be allowed and paid, in the same manner as costs before justices in criminal prosecutions; but in all cases, where a person is required to give security for the peace, or for his good behavior, the court or magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed, until such costs are paid, or he is otherwise legally discharged.

Payment of costs in other cases.  
1824, 128, § 2.  
1834, 151, § 4.

SECT. 9. Any person aggrieved by the order of any justice of the peace, or of a police court, requiring him to recognize as afore-

Appeal allowed.  
1833, 63, § 1.

said, may, on giving the security required, appeal to the court of common pleas, next to be held in the same county, or, in the city of Boston, to the municipal court.

On appeal, witnesses to recognize.

SECT. 10. The magistrate, from whose order an appeal is so taken, shall require such witnesses, as he may think necessary to support the complaint, to recognize for their appearance at the court to which the appeal is made.

Proceedings on appeal.

SECT. 11. The court, before which such appeal is prosecuted, may affirm the order of the justice, or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum, and for such time, as the court shall think proper, and may also make such order, in relation to the costs of prosecution, as may be deemed just and reasonable.

Recognizance, when to remain in force.

SECT. 12. If any party appealing shall fail to prosecute his appeal, his recognizance shall remain in full force and effect, as to any breach of the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as a security for any costs, which shall be ordered, by the court appealed to, to be paid by the appellant.

Persons committed for not finding sureties, how discharged.

SECT. 13. Any person, committed for not finding sureties, or refusing to recognize, as required by the court or magistrate, may be discharged by any judge or justice of the peace, on giving such security as was required.

Recognizances to be transmitted to the court.

SECT. 14. Every recognizance, taken pursuant to the foregoing provisions, shall be transmitted by the magistrate to the court of common pleas for the county, or, in the city of Boston, to the municipal court, on or before the first day of the next term, and shall be there filed of record by the clerk.

— when to be required on view of the court or magistrate.

SECT. 15. Every person who shall, in the presence of any magistrate mentioned in the first section of this chapter, or before any court of record, make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person, who in the presence of such court or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace, or being of good behavior, for a term not exceeding three months, and in case of refusal, may be committed, as before directed.

Persons who go armed may be required to find sureties for the peace, &c. 1794, 26, § 2.

SECT. 16. If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, he may, on complaint of any person having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.

Court may remit part of penalty. 7 Mass. 397. 1810. 80.

SECT. 17. Whenever, upon a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty, on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

Surety may surrender his

SECT. 18. Any surety in a recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right

to take and surrender his principal, as if he had been bail for him in a civil cause, and upon such surrender shall be discharged, and exempt from all liability, for any act of the principal subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person, so surrendered, may recognize anew, with sufficient sureties, before any justice of the peace, for the residue of the term, and thereupon shall be discharged.

principal, who may recognize anew.

**CHAPTER 135.**

**OF THE ARREST AND EXAMINATION OF OFFENDERS, COMMITMENT FOR TRIAL, AND TAKING BAIL.**

SECTION

1. Officers, empowered to act under this chapter.
2. Complaints, warrants, and summonses for witnesses.
3. In what counties warrants may be executed.
4. Prisoners, when to be brought before magistrate, on arrest, &c.
5. Magistrate, if he take bail, to return the recognizance to court, &c.
6. Officer, how to proceed if prisoner is not bailed
- 7, 8. Prisoner when to be carried to the county whence the warrant issued.
9. Magistrate may adjourn the examination, &c.
10. In case of default, magistrate to certify recognizance to C. C. Pleas.
11. Proceedings, when the party fails to recognize.
- 12, 13, 14. Manner of conducting the examination.

SECTION

15. Testimony may be reduced to writing.
16. Prisoner, when to be discharged.
17. " when to be bailed, or committed.
18. Witnesses to recognize.
19. Witnesses, when to recognize with sureties.
20. Recognizances of married women and minors.
21. Witnesses, refusing to recognize, to be committed.
22. Prisoners, by whom let to bail.
23. Examining magistrate may have associates.
24. Examinations and recognizances to be returned.
25. Commitments, when to be superseded, and recognizances discharged.
26. Orders therefor, how to be filed, and effect thereof.
- 27, 28, 29, 30. Proceedings on forfeited recognizances.

SECTION 1. For the apprehension of persons charged with offences, the justices of the supreme judicial court, justices of the court of common pleas, justices of any police court, in vacation as well as in term time, and all justices of the peace, are authorized to issue process, to carry into effect the provisions of this chapter.

Officers, empowered to act under this chapter.

SECT. 2. Upon complaint, made to any such magistrate, that a criminal offence has been committed, he shall examine on oath the complainant, and any witnesses produced by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant; and if it shall appear that any such offence has been committed, the court or justice shall issue a warrant, reciting the substance of the accusation, and requiring the officer, to whom it shall be directed, forthwith to take the person accused, and to bring him before the said court or justice, or before some other court or magis-

Complaints, warrants, and summonses for witnesses.

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the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as a security for any costs which shall be ordered by the court appealed to, to be paid by the appellant.

§ 13. Any person committed for not finding sureties, or refusing to recognize as required by the court or magistrate, may be discharged by any judge or justice of the peace on giving such security as was required. Not recognizing, how discharged.

§ 14. Every recognizance taken in pursuance of the foregoing provisions shall be transmitted by the magistrate to the district court for the county on or before the first day of the next term, and shall be there filed of record by the clerk. Recognizances transmitted to court.

§ 15. Any person who shall, in the presence of any magistrate mentioned in the first section of this statute, or before any court of record, make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who, in the presence of such court or magistrate, shall contend, with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace and being of good behavior, for a term not exceeding six months, and in case of refusal may be committed as before directed. When required on view of court, &c.

§ 16. If any person shall go armed with a dirk, dagger, sword, pistol or pistols, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family, or property, he may, on complaint of any other person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace for a term not exceeding six months, with the right of appealing as before provided. Persons going armed to give security, &c.

§ 17. Whenever, upon a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty on the petition of any defendant, as the circumstances of the case shall render just and reasonable. Part of penalty remitted.

§ 18. Any surety in a recognizance to keep the peace or for good behavior or both, shall have the same authority and right to take and surrender his principal as if he had been bail for him in a civil cause, and upon such surrender shall be discharged and exempt from all liability for any act of the principal subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person so surrendered may recognize anew, with sufficient sureties, before any justice of the peace for the residue of the term, and thereupon shall be discharged. Surety may surrender principal.

### AN ACT making general provisions concerning crimes and punishments.

§ 1. That every person who shall be aiding in the commission of any offence, which shall be a felony either at common law or by any statute now made, or which shall be hereafter made, or who shall be accessory thereto before the fact, by counselling, hiring or otherwise procuring such felony to be committed, shall be punished in the same manner as is or shall be prescribed for the punishment of the principal felon. Accessory to felony before the fact, how punished.

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refusing to recognize, as required by the court or magistrate, may be discharged by any judge or justice of the peace, on giving such security, as was required. **CHAP. 169.**

may be taken after commitment.

**SECT. 14.** Every recognizance, taken pursuant to the foregoing provisions, shall be transmitted to the district court, on or before the first day of the next ensuing term, and shall there be filed by the clerk, as of record.

Return of such recognizance.

**SECT. 15.** Whoever, in the presence of any magistrate, mentioned in the second section of this chapter, or before any court of record, shall make any affray or threaten to kill or beat another, or commit any violence against his person or property, or shall contend, with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace, or being of the good behavior for a term, not exceeding three months, and, in case of refusal, may be committed to prison as before directed.

When magistrate may require sureties, without a formal complaint, &c.

**SECT. 16.** Any person, going armed with any dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without a reasonable cause to fear an assault on himself, or any of his family or property, may, on the complaint of any person having cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace for a term, not exceeding one year, with the right of appeal as before provided.

Persons going armed, without reasonable cause. 1821, 76, § 1.

**SECT. 17.** In a suit, on such recognizance taken in a criminal case, if a forfeiture is found or confessed, the court, on petition, may remit the penalty, or such part of it as they may think proper, on such terms as they may think right.

Power of court, to remit the penalty of a recognizance. 1821, 50, § 4.

**SECT. 18.** Any surety in a recognizance may surrender the principal in the same manner, as if he had been his bail in a civil cause, and, on such surrender, shall be discharged from all liability for any act of the principal after such surrender, which would be a breach of the recognizance; and, upon such surrender, the principal may recognize anew with sufficient surety or sureties for the residue of the term, before any justice of the peace, and shall thereupon be discharged.

Sureties on recognizances may surrender their principals as in case of bail in civil actions.

**CHAPTER 170.**

**OF THE POWER AND PROCEEDINGS OF JUSTICES OF THE PEACE IN CRIMINAL CASES.**

- SECT. 1.** Justices may require aid, on view, without a warrant.
- 2. Their jurisdiction.
- 3. When a justice shall issue his warrant.
- 4. Examination, on trial, of the party accused.
- 5. Of commitment or binding over to a higher court.

- SECT. 6.** Duty of justices, as to arrests, and examinations into treasons, felonies, &c.
- 7. Trial and sentence within their jurisdiction.
- 8. Respondent may appeal; but required to recognize.
- 9. To carry up copies of the case.

TITLE XXXI.  
CHAPTER 162.

TITLE XXXI.

OF PROCEEDINGS IN CRIMINAL CASES.

- Chapter 162. Of Proceedings to prevent the Commission of Crime.
- Chapter 163. Of the Arrest and Examination of Offenders, commitment for Trial and taking Bail.
- Chapter 164. Of Indictments and Proceedings before Trial.
- Chapter 165. Of Trials in Criminal Cases.
- Chapter 166. Of new Trials and Exceptions in Criminal Cases.
- Chapter 167. Of Coroners' Inquests.
- Chapter 168. Of Judgments in Criminal Cases and the Execution thereof.
- Chapter 169. Of Fees of Officers and Ministers of Justice in Criminal Cases.
- Chapter 170. Miscellaneous Provisions concerning Proceedings in Criminal Cases.

CHAPTER 162.

OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIME.

Officers authorized to keep the peace.

SECTION 1. The justices of the supreme court, judges of county courts, circuit court commissioners, all mayors and recorders of cities, and all justices of the peace, shall have power to cause all laws made for the preservation of the public peace, to be kept, and in the execution of that power, may require persons to give security to keep the peace, in the manner provided in this chapter.

Complaint, how made.

SEC. 2. Whenever complaint shall be made in writing and on oath, to any such magistrate, that any person has threatened to commit any offence against the person or property of another, it shall be the duty of such magistrate to examine such complainant, and any witnesses who may be produced, on oath, to reduce such examination to writing, and to cause the same to be subscribed by the parties so examined.

Arrest.

SEC. 3. If it shall appear from such examination, that there is just reason to fear the commission of any such offence, such magistrate shall issue a warrant under his hand, directed to the sheriff or any constable of the county, reciting the substance of the complaint, and commanding him forthwith to apprehend the person so complained of, and bring him before such magistrate.

Trial, recognizance.  
4 Mass., 497.  
8 do., 73.  
2 B. & A., 278.

SEC. 4. When the party complained of is brought before the magistrate, he shall be heard in his defence, and he may be required to enter into a recognizance with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of

PREVENTION OF CRIME.

this state, and especially towards the person requiring such security, for such term as the magistrate may order, not exceeding one year, but shall not be bound over to the next court, unless he is also charged with some other offence, for which he ought by law to be held to answer at such court.

TITLE XXXI.  
CHAPTER 162.

SEC. 5. Upon complying with the order of the magistrate, the party complained of shall be discharged.

Party, when discharged.

SEC. 6. If the person so ordered to recognize, shall refuse or neglect to comply with such order, the magistrate shall commit him to the county jail, during the period for which he was required to give security, or until he shall so recognize; stating in the warrant the cause of commitment, with the sum and the time for which such security was required.

Refusing to recognize, to be committed.

SEC. 7. If, upon examination, it shall not appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he shall order the complainant to pay the costs of the prosecution, who shall thereupon be answerable to the magistrate and the officer (*officers*) for their fees, as for his own debt.

Complainant, when to pay costs.

SEC. 8. When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security to keep the peace, the court or magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed, until such costs are paid, or he is otherwise legally discharged.

Payment of cost in other cases.

SEC. 9. Any person aggrieved by the order of any justice of the peace, requiring him to recognize as aforesaid, may, on giving the recognizance to keep the peace required by such order, appeal to the circuit court for the same county.

Appeal allowed.

SEC. 10. The justice from whose order an appeal is taken, shall require such witnesses as he may think necessary to support the complaint, to recognize for their appearance at the court to which the appeal is made.

Witnesses to recognize.

SEC. 11. The court before which such appeal is prosecuted, may affirm the order of the justice, or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum, and for such time, not exceeding one year, as the court shall think proper, and may also make such order in relation to the costs of prosecution, as may be deemed just.

Court may affirm order of justice, or discharge appellant, &c.

SEC. 12. If any party appealing shall fail to prosecute his appeal, his recognizance shall remain in full force and effect, as to any breach of the condition, without an affirmation of the judgment or order of the justice, and shall also stand as a security for any costs which shall be ordered by the court appealed to, to be paid by the appellant.

Recognizance, when to remain in force.

SEC. 13. Any person committed for not finding sureties, or refusing to recognize, as required by the court or magistrate, may be discharged by any judge, circuit court commissioner or justice of the peace, on giving such security as was required.

Person committed how discharged.

SEC. 14. Every recognizance, taken pursuant to the foregoing provisions, shall be transmitted by the magistrate to the clerk of the circuit court for the county, within twenty days after the taking thereof, and on or before the next term of such court, and shall be filed by such clerk.

Recognizance to be transmitted to clerk of court.

TITLE XXXI.  
CHAPTER 163.Breach of peace  
in presence of  
magistrate, &c.

SEC. 15. Every person who shall, in the presence of any magistrate mentioned in the first section of this chapter, or before any court of record, make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who, in the presence of such court or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace, for a term not exceeding six months, and in case of refusal, may be committed as before directed.

Person going  
armed to find su-  
reties for the  
peace.

SEC. 16. If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, he may, on complaint of any person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.

Court may remit  
part of penalty.  
7 Mass., 397.

SEC. 17. Whenever upon a suit brought on any recognizance entered into in pursuance of this chapter, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty, on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

Surety may sur-  
render his prin-  
cipal, effect of  
surrender.

SEC. 18. Any surety in a recognizance to keep the peace, shall have the same authority and right to take and surrender his principal as in other criminal cases, and upon such surrender shall be discharged and exempt from all liability for any act of the principal subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person so surrendered may recognize anew, with sufficient sureties, before any justice of the peace or circuit court commissioner for the residue of the term, and shall thereupon be discharged.

## CHAPTER 163.

OF THE ARREST AND EXAMINATION OF OFFENDERS, COMMITMENT FOR  
TRIAL AND TAKING BAIL.What officers  
may issue pro-  
cess for the arrest  
of offenders, &c.

SECTION 1. For the apprehension of persons charged with offences, excepting such offences as are cognizable by justices of the peace, the justices of the supreme court, judges of the county courts, circuit court commissioners, mayors and recorders of cities, and all justices of the peace, shall have power to issue process and to carry into effect the provisions of this chapter.

Complainant, &c.  
to be examined.

SEC. 2. Whenever complaint shall be made to any such magistrate, that a criminal offence, not cognizable by a justice of the peace, has been committed, he shall examine on oath the complainant, and any witnesses who may be produced by him.

Proceedings if it  
appear that an  
offence has been  
committed.

SEC. 3. If it shall appear from such examination, that any criminal offence, not cognizable by a justice of the peace, has been committed, the magistrate shall issue a warrant, directed to the sheriff or any constable of the county, reciting the substance of the accusation, and

*Prevention of Crimes.*

**TITLE III.**

**OF PROCEEDINGS IN CRIMINAL CASES.**

- CHAP. 14. Of proceedings to prevent the commission of crimes.
  - 15. Of arrest and commitment.
  - 16. Of coroners' inquests.
  - 17. Of bail in criminal cases.
  - 18. Of examining courts.
  - 19. Of grand juries.
  - 20. Of indictments, presentments and informations, and process thereon.
  - 21. Of trial and its incidents.
  - 22. Of exceptions, writs of error and execution of judgment.
  - 23. Of taxation and allowance of costs.
  - 24. Of contempts of court.
  - 25. Of general provisions concerning proceedings in criminal cases.
  - 26. Of criminal proceedings against slaves, free negroes and mulattoes.

**CHAP. XIV.**

**OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.**

SECTION	SECTION
1. Officers authorized to keep the peace.	12. Recognizance, when to remain in force.
2. Complaint, how made.	13. Persons committed for not recognizing, how discharged.
3. Arrest.	14. Recognizances to be transmitted to court.
4. Trial. Recognizance to keep the peace.	15. Recognizances, when to be required on view of the court or magistrate.
5. Party, when discharged.	16. Persons who go armed may be required to find sureties of the peace, &c.
6. Refusing to recognize, to be committed.	17. Persons not of good fame to give surety for good behaviour.
7. Complainant when to pay costs.	
8. Payment of costs in other cases.	
9. Appeal allowed.	
10. On appeal, witnesses to recognize.	
11. Proceedings on appeal.	

1. The judges of the supreme court of appeals, the judges of the general court throughout the commonwealth, all justices of the peace and commissioners in chancery within their respective jurisdictions, shall have power to cause all laws made for the preservation of the public peace, to be kept, and in the execution of that power, may require persons to give security to keep the peace, or for their good behaviour, or both, in the manner hereinafter provided.

Officers authorized to keep the peace.

Power to require security for behaviour.

2. Whenever complaint shall be made to any such magistrate that there is good cause for fear that any person intends to commit an offence against the person or property of another, the magistrate shall examine the complainant and any witnesses who may be produced on oath, and reduce such complaint to writing, and cause the same to be subscribed by the complainant.

Complaint how made.

3. If upon examination, it shall appear that there is just cause to fear that any such offence may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate having jurisdiction of the cause.

Arrest.

- Trial.** **4.** When the party complained of is brought before the magistrate, he shall be heard in his defence, and he may be required to enter into a recognizance, with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of this commonwealth, and especially towards the person making the complaint, for such term as the magistrate may order, not exceeding twelve months, but shall not be bound over to the next court, unless he is also charged with some other offence, for which he ought to be held to answer at such court.
- Recognizance to keep peace.**
- Party when discharged.** **5.** Upon complying with the order of the magistrate, the party complained of shall be discharged.
- Refusing to recognize, to be committed.** **6.** If the person so ordered to recognize shall refuse or neglect to comply with such order, the magistrate shall commit him to the jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment, with the sum and the time for which security was required.
- Defendant when discharged.** **7.** If upon examination it shall not appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he may order the complainant to pay the costs of the prosecution, and thereupon award execution against him for the same.
- Complainant when to pay costs.**
- Payment of costs in other cases.** **8.** When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security for the peace, or for his good behaviour, the court or magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.
- Appeal against order to recognize allowed.** **9.** Any person aggrieved by the order of any justice of the peace requiring him to recognize as aforesaid, may, on giving the security required, appeal to the county or corporation court next to be holden for the said county or corporation.
- On appeal, witnesses to recognize.** **10.** The magistrate from whose order an appeal is taken, shall require such witnesses as he may think necessary to support the complaint, to recognize for their appearance at the court to which the appeal is made.
- Proceedings on appeal.** **11.** The court before which such appeal is prosecuted, may affirm the order of the justice, or discharge the appellant, or may require him to enter into a new recognizance, with sufficient sureties, in such sum, and for such time, as the court shall think proper; and may also make such order in relation to the costs of prosecution as may be deemed just and reasonable.
- Costs.**
- Recognizance to be valid unless appeal prosecuted.** **12.** If any party appealing shall fail to prosecute his appeal, his recognizance shall remain in full force and effect, as to any breach of the condition, without any affirmation of the order of the magistrate, and shall also stand as a security for any costs which shall be ordered by the court appealed to, to be paid by the appellant.
- Persons committed for not recognizing, how discharged.** **13.** Any person committed for not finding securities, or refusing to recognize as required by the court or magistrate, may be discharged by any judge or justice of the peace on giving such security as was required, or by the county court, on such terms as the court may deem reasonable.
- Recognizances returned to court.** **14.** Every recognizance taken pursuant to the foregoing provisions, shall be transmitted by the magistrate to the court of the county on or before the first day of the next term thereof, and shall be there filed of record by the clerk.

*Arrest and Commitment.*

15. Every person who shall, in the presence of any magistrate, mentioned in the first section of this act, or before any court of record, make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who, in the presence of such court or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered without process or any other proof, to recognize for keeping the peace, or being of good behaviour, for a term not exceeding six months, and in case of refusal may be committed as before directed.

Recognizances required for offences in presence of magistrate or court.

16. If any person shall go armed with any offensive or dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, he may be required to find sureties for keeping the peace for a term not exceeding twelve months, with the right of appealing as before provided.

Persons armed, required to find sureties.

Appeal allowed.

17. Such persons as are not of good fame may be required to give sufficient surety of their good behaviour for such term, not exceeding twelve months, as the magistrate requiring it may order.

Persons not of good fame to give surety.

CHAP. XV.

OF ARREST AND COMMITMENT.

<p><b>SECTION</b></p> <p>1. Officers empowered to act.</p> <p>2. Complaints, warrants and summonses.</p> <p>3. Offence committed in another county.</p> <p>4. In what county warrant may be executed.</p> <p>5. Prisoner, when to be brought before magistrate on arrest.</p> <p>6. Magistrate, if he take bail, to return recognizance, &amp;c.</p> <p>7. Officer, how to proceed if prisoner not bailed.</p> <p>8. Prisoner, when to be carried to county whence warrant issued.</p> <p>9. Same subject.</p> <p>10. Magistrate may adjourn examination.</p> <p>11. In case of default, recognizance to be certified.</p> <p>12. Proceedings when party fails to recognize.</p> <p>13. } Manner of conducting examination.</p> <p>14. } 15. }</p> <p>16. Testimony to be reduced to writing.</p>	<p><b>SECTION</b></p> <p>17. When prisoner to be discharged.</p> <p>18. When to be bailed or committed.</p> <p>19. If party entitled to examination, &amp;c.</p> <p>20. If not so entitled, and triable on indictment, &amp;c.</p> <p>21. If party charged be free negro, &amp;c.</p> <p>22. Duty of magistrate, &amp;c.</p> <p>23. Witnesses to recognize.</p> <p>24. Witnesses, when to recognize with sureties.</p> <p>25. Recognizances of minors, &amp;c.</p> <p>26. Witnesses refusing to recognize.</p> <p>27. Magistrate may associate others.</p> <p>28. Prisoner by whom let to bail.</p> <p>29. Recognizances, &amp;c. to be returned.</p> <p>30. Commitments, &amp;c. when to be discharged.</p> <p>31. Orders therefor, how to be filed &amp;c.</p> <p>32. } Proceedings on forfeited recognizances.</p> <p>33. } 34. } 35. }</p> <p>36. Right of surety to surrender principal.</p> <p>37. To whom to be surrendered.</p> <p>38. When to the court.</p>
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1. For the apprehension of persons charged with offences, the judges of the general court, and all justices of the peace in vacation as well as in term time, are authorized to issue process to carry into effect the provisions of this act.

Process to arrest for offences, by whom issued.

2. Upon complaint made to any such magistrate that a criminal offence has been committed, he shall examine on oath the complainant and any witnesses produced by him, and shall reduce the complaint to writing, and cause the same to be subscribed by the complainant; and if it shall appear that any such offence has been com-

Examination on complaint.

PROCEEDINGS TO PREVENT CRIMES.

as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same, or some other court or magistrate within the territory, to answer such complaint as in other cases.

When person charged to give recognizance.

SEC. 4. If, upon examination of the person charged, it shall appear to the court or magistrate, that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, he shall, if not charged with a capital crime, be required to recognize with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate; and if such person shall not so recognize, he shall be committed to prison, and be there detained until such day, in like manner as if the offence charged had been committed within this territory; and if the person so recognizing shall fail to appear according to the condition of his recognizance, he shall be defaulted, and the like proceedings shall be had as in the case of other recognizances entered into before such court or magistrate; but if such person be charged with a capital crime, he shall be committed to prison, and there detained until the day so appointed for his appearance before the court or magistrate.

When to be committed.

Forfeiture of recognizance.

When discharged.

May be delivered on warrant of executive, &c.

SEC. 5. If the person so recognized or committed, shall appear before the court or magistrate upon the day ordered, he shall be discharged unless he be demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate shall see cause to commit him, or to require him to recognize anew, for his appearance at some other day and if, when ordered, he shall not so recognize, he shall be committed and detained as before provided; whether the person so discharged shall be recognized, committed, or discharged, any person authorized by the warrant of the executive, may at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

Complainant liable for costs, &c.

SEC. 6. The complainant in such case, shall be answerable for the actual costs and charges, and for the support in prison, of any person so committed, and shall advance to the jailor one week's board, at the time of commitment, and so from week to week, so long as such person shall remain in jail, and if he fail so to do, the jailor may forthwith discharge such person from his custody.

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CHAPTER 112.

OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

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SECTION

1. What officers to cause public peace to be kept.
2. Proceedings when complaint is made to magistrate.

SECTION

3. Magistrate when to issue warrant.
4. Proceedings upon examination, before magistrate.
5. Defendant may have counsel.

PROCEEDINGS TO PREVENT CRIMES.

SECTION

- 6. Defendant when to enter into recognizance.
- 7. Defendant when to be discharged.
- 8. Defendant when to be committed.
- 9. Defendant when to be discharged.
- 10. Costs by whom paid.
- 11. Appeal when allowed.
- 12. When magistrate may require witnesses to recognize.
- 13. District court how to proceed upon such appeal.
- 14. When appellant fails to prosecute appeal, recognizance to be in force.

SECTION

- 15. After commitment, how defendant may be discharged.
- 16. Recognizance to be transmitted to district court.
- 17. When person may be ordered to recognize without warrant.
- 18. Persons carrying offensive weapons, how punished.
- 19. Suit brought on recognizance.
- 20. Surety may take and surrender principal in recognizance.

SEC. 1. The judges of the several courts of record, in vacation as well as in open court, and all justices of the peace, shall have power to cause all laws made for the preservation of the public peace, to be kept, and in the execution of that power, may require persons to give security to keep the peace, or for their good behavior, or both, in the manner provided in this chapter.

What officers to cause public peace to be kept.

SEC. 2. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offence against the person or property of another, the magistrate shall examine the complainant and any witness who may be produced, on oath, and reduce such complaint to writing and cause the same to be subscribed by the complainant.

Proceedings when complaint is made to magistrate.

SEC. 3. If upon examination, it shall appear that there is just cause to fear that any such offence may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate or some other magistrate or court, having jurisdiction of the cause.

Magistrate when to issue warrant.

SEC. 4. The magistrate before whom any person is brought upon charge of having made threats as aforesaid, shall as soon as may be, examine the complainant and the witnesses to support the prosecution, on oath, in the presence of the party charged, in relation to any matters connected with such charge, which may be deemed pertinent.

Proceedings upon examination before magistrate.

SEC. 5. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross examination of the witnesses in support of the prosecution.

Defendant may have counsel.

SEC. 6. If upon examination it shall appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be required to enter into a recognizance and with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of this territory, and especially towards the persons requiring such security, for such term as the magistrate shall order, not exceeding six months; but he shall not be ordered to recognize for his appearance at the district court, unless he is charged with some offence for which he ought to be held to answer at said court.

Defendant when to enter into recognizance.

SEC. 7. Upon complying with the order of the magistrate, the party complained of shall be discharged.

Defendant when to be discharged.

SEC. 8. If the person so ordered to recognize shall refuse or neglect to comply with such order, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment, with the sum and time for which security was required.

Defendant when to be committed.

SEC. 9. If, upon examination, it shall not appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall

Defendant when to be discharged.

## PROCEEDINGS TO PREVENT CRIME.

deem the complaint unfounded, frivolous, or malicious, he shall order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees as for his own debt.

Costs by whom paid

SEC. 10. When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security for the peace or for his good behavior, the magistrate may further order the costs of prosecution or any part thereof to be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.

Appeal when allowed.

SEC. 11. Any person aggrieved by the order of any justice of the peace requiring him to recognize as aforesaid, may, on giving the security required, appeal to the district court next to be holden in the same county, or that county to which said county is attached for judicial purposes.

When magistrate may require witness to recognize.

SEC. 12. The magistrate from whose order an appeal is so taken, shall require such witnesses as he may think necessary to support the complaint, to recognize for their appearance at the court to which appeal is made.

District court how to proceed upon such appeal.

SEC. 13. The court before which such appeal is prosecuted, may affirm the order of the justice or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution as he may deem just and reasonable.

When appellant fails to prosecute appeal, recognizance to be in force.

SEC. 14. If any party appealing, shall fail to prosecute his appeal, his recognizance shall remain in full force and effect as to any breach of the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as a security for any costs which shall be ordered by the court appealed to, to be paid by the appellant.

After commitment, how defendant may be discharged.

SEC. 15. Any person committed for not finding sureties, or refusing to recognize as required by the court or magistrate, may be discharged by any judge or justice of the peace on giving such security as was required.

Recognizance to be transmitted to district court.

SEC. 16. Every recognizance taken in pursuance of the foregoing provision, shall be transmitted by the magistrate to the district court for the county, on or before the first day of the next term, and shall be there filed of record by the clerk.

When person may be ordered to recognize without warrant.

SEC. 17. Any person who shall in the presence of any magistrate mentioned in the first section of this chapter, or before any court of record make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person, who, in the presence of such court or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered without process or any other proof, to recognize for keeping the peace, and being of good behavior, for a term not exceeding six months, and in case of a refusal, may be committed as before directed.

Persons carrying offensive weapons how punished.

SEC. 18. If any person shall go armed with a dirk, dagger, sword, pistol or pistols, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury or violence to his person, or to his family, or property, he may, on complaint of any other person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.

Suit brought on recognizance.

SEC. 19. Whenever upon a suit brought on any such recognizances, the penalty thereof shall be adjudged forfeited, the court may remit such

OF ARRESTS.

portion of the penalty, on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

SEC. 20. Any surety in a recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right to take and surrender his principal, as if he had been bail for him in a civil case, and upon such surrender, shall be discharged and exempt from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person so surrendered may recognize anew, with sufficient sureties, before any justice of the peace for the residue of the term, and thereupon shall be discharged.

Surety may take and surrender principal in recognizance.

CHAPTER 113.

OF ARRESTS.

SECTION

- 1. Arrest defined.
- 2. Arrest how and by whom made.
- 3. Every person must aid officer in making arrest.
- 4. Arrest for felony or misdemeanor how made.
- 5. Arrest for felony or misdemeanor how made.
- 6. Defendant how to be restrained.
- 7. Officer must inform defendant that he acts under authority.
- 8. Officer may use necessary force.
- 9. Officer may break outer door to make arrest.
- 10. Officer may break outer door to make arrest.
- 11. When officer may arrest person without warrant.

SECTION

- 12. Officer may break open door.
- 13. Arrest may be made at night.
- 14. Officer must inform person of the cause of arrest.
- 15. Person breaking peace to be taken before justice.
- 16. Offences in presence of magistrate.
- 17. When private person may arrest person.
- 18. Must inform person the cause of arrest.
- 19. Person making such arrest may break open door.
- 20. Person arrested must be taken before magistrate.
- 21. Defendant may be retaken if he escape.
- 22. Person pursuing may break open door, &c.

SEC. 1. Arrest is the taking of a person into custody, that he may be held to answer for a public offence.

Arrest defined.

SEC. 2. An arrest may be either,

- 1. By a peace officer under a warrant :
- 2. By a peace officer without a warrant :
- 3. By a private person.

Arrest how and by whom made.

SEC. 3. Every person must aid an officer in the execution of a warrant, if the officer require his aid, and be present and acting in its execution.

Every person must aid officer in making arrest.

SEC. 4. If the offence charged be a felony, the arrest may be made on any day and at any time of the day or night; if it be a misdemeanor, the arrest cannot be made on Sunday, or at night, unless upon the direction of the magistrate indorsed upon the warrant.

Arrest for felony or misdemeanor how made.

SEC. 5. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

Arrest for felony or misdemeanor how made.

SEC. 6. The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention.

Defendant how to be restrained.

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CHAPTER XVI.

PROCEEDINGS TO PREVENT COMMISSION OF CRIMES.

- SEC. 1. Certain officers conservators of the public peace.
- 2. Proceedings when complaint is made to magistrate.
- 3. Magistrate, when to issue warrant.
- 4. Proceedings on examination before magistrate.
- 5. Privilege of defendant.
- 6. Recognizance, when required.
- 7. Defendant, when to be committed.
- 8. Discharge of defendant; complainant, when to pay costs.
- 9. In other cases, costs, how and when paid.
- 10. Appeal, when allowed.
- 11. When magistrate may require witnesses to recognize.
- 12. Proceedings on appeal by district court.
- 13. Consequence of appellant failing to prosecute appeal.
- 14. After commitment, defendant may be discharged on giving security.
- 15. Recognizance to be transmitted to district court.
- 16. When person may be ordered to recognize without warrant.
- 17. Armed persons, when required to find sureties.
- 18. Suit on recognizance.
- 19. Surety may surrender principal.

Keeping the peace.

SEC. 1. The judges of the several courts of record, in vacation as well as in open court, and all justices of the peace, shall have power to cause all laws made for the preservation of the public peace, to be kept, and in the execution of that power, may require persons to give security to keep the peace, or for their good behavior, or both, in the manner provided in this chapter.

When sureties may be required. 17 Wcn. 181; 23 do. 639.

SEC. 2. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offence against the person or property of another, the magistrate shall examine the complainant, and any witness who may be produced on oath, and reduce such complaint to writing, and cause the same to be subscribed by the complainant.

Warrant to issue.

SEC. 3. If, upon examination, it shall appear that there is just cause to fear that such offence may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate or court having jurisdiction of the cause.

Examination

SEC. 4. The magistrate before whom any person is brought upon charge of having made threats as aforesaid, shall, as soon as may be, examine the complainant, and the witnesses to support the prosecution, on oath, in the presence of the party charged, in relation to any matters connected with such charge, which may be deemed pertinent.

Privilege of defendant.

SEC. 5. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross-examination of the witnesses in support of the prosecution.

Recognizance when required.

SEC. 6. If, upon examination, it shall appear that there is just cause to fear that any such offence will be committed by the party

PROCEEDINGS TO PREVENT COMMISSION OF CRIMES.

complained of, he shall be required to enter into recognizance with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of this territory, and especially towards the person requiring such security, for such term as the magistrate shall order, not exceeding six months; but he shall not be ordered to recognize for his appearance at the district court, unless he is charged with some offence for which he ought to be held to answer at said court.

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SEC. 7. If the person so ordered to recognize, shall refuse or neglect to comply with such order, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment, with the sum and time for which security was required.

When to be committed. 23 Wen. 639.

SEC. 8. If, upon examination, it shall not appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he shall order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees, as for his own debt.

Complainant when to pay costs.

SEC. 9. When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security for the peace, or for his good behavior, the magistrate may further order the costs of prosecution, or any part thereof, to be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.

Costs.

SEC. 10. Any person aggrieved by the order of any justice of the peace, requiring him to recognize as aforesaid, may, within ten days after the decision of the justice, on giving the security required, appeal to the district court, next to be holden in the same county, or that county to which said county is attached for judicial purposes.

Appeal.

SEC. 11. The magistrate, from whose order an appeal is to be taken, shall require such witnesses as he may deem necessary to support the complaint, to recognize for their appearance at the court to which appeal is made.

Witnesses when to recognize.

SEC. 12. The court before which such appeal is prosecuted, may affirm the order of the justice, or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution, as it may deem just and reasonable.

Power of appellate court

SEC. 13. If any party appealing, shall fail to prosecute his appeal, his recognizance shall remain in full force and effect, as to any breach of the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as security for any cost which shall be ordered by the court appealed to, to be paid by the appellant.

Failing to prosecute appeal.

SEC. 14. Any person committed for not finding sureties, or refusing to recognize as required by the court or magistrate, may be dis-

Discharge of party committed.

CHAP. 17. charged by any judge or justice of the peace, on giving such security as was required.

Recognizances when to be transmitted.

SEC. 15. Every recognizance taken in pursuance of the foregoing provisions, shall be transmitted by the magistrate to the district court for the county, on or before the first day of the next term, and shall be there filed of record by the clerk.

Order to recognize without warrant.

SEC. 16. Any person, who shall, in the presence of any magistrate mentioned in the first section of this chapter, or before any court of record, make an affray, or threaten to kill, or beat another, or to commit any violence or outrage against his person or property, and every person, who, in the presence of such court or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace, and being of good behavior for a term not exceeding six months, and in case of a refusal, may be committed as before directed.

Armed persons, when required to find sureties.

SEC. 17. If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault, injury, or other violence to his person, or to his family or property, he may, on complaint of any other person, having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace for a term not exceeding six months, with the right of appealing as before provided.

Suit on recognizance.

SEC. 18. Whenever on a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

Surety may surrender principal.

SEC. 19. Any surety in a recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right to take and surrender his principal, as if he had been bail for him in a civil case, and upon such surrender, shall be discharged and exempted from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person so surrendered, may recognize anew with sufficient sureties, before any justice of the peace for the residue of the term, and thereupon shall be discharged.

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## CHAPTER XVII.

### ARRESTS.

- SEC. 1. Arrest defined.
- 2. Arrest, how and by whom made.
- 3. Every person must aid officer in making arrest, if required.
- 4. Arrest for felony and misdemeanor, when may be made.
  - 5. As to what constitutes arrest.
- 6. Officer may pursue fugitive into other counties.
- 7. When an officer or private person may arrest without warrant.
- 8. Arrest, how made in such case.
- 9. Escape and capture of prisoner.

Arrest.

SEC. 1. Arrest is the taking a person into custody, that he may be held to answer for a public offence.

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PART 4.]

INDICTABLE OFFENCES.

[TITLE 1,

Factor appropriating cotton taken from bale.

§ 3266. Any factor, commission merchant, or agent, having the control of cotton, who appropriates to his own use any cotton taken from any bale under his control, with intent to defraud the owner thereof, must, on conviction, be punished, as if he had feloniously stolen such cotton.

Adulterating sugar.

§ 3267. Any person who mixes any foreign matter or thing with sugar, so as to deteriorate the quality thereof with intent to injure or defraud, must, on conviction, be fined not less than fifty or more than two hundred dollars, and may be imprisoned not more than three months.

Making or emitting bills for circulation.

§ 3268. Any person, private corporation, or association, who without authority of law, makes or emits any paper to answer the purposes of money, or for general circulation, such person, and each individual of such corporation or association, on conviction, must be fined not less than twenty or more than one hundred dollars, and may be imprisoned not more than twelve months.

Signing bills for circulation.

§ 3269. Any person in this state who signs any paper to be put in circulation as money, except under the authority of this state, or countersigns the same, must, on conviction, be fined in a sum not less than one hundred or more than five hundred dollars; and the signature of such person to any such paper must be taken as genuine, unless the fact of signing be denied on oath by the defendant.

Passing such paper.

§ 3270. Any person who passes or circulates any paper issued to answer the purposes of money, without authority of law, must, on conviction, be fined not less than twenty or more than one hundred dollars.

Passing bills under five dollars.

§ 3271. Any person who passes or circulates in this state, any bank bill of a less denomination than five dollars, not issued under the authority of this state, must, on conviction, be fined not exceeding fifty dollars.

Indictment for.

§ 3272. An indictment under the preceding section, which charges that the defendant did pass or circulate a bank bill under the denomination of five dollars, not issued under the authority of this state, is sufficient, without describing such bank bill; and proof that such bill on its face purported to be issued by the authority of any other state, or country, or by any bank, or corporation out of this state, or by any bank or corporation known to be out of this state, is sufficient without further proof.

Concealed weapons.

§ 3273. Any one who carries concealed about his person a bowie knife, or knife or instrument of the like kind or description by whatever name called, or air gun, must, on conviction, be fined not less than fifty or more than three hundred dollars.

The same.

§ 3274. Any one who carries concealed about his person a pistol, or any other description of fire arms, not being threatened with, or having good reason to apprehend an attack, or travelling, or setting out on a journey, must, on conviction, be fined not less than fifty nor more than three hundred dollars.

§ 3275. In an indictment under the preceding section, it is sufficient to charge that the defendant carried concealed about his person a pistol or other description of fire arms; and the excuse must be made out by the defendant, to the satisfaction of the jury.

Indictment for.  
Excuse.

§ 3276. Any person, who in any newspaper, handbill, or other advertisement, written or printed, publishes or proclaims any person as a coward, or uses any other opprobrious or abusive language for not accepting a challenge to fight a duel, or for not fighting a duel, must, on conviction, be fined not less than two hundred or more than five hundred dollars, and imprisoned not less than six or more than twelve months.

Publishing another as a coward, &c.

§ 3277. The publisher or printer of any such newspaper, or handbill, or other publication, may be required to testify against any defendant indicted under the preceding section; and refusing to give evidence, must be fined five hundred dollars, and imprisoned until such fine is paid, and also imprisoned until he shall testify.

Printer to give evidence.  
Penalty for refusing.

§ 3278. Any person who sells and delivers any poisonous substance, without having the word "poison" written or printed on the label attached to the vial, box or parcel in which the same is sold; or sells and delivers any tartar emetic, laudanum or morphine, without having the common name thereof, written or printed upon a label attached to the vial, box or parcel, containing the same, must, on conviction, be fined not more than one hundred dollars.

Selling poisons without labels.

§ 3279. Any person who sells to any slave, or free child under ten years of age, any drug, poisonous in its nature, without an order in writing from the owner or master of such slave, or the parent, guardian, or person standing in that relation to such child, designating the drug, either by name or by its effects, must, on conviction, be fined not more than two hundred dollars, and may be imprisoned not more than three months.

Selling poisons to slaves or children.

§ 3280. Any licensed retailer or other person, keeping fermented, vinous or spirituous liquors for sale, who sells, gives or delivers to any student of any college, or pupil of any school or academy, or to any other person for the use of such student or pupil, any of such liquors, knowing the use for which it was intended, without the consent of the parent or guardian, or the person having the charge of such student or pupil, such retailer, or the person so selling, giving or delivering, must, on conviction, be fined not less than fifty or more than five hundred dollars.

Selling or giving liquor to students, &c.

§ 3281. Any licensed retailer or other person who sells, gives, or delivers to any minor any of the liquors specified in the preceding section, after notice from the parent, guardian, or person in charge of such minor, forbidding such sale, gift, or delivery, must, on conviction, be fined not less than fifty or more than five hundred dollars.

To minors.

§ 3282. Any licensed retailer, who, after taking the affidavit prescribed in section 1057, knowingly sells any vinous

Licensed retailer. Add 76

ing with  
slaves.

or spirituous liquors to any slave; or knowingly sells to or purchases from any slave any article or commodity, without the permission of the master or overseer of such slave; or knowingly permits the same to be done by his partner, clerk, or any other person about his premises; or knowingly permits any gaming to be carried on on his premises, must, on conviction, be imprisoned in the penitentiary not less than two or more than five years.

Selling or  
giving liquor  
to slaves.

§ 3283. Any person who sells, gives, or delivers to any slave any vinous or spirituous liquor, except on an order in writing, signed by the overseer or master of such slave, specifying the quantity to be sold, given, or delivered, must, on conviction, be fined not less than fifty dollars.

The same.

§ 3284. The provisions of the above section apply to licensed retailers as well as other persons.

Trading with  
slaves.  
19 Ala., 19.

§ 3285. Any person who sells to or buys or receives from any slave, any other article or commodity of any kind or description, without the consent of the master, owner, or overseer of such slave, verbally or in writing, expressing the articles permitted to be sold to, or bought or received from such slave, first obtained, must, on conviction, be fined in not less than ten or more than two hundred dollars, and may be imprisoned not more than six months.

Evidence on  
indictment.

§ 3286. Upon the trial of indictments under the preceding and section 3283, evidence that the slave was seen in the night time, or on Sunday, going into a place where spirituous or vinous liquors or merchandize are sold, with an article of traffic, and coming out without the same; or that such slave was seen at such time, or on such day, immediately after coming out of such place, in possession of spirituous or vinous liquor, or merchandize of any kind, is presumptive evidence of the guilt of the defendant.

Employing  
slave or free  
negro to  
draw off or  
sell.

§ 3287. Any person keeping spirituous liquor for sale, who employs any slave or free person of color in drawing off or selling such liquor, must, on conviction, be fined not less than twenty-five or more than fifty dollars.

Duty of mag-  
istrate in re-  
lation to laws  
against re-  
tailing or  
trading with  
slaves.

§ 3288. Any justice or magistrate, whenever he has good reason to believe, or upon information on oath that any of the laws of this state against retailing or trading with slaves have been violated by any person, must forthwith issue a warrant of arrest against such person, and if the evidence proves the offence, must bind him over to answer therefor at the next circuit court, and on his failing to give bond must commit him.

Permitting  
slave or free  
negro to  
sample cot-  
ton.

§ 3289. Any person who employs or knowingly permits any slave or free person of color to sample any cotton, must, on conviction, be fined not less than fifty or more than one thousand dollars.

Owner may.

§ 3290. In indictments under the preceding section, the defendant may show in defence he was the owner of the cotton.

Prosecuting  
suits in the  
name of an-

§ 3291. Any person who prosecutes a suit in any of the courts in this state, in the name of another person, without

his consent, must, on conviction, be fined not less than five hundred dollars.

other. Exceptions.

§ 3292. The provisions of the preceding section do not apply to a person having the beneficial interest using the name of the person having the legal right, in cases where he cannot bring the action in his own name.

Refusing to obey summons of officer.

§ 3293. Any person summoned by any sheriff, or other officer having authority, for the purpose of enabling such officer to make an arrest, or to execute any duty devolving upon him under any law in relation to public offences, who refuses obedience to such summons, must, on conviction, be fined not less than fifty or more than three hundred dollars.

Duty of the officer.

§ 3294. It is the duty of the officer summoning such person to present the offender to the next grand jury, and failing so to do, he must, on conviction, be fined not less than twenty dollars.

ARTICLE VII.

Offences against slaves.

- SEC. 3295. Causing death of by whipping, is murder in the first degree.
- 3296. Causing death by whipping, &c., without intention to kill, murder in the second degree.
- 3297. Inflicting or allowing cruel punishment, &c., failing to provide food, raiment, attention in sickness, &c.

- SEC. 3298. Indictments under preceding section.
- 3299. Defendant entitled to a jury two-thirds of whom are slave holders.
- 3300. Assaults by any other person than the master.

§ 3295. Any person who with malice aforethought causes the death of a slave, by cruel whipping or beating, or by any inhuman treatment, or by the use of any weapon in its nature calculated to produce death, is guilty of murder in the first degree.

Death of a slave by whipping, &c.

§ 3296. Any owner, overseer, or other person having the right to correct any slave, who causes the death of such slave by cruel whipping or beating, or by any other cruel or inhuman treatment, or by the use of any instrument in its nature calculated to produce death, though without any intention to kill, is guilty of murder in the second degree, and may be guilty of murder in the first degree.

Without intention to kill.

§ 3297. Any master, or other person standing towards the slave in that relation, who inflicts, or allows another to inflict on him any cruel punishment, or fails to provide him with a sufficiency of healthy food, or necessary clothing, or to provide for him properly in sickness or old age, or treats him in any other way with inhumanity, on conviction thereof must be fined not less than twenty-five or more than one thousand dollars.

Cruel punishments; not feeding or clothing, &c.

§ 3298. In indictments under the preceding section, it is sufficient to charge that the defendant did inflict on a slave

Indictments.

SEC. 2. On the trial of every indictment, the party accused shall be allowed to be heard by counsel, and he may defend himself, and he shall have a right to produce witnesses and proofs in his favor, and to be confronted with the witnesses who are produced against him.

SEC. 3. No person indicted for an offence shall be convicted thereof, unless by confession of his guilt in open court, or by admitting the truth of the charge against him by his plea or demurrer, or by the verdict of a jury, accepted and recorded by the court.

SEC. 4. No person shall be held to answer on a second indictment for any offence of which he has been acquitted by the jury, upon the facts and merits, on a former trial; but such acquittal may be pleaded by him in bar of any subsequent prosecution for the same offence, notwithstanding any defect in the form or in the substance of the indictment on which he was acquitted.

SEC. 5. No person who is charged with any offence against the law, shall be punished for such offence, unless he shall have been duly and legally convicted thereof in a court having competent jurisdiction of the cause and of the person.

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## CHAPTER 141.

### OF PROCEEDINGS TO PREVENT AND DETECT THE COMMISSION OF CRIMES.

#### SECTION

1. Officers authorized to keep the peace.
2. Complaint; how made.
3. Arrest.
4. Trial; recognizance to keep the peace.
5. Party; when to be discharged.
6. Refusing to recognise, to be committed.
7. Party, when discharged; and complainant, when to pay costs.
8. Payment of costs in other cases.
9. Appeal allowed.
10. On appeal, witnesses to recognise.
11. Proceedings upon an appeal.
12. Recognizance; when to remain in force.
13. Persons committed for not recognising; how discharged.
14. Recognizances to be transmitted to the court.

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15. Recognizances; when to be required on view of the court or magistrate.
16. Persons who go armed may be required to find sureties for the peace, &c.
17. Proceedings when person is suspected of selling liquor contrary to law.
18. Surety may surrender his principal, who may recognise anew.

#### SEARCH WARRANTS.

19. Search warrants for property stolen.
20. In what other cases to be issued.
21. } Warrant; to whom directed, and when
22. } and how executed.
23. Property seized may be kept as evidence, and then restored to owner or destroyed.

## SECTION

## CORONERS' INQUESTS.

24. Coroners' inquests; when to be held.
25. Coroner to issue a warrant to constable to summon jury. Form of warrant.
26. Penalty for constable's or juror's neglect.
27. Jurors; how empaneled and sworn.
28. Witness; how summoned, &c.
29. Oath of witnesses.
30. When and how post mortem to be made, or chemical analysis to detect poison; and fees, &c., for same.
31. Testimony of witnesses reduced to writing.
32. Inquisition; how taken, and form thereof.

## SECTION

33. Coroner; duty in case of felonious killing, &c.
34. Burial of dead body and payment of costs.
35. Jury to report money, &c., found; and same, how disposed of.
36. When coroner to publish description of deceased.
37. Duty of officer in relation to such money.
38. Coroner, failing to pay over same.
39. Property on body to be sold and disposed of as money.
40. When justice of the peace to act as coroner.

SECTION 1. The judge of the criminal court, or any judge of the circuit court, in vacation as well as in term, and also all justices of the peace, shall have power to cause all laws made for the preservation of the public peace to be kept, and, in the execution of that power, may require persons to give security to keep the peace, or for their good behavior, or both, in the manner provided in this chapter.

SEC. 2. Whenever complaint shall be made to any such magistrate that any person has threatened to commit an offence against the person or property of another, the magistrate shall examine the complainant, and any witness who may be produced, on oath, and reduce such complaint to writing, and cause the same to be subscribed by the complainant. A wife may pray surety of the peace against her husband, or anybody else may pray such surety, in her behalf, against him, and such person shall, in such proceeding, be deemed the complaining witness.

SEC. 3. If, upon examination, it shall appear that such affidavit is made only to secure the protection of the law, and not from anger or malice, and that there is just cause to fear that any such offence may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed forthwith to apprehend the person complained of and bring him before such magistrate, or some other magistrate or court having jurisdiction of the cause.

SEC. 4. When the party complained of is brought before the magistrate, he shall be heard in his defence, and he may be required to enter into a recognizance, with sufficient sureties, in such sum as the

magistrate shall direct, to keep the peace towards all the people of this District, and especially towards the person requiring such security, for such term as the magistrate may order, not exceeding one year, but shall not be bound over to the next court, unless he is also charged with some other offence for which he ought to be held to answer at such court.

SEC. 5. Upon complying with the order of the magistrate, the party complained of shall be discharged.

SEC. 6. If the person so ordered to recognise shall refuse or neglect to comply with such order, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognise; stating in the warrant the cause of commitment, with the sum and the time for which security was required.

SEC. 7. If, upon examination, it shall not appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous, or malicious, he shall order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees as for his own debt.

SEC. 8. When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecution; but in all cases where a person is required to give security for the peace, or for his good behavior, the court or magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.

SEC. 9. Any person aggrieved by the order of any justice of the peace requiring him to recognise as aforesaid, may, on giving the security required, appeal to the criminal court at its next session to be discharged therefrom.

SEC. 10. The magistrate from whose order an appeal is so taken shall require such witnesses as he may think necessary to support the complaint, to recognise for their appearance at the court to which the appeal is made.

SEC. 11. The criminal court may affirm the order of the justice or

discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution as may be deemed just and reasonable.

SEC. 12. If any party appealing shall fail to prosecute his appeal, his recognizance shall remain in full force and effect, as to any breach of the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as a security for any costs which shall be ordered by the court appealed to, to be paid by the appellant.

SEC. 13. Any person committed for not finding sureties, or refusing to recognise, as required by the court or magistrate, may be discharged by any judge or justice of the peace on giving such security as was required.

SEC. 14. Every recognizance taken pursuant to the foregoing provisions shall be transmitted by the magistrate to the criminal court on or before the first day of the next term, and shall be there filed by the clerk.

SEC. 15. Every person who shall, in the presence of any officer mentioned in the first section of this chapter, make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who, in the presence of such officer, shall contend with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognise for keeping the peace, or being of good behavior, for a term not exceeding one year, and in case of refusal may be committed as before directed.

SEC. 16. If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury or violence to his person, or to his family or property, he may, on complaint of any person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace for a term not exceeding six months, with the right of appealing as before provided.

SEC. 17. If any justice of the peace suspect any person of selling, by retail, wine or ardent spirits, or a mixture thereof, contrary to law, he shall summon the person and such witnesses as he may think

proper, to appear before him; and, upon such person appearing, or failing to appear, if the justice, on examining the witnesses on oath, find sufficient cause, he shall inform the district attorney, or other proper officer, that a prosecution or suit may be instituted, and shall recognise the material witnesses to appear at the next term of the court before which the case is heard. Such justice may also require the person suspected to enter into a recognizance to keep the peace and be of good behavior for any time not exceeding one year. If such recognizance be given, the condition thereof shall be deemed to be broken if, during the period for which it is given, such person shall sell, by retail, wine or ardent spirits, or a mixture thereof, contrary to law.

SEC. 18. Any surety in a recognizance to keep the peace, or for good behavior, or both, shall have authority and right to take and surrender his principal, and, upon such surrender, shall be discharged and exempt from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance. Such person may recognise anew, with sufficient sureties, before any justice of the peace, for the residue of the term, and be thereupon discharged.

#### SEARCH WARRANTS.

SEC. 19. When complaint shall be made on oath to any magistrate authorized to issue warrants in criminal cases, that personal property has been stolen or embezzled, or obtained by false tokens or pretences, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he be satisfied that there is reasonable cause for such belief, shall issue a warrant to search for such property.

SEC. 20. Any such magistrate may also, upon a like complaint made on oath, issue search warrants, when satisfied that there is reasonable cause, in the following cases, to wit:

First, to search for and seize any counterfeit or spurious coin, forged bank notes, and other forged instruments, or any tools, machines, or materials, prepared or provided for making either of them;

Secondly, to search for and seize any books pamphlets, ballads, printed papers, or other things containing obscene language, or obscene prints, pictures, figures, or descriptions, manifestly tending

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## Division 9.—Offences against the Public Peace and Tranquility.

be made; *And provided, also*, that the only questions to be submitted to and determined by the jury in trials for forcible entry, or forcible detainer, shall be the possession and the force, without regard to the merits of the title on either side. Title not examinable.

§4413. SEC. XV. Any person having or carrying about his person, unless in an open manner and fully exposed to view, any pistol, (except horseman's pistols,) dirk, sword in a cane, spear, bowie-knife, or any other kind of knives, manufactured and sold for the purpose of offence and defence, shall be guilty of a misdemeanor, and, on conviction, shall be punished by fine or imprisonment, or both, at the discretion of the court. Carrying concealed, deadly weapons.

§4414. SEC. XVI. All other offences against the public peace, not provided for in this Code, shall be prosecuted and indicted as heretofore, and the punishment, in every case, shall be by fine or imprisonment in the common jail of the county, or both, at the discretion of the court. Other offences vs. public peace.

## TENTH DIVISION.

## OFFENCES AGAINST THE PUBLIC MORALITY, HEALTH, POLICE AND DECENCY.

SECTION.	SECTION.
4415. Bigamy.	4435. Vagrants.
4416. Punishment on married person.	4436. Common rogues.
4417. On unmarried person.	4437. Nuisances.
4418. Incest.	4438. Disinterring bodies.
4419. Adultery.	4439. Bastardy.
4420. Lewdness.	4440. Retailing without license.
4421. Lewd houses.	4441. Illegal marrying.
4422. Disorderly houses.	4442. Illegal voting.
4423. Gaming houses.	4443. Buying or selling votes.
4424. Gaming tables.	4444. Minor voting.
4425. Gambling.	4445. Adultery with negro.
4426. Gaming with minors.	4446. Whipping wife.
4427. Gaming with clerks and bank off'r's.	4447. Interfering with religious worship.
4428. Players—witnesses.	4448. Retailing near church.
4429. Judge's charge.	4449. Working slaves on Sabbath.
4430. Suspected houses.	4450. Running freight trains on Sunday.
4431. Unwholesome provisions.	4451. Violating Sabbath.
4432. Unwholesome bread, &c.	4452. Fines from Sabbath-breakers.
4433. Spreading small pox.	4453. Bonds in case of vagrancy.
4434. Violating quarantine.	4454. Att'y or Sol'r—duty in such case.

§4415. SEC. 1. Polygamy, or bigamy, shall consist in knowingly having a plurality of husbands, or wives, at the same time. Polygamy and bigamy.

Acts of assembly to be strictly pursued.

192. In all cases where a remedy is provided, or duty enjoined, or anything directed to be done by any act or acts of assembly of this commonwealth, the directions of the said acts shall be strictly pursued; and no penalty shall be inflicted, or anything done agreeably to the provisions of the common law in such cases, further than shall be necessary for carrying such act or acts into effect. (a)

Meaning of general terms.

193. Wherever anything is forbidden or directed by the provisions of this code, by using the general terms, any one, any person, the person, every person and such person, or the relative pronoun he, referring to such general term, the same prohibition or direction, if the contrary be not expressed, is extended to more persons than one, and to females as well as males doing or omitting the same act. (b)

## Criminal Procedure.

### A. PROCEEDINGS TO DETECT THE COMMISSION OF CRIMES.

1. Writs of arrest, &c. Subpœnas. Expenses.
2. Escapes into another county.
3. Backing warrants. Bail. Removal.
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5. Disposition of property supposed to be stolen, found in the possession of one accused.
6. Surety of the peace.
7. Bail.
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9. Settlement of criminal cases.

### B. INDICTMENTS AND PLEADINGS.

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11. Form of indictments. Formal objections to indictment to be made before the jury is sworn. Amendments on demurrer, &c.
12. Variances between written instruments, as produced and laid in the indictment, amendable.
13. Immaterial variances between indictment and proof amendable.
14. Manner of laying the ownership of property in cases of partners and joint owners.
15. Manner of charging frauds against partners and joint owners.
16. Manner of laying property of counties, cities, townships, &c.
17. Forms of indictment in cases of forging, stealing and embezzling, or cheating by false pretences.
18. Forms in other cases.
19. Intent to defraud particular persons need not be alleged or proven in cases of forging, uttering or false pretences.
20. In indictments for murder and manslaughter, means by which the injury was inflicted need not be specified.
21. Requisites of an indictment for perjury.
22. Requisites of an indictment for subornation of perjury.
23. Indictment for duelling.
24. Counts for receiving and stealing may be joined.
25. Issue and trial in criminal cases.
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29. Nolle prosequi.
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### C. COURTS OF CRIMINAL JURISDICTION.

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36. Peremptory challenges.

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42. Of juries de medietate lingue.
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46. Of felonious striking or poisoning in one county, and death in another.
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74. Sentences of separate or solitary confinement.
75. Sentences of separate or solitary confinement of less than one year, and simple imprisonment.
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78. Fines to be decreed to be paid to the state for the use of the county.

### A. PROCEEDINGS TO DETECT THE COMMISSION OF CRIMES.

- Warrants of arrest, &c.
1. The judges of the supreme court, of the court of oyer and terminer and jail delivery, of the courts of quarter sessions, or any of them, shall and may direct their writs and precepts to the sheriffs and coroners of the several counties within this commonwealth, when need shall be, to take persons indicted for felonies, or other offences, before them, who may dwell, remove or be received into another county; and it shall and may be lawful to and for the said judges, or any of them, to issue subpœnas into any county of the commonwealth, for summoning and bringing any person to give evidence in any matter or cause before them, or any of them, and to compel obedience to such writs, precepts or subpœnas, by attachment or otherwise, and under such pains and

192. Act 31 March 1860, § 163. P. L. 426.

193. Ibid. § 184.

1. Act 31 March 1860, § 1. P. L. 428.

system by the 13th section of the act of 22d April 1794, 3 Sm. 190; it will also be found in the punishments provided by the act of 23d April 1820, 10 Sm. 430. Report on the Penal Code 38.

(a) This section is taken from the 13th section of the act of

6 S. & R. 289. 11 S. & R. 345. Bright. R. 69. 1 R. 457. 5 R. 64. 1 Ash. 46. 7 Am. L. R. 620.

(b) This section explains the meanings of general terms which have been used for the sake of brevity. Report on the Penal Code 39.

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penalties as other writs or subpoenas are or ought by law to be granted and awarded; and that it shall be lawful for said judges, or any of them, if they see fit to direct such writ, precept, summons, subpoena or attachments, to be executed by the sheriff of the county in which the same is awarded, which said writ, precept, summons or subpoena, shall be the sufficient warrant of such sheriff for executing the same throughout this commonwealth, as fully and effectually as if directed to, and executed by the sheriff of the proper county where issued: *Provided*, That the reasonable expenses of executing such process, when issued on behalf of the commonwealth, shall be paid out of the funds of the county where issued; and the expenses of removing any person charged with having committed an offence in one county into another county, or of transporting any person charged with having committed any offence in this state from another state into this state for trial, or for conveying any person, after conviction, to the penitentiary, shall be paid out of the treasury of the county where the offence is charged to have been committed. (a)

2. Where any person charged with having committed any felony, (b) in any city or county of this commonwealth, shall go or escape into any other county thereof, it shall and may be lawful for the president, or any judge of the court of common pleas in the county where the said person may be found, to issue his warrant, authorizing and requiring the sheriff of the said county, to take the said person and conduct him to the proper county, where the said felony is alleged to have been committed, the expenses of which shall be paid to the said sheriff by the county to which the said person is conducted. (c)

3. In case any person against whom a warrant may be issued by any judge or alderman of any city, or justice of the peace of any county in this commonwealth, for any offence there committed, shall escape, go into, reside or be in any other city or county out of the jurisdiction of the judge, alderman, justice or justices of the city or county granting such warrant as aforesaid, it shall and may be lawful for, and it is hereby declared to be the duty of any alderman, justice or justices of the city or county where such person shall escape, go into, reside or be, upon proof being made, upon oath or affirmation, of the handwriting of the judge, alderman, justice or justices granting such warrant, to indorse his or their name or names on such warrant, which shall be sufficient authority to the person or persons bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute the same in such other city or county, out of the jurisdiction of the alderman, justice or justices, granting such warrant as aforesaid, and to apprehend and carry such offender before the alderman, justice or justices who indorsed such warrant, or some other alderman, justice or justices of such other city and county where such warrant was indorsed. And in case the offence for which such offender shall be so apprehended, shall be bailable in law by an alderman or justice of the peace, and such offender shall be willing and ready to give bail for his appearance at the next court of general jail delivery or quarter sessions, to be held in and for the city and county where the offence was committed, such alderman, justice or justices shall and may take such bail for his appearance, in the same manner as the alderman or justice of the peace of the proper city or county might have done; and the said alderman, justice or justices of the peace of such other city or county so taking bail, shall deliver or transmit such recognisance and other proceeding to the clerk of the court of general jail delivery or quarter sessions, where such offender is required to appear by virtue of such recognisance, and such recognisance and other proceedings shall be as good and effectual in law as if the same had been entered into, taken or acknowledged in the proper county where the offence was committed, and the same proceedings shall be had therein. And in case the offence for which such offender shall be apprehended in any other city or county, shall not be bailable in law by an alderman or justice of the peace, or such offender shall not give bail for his appearance at the proper court having cognisance of his crime, to the satisfaction of the alderman or justice before whom he shall be brought, then the constable or other person so apprehending such offender, shall carry and convey him before one of the aldermen or justices of the peace of the proper city or county where such offence was committed, there to be dealt with according to law. (d)

4. No action of trespass, or false imprisonment, or information, or indictment, shall be brought, sued, commenced, exhibited or prosecuted by any person, against the alderman, justice or justices, who shall indorse such warrant, for or by reason of his or their indorsing the same, but such person shall be at liberty to bring or prosecute his or their action or suit against the alderman or justice who originally granted the warrant. (e)

5. When any person shall be accused before a magistrate, upon oath or affirmation

2. Act 31 March 1860, § 2. P. L. 429.

3. *Ibid.* § 3.

4. *Ibid.* § 4.

5. *Ibid.* § 5.

(a) This section is composed of the 8th section of the act of 22d May 1722, 1 Sm. 138; of the 14th section of the act of 23d September 1791, 3 Sm. 43; and of the 2d section of the act of 25th April 1846, P. L. 406. It is not proposed to repeal all the 8th section of the act of 1722, because part of it equally applies to civil as well as criminal proceedings. Report on the Penal Code 39. The county is not liable for the expenses incurred in an unsuccessful attempt to arrest a fugitive from justice, who has taken refuge in another state. 8 C. 540.

(b) This does not extend to misdemeanors; a fugitive charged with having committed a misdemeanor in another county can

only be arrested under the provisions of the succeeding section. Grant 218.

(c) This section is taken from the 3d section of the act of 4th of April 1807, 4 Sm. 393. Report on the Penal Code 39.

(d) A warrant issued by a justice of the peace in one county, and indorsed by a justice of another county, charging a misdemeanor to have been committed in the county whence the warrant issued, will not justify the detention of the offender in the jail of the county where the warrant was indorsed. Grant 218.

(e) The 3d and 4th sections are taken from the act of 16th April 1827, 9 Sm. 424. Report on the Penal Code 39.

supposed to be stolen, found in the possession of one accused.

Inventory.

Notice.

Restitution.

When to be delivered to county commissioners.

Disposition of proceeds.

Surety of the peace.

Bail.

tion, of the crime of burglary, robbery or larceny, and the said magistrate shall have issued his warrant to apprehend such person or persons, or to search for such goods as have been described, on oath or affirmation, to have been stolen goods, if any shall be found in the custody or possession of such person or persons, or in the custody or possession of any other person or persons, for his, her or their use, and there is probable cause, supported by oath or affirmation, to suspect that other goods, which may be discovered on such search, are stolen, it shall and may be lawful for the said magistrate to direct the said goods to be seized, and to secure the same in his own custody, unless the person in whose possession the same were found shall give sufficient surety to produce the same at the time of his or her trial. And the said magistrate shall forthwith cause an inventory to be taken of the said goods, and shall file the same with the clerk of that court in which the accused person is intended to be prosecuted, and shall give public notice in the newspapers, or otherwise by advertising the same in three or more public places in the city or county where the offence is charged to have been committed, before the time of trial, noting in such advertisement the said inventory, the person charged and time of trial. And if, on such trial, the accused party shall be acquitted, and no other claimant shall appear or suit be commenced, then, at the expiration of three months, such goods shall be delivered to the party accused, and he, she or they shall be discharged, and the county be liable to the costs of prosecution; but if he be convicted of larceny only, and, after restitution made to the owner and the sentence of the court being fully complied with, shall claim a right in the residue of the said goods, and no other shall appear or claim the said goods, or any part of them, then it shall be lawful, notwithstanding the claim of the said party accused, to detain such goods for the term of nine months, to the end that all persons having any claim thereto may have full opportunity to come, and to the satisfaction of the court, prove their property in them: on which proof the said owner or owners, respectively, shall receive the said goods, or the value thereof, if from their perishable nature it shall have been found necessary to make sale thereof, upon paying the reasonable charges incurred by the securing the said goods and establishing their property in the same; but if no such claim shall be brought and duly supported, then the person so convicted shall be entitled to the remainder of the said goods, or the value thereof, in case the same shall have been sold agreeably to the original inventory. But if, upon an attainder of burglary or robbery, the court shall, after due inquiry, be of opinion that the said goods were not the property of such burglar or robber, they shall be delivered, together with a certified copy of the said inventory, to the commissioners of the county, who shall indorse a receipt therefor on the original inventory, register the said inventory in a book, and also cause the same to be publicly advertised, giving notice to all persons claiming the said goods to prove their property therein to the said commissioners; and unless such proof shall be made within three months from the date of such advertisement, the said goods shall be publicly sold, and the net moneys arising from such sale shall be paid into the county treasury for the use of the commonwealth: *Provided always*, That if any claimant shall appear within one year, and prove his or her property in the said goods to the satisfaction of the commissioners, or in the case of dispute, shall obtain the verdict of a jury in favor of such claim, the said claimant shall be entitled to recover, and receive from the said commissioners, or treasurer, the net amount of the moneys paid as aforesaid into the hands of the said commissioners, or by them paid into the treasury of this commonwealth. (a)

6. If any person shall threaten the person of another to wound, kill or destroy him, or to do him any harm in person or estate, (b) and the person threatened shall appear before a justice of the peace, and attest, on oath or affirmation, that he believes that by such threatening he is in danger of being hurt in body or estate, such person so threatening as aforesaid, shall be bound over, with one sufficient surety, to appear at the next sessions, (c) according to law, and in the meantime to be of his good behavior, and keep the peace toward all citizens of this commonwealth. (d) If any person, not being an officer on duty in the military or naval service of the state or of the United States shall go armed with a dirk, dagger, sword or pistol, or other offensive or dangerous weapon, without reasonable cause to fear an assault or other injury or violence to his family, person or property, he may, on complaint of any person having reasonable cause to fear a breach of the peace therefrom, be required to find surety of the peace as aforesaid. (e)

7. In all cases the party accused, on oath or affirmation, of any crime or misdemeanor against the laws, shall be admitted to bail by one or more sufficient sureties, to be taken before any judge, justice, mayor, recorder or alderman where the offence charged has been committed, except such persons as are precluded from being bailed by the constitution of this commonwealth: (g) *Provided also*, That persons accused as aforesaid, of

6. Act 31 March 1860, § 6. P. L. 432.

7. *Ibid.* § 7.

(a) This section is taken from the 10th section of the act 23d September 1791, 3 Sm. 42. Report on the Penal Code 39.

(b) Surety of the peace is demandable of right by any individual who will make the necessary oath. 1 B. 102, n. See 1 Ash. 46. 2 P. 458.

(c) A committing magistrate has no authority to bind a person to keep the peace, or for his good behavior, longer than the next term of the court. 2 P. 458.

(d) Surety for good behavior may be ordered by the court, after the acquittal of a prisoner, in such sum, and for such length of time, as the public safety requires. 2 Y. 437. 10 Barr

339. 2 Hayw. 73-4. See 12 Eng. L. & Eq. 462.

(e) This section is partly taken from the act of 1700, 1 Sm. 5, the addition thereto provided by this section, against the unnecessarily carrying deadly weapons, is introduced from an obvious necessity, arising from daily experience and observation. Report on the Penal Code 39.

(g) A justice may take bail after commitment for trial. 6 W. & S. 314. 2 P. 458. And see 7 W. 454. 5 B. 512. 1 Sm. 57, n. A recognisance taken by a justice to answer the charge of arrest is *coram non iudice*, and void. Com. v. Phillips, 2 U. S. Law Add. 87 Mag. 316.

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murder or manslaughter, shall only be admitted to bail by the supreme court or one of the judges thereof, or a president or associate law judge of a court of common pleas: persons accused, as aforesaid, of arson, rape, mayhem, sodomy, buggery, robbery or burglary, shall only be bailable by the supreme court, the court of common pleas, or any of the judges thereof, or a mayor or recorder of a city.(a)

8. All sureties, mainpernors, and bail in criminal cases, whether bound in recognisances for a particular matter or for all charges whatsoever, shall be entitled to have a bail-piece, duly certified by the proper officer or person before whom or in whose office the recognisance of such surety, mainpernors or bail shall be or remain, and upon such bail-piece, by themselves, or their agents, to arrest and detain, and surrender their principals, with the like effect as in cases of bail in civil actions;(b) and such bail-piece shall be a sufficient warrant or authority for the proper sheriff or jailor to receive the said principal, and have him forthcoming to answer the matter or matters alleged against him: Provided, That nothing herein contained shall prevent the person thus arrested and detained from giving new bail or sureties for his appearance, who shall have the same right of surrender hereinbefore provided.(c)

9. In all cases where a person shall, on the complaint of another, be bound by recognisance to appear, or shall, for want of security, be committed, or shall be indicted for an assault and battery or other misdemeanor, to the injury and damage of the party complaining, and not charged to have been done with intent to commit a felony, or not being an infamous crime, and for which there shall also be a remedy, by action, if the party complaining shall appear before the magistrate who may have taken recognisance or made the commitment, or before the court in which the indictment shall be, and acknowledge to have received satisfaction for such injury and damage, it shall be lawful for the magistrate, in his discretion, to discharge the recognisance which may have been taken for the appearance of the defendant, or in case of committal, to discharge the prisoner, or for the court also where such proceeding has been returned to the court, in their discretion, to order a nolle prosequi to be entered on the indictment, as the case may require, upon payment of costs: Provided, That this act shall not extend to any assault and battery, or other misdemeanor, committed by or on any officer or minister of justice.(d)

B. INDICTMENTS AND PLEADINGS.

10. The foreman of any grand jury, or any member thereof, is hereby authorized and empowered to administer the requisite oaths or affirmations to any witness whose name may be marked by the district attorney on the bill of indictment.(e)

11. Every indictment shall be deemed and adjudged sufficient and good in law which charges the crime substantially in the language of the act of the assembly prohibiting the crime, and prescribing the punishment, if any such there be, or, if at common law, so plainly that the nature of the offence charged may be easily understood by the jury. Every objection to any indictment for any formal defect, apparent on the face thereof, shall be taken by demurrer, or on motion to quash such indictment, before the jury shall be sworn, and not afterward; and every court, before whom any such objection shall be taken for any formal defect, may, if it be thought necessary, cause the indictment to be forthwith amended in such particular, by the clerk or other officer of the court, and thereupon the trial shall proceed as if no such defect appeared.(g)

8. Act 31 March 1860, § 8 P. L. 432.

9. Ibid. § 9.

10. Ibid. § 10.

11. Ibid. § 11.

(a) This section is a consolidation of the first clause of the act of 1705, 1 Sm. 56; and the first section of the act of 30th April 1832, P. L. 388. Report on the Penal Code 39.

(b) See 1 T. & H. Pr. 303-10.

(c) This section is taken from the 3d section of the act of 10th April 1848, P. L. 449. Report on the Penal Code 40.

(d) This section is an extension of the existing law of the 17th March 1806, 4 Sm. 318. Report on the Penal Code 40.

(e) This is taken from the 1st section of the act 5th April 1826, 9 Sm. 136. That witnesses, whose names had not been marked by the district attorney on the bill of indictment, were sworn and examined by the foreman of the grand jury, is not pleadable in bar; at most, it is only ground for a motion to quash. Tillard v. Com., 13 Leg. Int. 132.

(g) Sections 11 to 22 are all new, and are certainly not the least important in the proposed amendments of our penal system. The history of criminal administration abounds with instances in which the guilty have escaped, by reason of the apparently unreasonable nicety required in indictments. Lord Hale, one of the best, and most humane of English judges, long since remarked, that such niceties were "grown to be a blemish and an inconvenience in the law, and the administration thereof; that more offenders escaped by the easy ear given to exceptions to indictments, than by the manifestations of their innocence, and that the grossest crimes had gone unpunished, by reason of these unseemly niceties." The reason for recognising these subtilities by the common law, no doubt arose from the humanity of the judges, who, in administering a system in which the punishment of death followed almost every conviction of felony, were naturally disposed, in favor of life, to hold the crown to the strictest rules. Since, however, the reform of the penal laws, and the just apportionment of punishment to crimes according to their intrinsic atrocity and danger, the reason which led to the adoption of these technical niceties has ceased, and with the cessation of the reason, the technicalities themselves should be expunged from our system. The 11th section of this act proposes what the com-

missioners believe will be an effective remedy to this reproach of the common law, without depriving the accused of any proper privilege; it leaves him, at the outset of his trial, to determine whether he will question the relevancy of his accusation, or take issue on the merits of the charge; if he elects the latter, and is condemned, there seems neither moral nor legal fitness in permitting him to urge formal exceptions, which, if suggested, at an early period, would have been promptly corrected. The 12th and 13th sections are intended to meet cases of frequent occurrence, in which, although an indictment is strictly formal, yet, owing to some accidental slip in its preparation, it is found on the trial that the proofs do not entirely tally with the description of the instrument set forth in the indictment, or in the names of persons or places described therein. By the law as it now stands, where written instruments enter into the gist of the offence, as in forgery, passing counterfeit money, selling lottery tickets, sending threatening letters, &c., they are required to be set out in words and figures; the omission of a figure in an indictment for forgery is fatal. In the case of Com. v. Gillespie, 7 S. & R. 469, a mistake in spelling the name of "Burrall," which in the indictment was spelled "Burvil," was adjudged fatal after verdict. So, a variance between the names of the persons aggrieved, and places described in the indictment, and the proofs thereof on trial, will entitle the defendant to an acquittal, on the ground of the want of agreement between the allegata and the probata. The proposed sections authorize the courts to amend such verbal errors, if objected to; and thus terminate a class of technical niceties, which are a reproach to the rational administration of justice. The 14th and 15th sections avoid the existing necessity of setting forth, in indictments, the names of numerous individuals, owners of property feloniously or fraudulently taken, or maliciously injured or destroyed; it will serve to reduce the voluminousness of such indictments, and can do no possible injury to the defendant, who cannot be interested in the fact, whether one person is, or one hundred persons are the owners of property in regard to

Variances between written instruments as produced and laid in indictment amendable.

Immaterial variances between indictment and proof amendable.

Manner of saying the ownership of property in cases of partners and joint owners.

12. It shall be lawful for any court of criminal jurisdiction, if such court shall see fit so to do, to cause the indictment for any offence whatever, when any variance or variances shall appear between any matter in writing or in print, produced in evidence, and the recital or setting forth thereof in the indictment whereon the trial is pending, to be forthwith amended in such particular or particulars, by some officer of the court, and after such amendment the trial shall proceed in the same manner, in all respects, as if no such variance or variances had appeared.

13. If, on the trial of any indictment for felony or misdemeanor, there shall appear to be any variance between the statement of such indictment and the evidence offered in proof thereof, in the name of any place mentioned or described in any such indictment; or in the name or description of any person or persons or body politic or corporation therein stated, or alleged to be the owner or owners of any property, real or personal, which shall form the subject of any offence charged therein; or the name or description of any person or persons, body politic or corporate therein stated or alleged to be injured or damaged, or intended to be injured or damaged, by the commission of such offence; or in the Christian name or surname, or both Christian and surname, or other description whatsoever of any person or persons whomsoever therein named or described; or in the name or description of any matter or thing whatsoever therein named or described; or in the ownership of any property named or described therein; it shall and may be lawful for the court before whom the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defence upon such merits, to order such indictment to be amended, according to the proof, by some officer of the court, both in that part of the indictment wherein said variance occurs, and in every other part of the indictment in which it may become necessary to amend; and after such amendment, the trial shall proceed in the same manner, in all respects, and with the same consequences, as if no variance had occurred. And every verdict and judgment which shall be given after making such amendment, shall be of the same force and effect, in all respects, as if the indictment had originally been in the same form in which it was after such amendment was made.

14. In order to remove the difficulty of describing the ownership of property, in the case of partners and joint owners, in any indictment for any felony or misdemeanor committed on or with respect to any money, chattels, bond, bill, note or other valuable security or effects belonging to or in the possession of any partners or joint owners, it shall be sufficient to aver that the particular subject-matter on which or with respect to which any such offence shall have been committed, to be the property of some one or more of the partners or joint owners named in the indictment, and of other persons being partners or joint owners with him or them, without stating any of the names of such other persons; and in any indictment for any felony or misdemeanor, committed on or with respect to any house or building whatsoever, belonging to or in the possession of any partners or joint owners, or for any felony or misdemeanor committed on or with

12. Act 31 March 1860, § 12. P. L. 433.

13. *Ibid.* § 13.

14. *Ibid.* § 14.

which he is charged with having committed a felony or misdemeanor. The 16th section refers to public property, and rests on the same principle as the fourteenth and fifteenth sections. The 17th and 18th sections will enable the criminal pleader to simplify hereafter the forms of indictments in forgery, and facilitate him in averring instruments necessary to be recited in any other indictment. The 12th and 13th sections contemplate the amendment of indictments, framed according to the existing law, where an accidental error occurs between the instrument and names described, and those offered in proof. These sections strike at the root of the evil sought to be eradicated, by giving the pleader the option to prepare his indictment in such a way as to avoid, altogether, such difficulties; which can be done with ordinary care and caution. The 19th section contemplates avoiding the necessity of specifically describing the parties intended to be defrauded, and the embarrassing the proofs, in any case, with a question not really material to the issue. In forgeries, uttering and passing forged money, and in cheating by false pretences (the crimes contemplated by the section), the gist of the offence is, that the act charged was committed with an intent to defraud; an indictment containing that averment, should be sufficient, without requiring the pleader to go into the description of who was the party intended to be defrauded; a mistake in whom would acquit the accused, although the jury should be convinced that he had forged or uttered false money, or had been guilty of cheating by false pretences, with intent to defraud. The 20th section, providing for indictments for murder and manslaughter, from the nature and consequences of these offences, require that a somewhat detailed explanation of the reasons which have led to their introduction should be given. By the common law, in an indictment for murder, it is essentially necessary to set forth, particularly, the manner of the killing, and the means by which it was effected; if a person be indicted for one species of killing, as by poisoning, he cannot be convicted by evidence of a different species of death, as by shooting, starving or strangling. A few cases will serve to illustrate how far this principle has been carried. In *Rex v. Kelly*, 1 Mood. Cro. Cas. 113, decided in 1825, the indictment charged that the prisoner struck the deceased with a piece of brick, and it appeared probable that the prisoner had not struck with the brick but that he struck with his fist, and that the deceased fell from the blow upon a piece of brick, and that the fall on the brick was the cause of the death; it was unanimously held by the twelve judges of England, on a case reserved, that the cause of the

death had not been truly stated, and the prisoner was discharged. So, in *Rex v. Martin*, 5 C. & P. 128, where the indictment charged the wound to have been inflicted by a blow with a hammer, held in the prisoner's hand, and it appeared that the injury might have been occasioned by a fall against the lock or key of a door, it was held, that if the injury was occasioned by a fall against the lock or key of a door, produced by the act of the defendant, the indictment was not sufficient. In *Rex v. Hughes*, 5 C. & P. 126, decided in 1832, the prisoner was indicted for an attempt to murder, by shooting the injured party with a pistol loaded with a leaden bullet; on the trial, no evidence was produced to actually prove that the pistol was loaded with a leaden bullet, none having been found either in the wound, or in the room where the wound was inflicted; the surgeon, examined in the case, testified that the wadding, if rammed tight, might have produced the effect without any ball; in this state of the evidence, the court ruled, that the indictment was not sufficiently proved, and the defendant was acquitted. It is true, that the courts have drawn a distinction, which rendered their rulings in indictments for homicide, as to the manner and cause of the death, more reconcilable with reason, to wit: that where the instrument laid in the indictment, and the instrument proved, are of the same nature and character, there is no variance, as if the wound is charged to have been inflicted with a dagger or knife, proof is sufficient which establishes the wound to have been inflicted with a sword, spear or the like; so, if the indictment allege a death by one kind of poison, proof of death by another kind of poison will support it. The section under consideration proposes to go one step in advance of this doctrine, by declaring that it shall hereafter be sufficient, in an indictment for murder, to charge that the defendant did feloniously, wilfully, and of his malice aforethought, kill and murder the deceased; without going into the details of the cause and manner of the death, which the cases cited show only tends to create unnecessary difficulties on the trial, and often results in the complete defeat of justice. The 21st and 22d sections are intended to simplify indictments for perjury and subornation of perjury, which are now extremely voluminous and technical; these characteristics of indictments for these crimes, are so familiar to all criminal lawyers, as to render it unnecessary to enter into any details on the subject. The sections recommended for adoption will remedy these evils, and place indictments for these crimes on a rational footing. Report on the Penal Code 40A.

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respect to any property being in any such house or building, it shall be sufficient to aver that the particular house or building on or with respect to which, or on or with respect to the property being in which, any such offence shall have been committed, is the property of some one or more of the partners or joint owners named in the indictment, and of other persons being partners or joint owners with him or them, without stating any of the names of such other persons.

15. With regard to frauds committed against partners and joint owners, it shall be sufficient in any indictment for any felony or misdemeanor committed with intent to defraud any partners or joint owners, to allege that the act was committed with intent to defraud any one or more of the partners or joint owners named in the indictment, and other persons being partners or joint owners with him or them, without stating any of the names of such other persons.

Manner of charging frauds against partners and joint owners.

16. With respect to property belonging to counties, cities, townships and districts, it shall be sufficient in any indictment for any felony or misdemeanor committed on or with respect to any goods, chattels, furniture, provisions, clothes, tools, utensils, materials or things whatsoever, which have been or at any time shall be provided for or at the expense of any county, city, township or district, to be used in any court, jail, house of correction, almshouse, or other building or place, or in any part thereof respectively, or to be used for the making, altering or repairing of any bridge or road, to aver that any such things are the property of such county, city, township or district.

Manner of laying property of counties, cities, townships, &c.

17. In any indictment for forgery, uttering, stealing, embezzling, destroying or concealing, or obtaining by false pretences, any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac-simile thereof, or otherwise describing the same or the value thereof.

Forms of indictment in cases of forging, stealing, embezzling, &c.

18. In all other cases whatsoever in which it shall be necessary to make any averment in any indictment, as to any instrument, whether the same consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, and in such manner as to sufficiently identify such instrument, without setting out any copy or fac-simile of the whole or any part thereof.

Forms in other cases.

19. It shall be sufficient in any indictment for forging, uttering, offering, disposing of, or putting off any instrument whatsoever, or for obtaining or attempting to obtain any property by false pretences, to allege that the defendant did the act with intent to defraud, without alleging the intent of the defendant to be to defraud any particular person; and on the trial of any of the offences in this section mentioned, it shall not be necessary to prove any intent on the part of the defendant to defraud any particular person, but it shall be sufficient to prove that the defendant did the act charged with an intent to defraud.

Intent to defraud particular persons, need not be alleged or proven in certain cases.

20. In any indictment for murder or manslaughter, it shall not be necessary to set forth the manner in which, or the means by which the death of the deceased was caused, but it shall be sufficient in every indictment for murder, to charge that the defendant did feloniously, wilfully and of his malice aforethought, kill and murder the deceased; and it shall be sufficient in every indictment for manslaughter, to charge that the defendant did feloniously kill and slay the deceased. (a)

Indictments for murder and manslaughter.

21. In every indictment for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged, and in what court, or before whom the oath or affirmation was taken, averring such court or person or body to have competent authority to administer the same, together with the proper averment, to falsify the matter wherein the perjury is assigned, without setting forth the information, indictment, declaration or part of any record or proceeding, other than as aforesaid, and without setting forth the commission or authority of the court, or person, or body before whom the perjury was committed.

Requisites of indictment for perjury.

22. In every indictment for subornation of perjury, or for corrupt bargaining, or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence, without setting forth the information, indictment, declaration or part of any record or proceedings, and without setting forth the commission or authority of the court, or person or body before whom the perjury was committed, or was agreed or promised to be committed.

Requisites of indictment for subornation of perjury.

23. In cases arising under the laws of this commonwealth for the restraint of the horrid practice of duelling, it shall be sufficient to form an indictment generally, against either of the principals for challenging another to fight at deadly weapons, and notwithstanding it may appear on the trial that the defendant only accepted the challenge, it shall be sufficient to convict and render him liable to the penalties of the law; and in like manner an indictment against the seconds may be framed generally, for carrying and delivering a challenge, and proof of the mere act of fighting, and the defendant being present thereat, shall be sufficient to convict the defendant upon an indictment so framed; and if the duel shall take place within this commonwealth, the mere fact of fighting shall be full and complete evidence of the charges, respectively, of giving or receiving, or of carrying or delivering a challenge, without other proof thereof. (b)

Indictment for duelling.

15. Act 31 March 1860, § 15. P. L. 434.  
16. *Ibid.* § 16.  
17. *Ibid.* § 17.

18. *Ibid.* § 18.  
19. *Ibid.* § 19.  
20. *Ibid.* § 20.

21. *Ibid.* § 21.  
22. *Ibid.* § 22.  
23. *Ibid.* § 23.

(a) An indictment drawn in conformity with the provisions of this section is not in conflict with the constitutional proviso, that "in all criminal prosecutions, the accused shall have a right to be informed of the nature and cause of the accusation

against him." 1 Wr. 109.

(b) This section is taken from the 3d section of the act of 21st March 1860, 4 Sm. 354. Report on the Penal Code 43.

Counts for stealing and receiving, may be joined.

24. In every indictment for feloniously stealing property, it shall be lawful to add a count for feloniously receiving the said property, knowing it to have been stolen; and in any indictment for feloniously receiving property, knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing said property; and it shall be lawful for the jury trying the same, to find a verdict of guilty either of stealing the property, or of receiving the same, knowing it to have been stolen; and if such indictment shall have been preferred and found against two or more persons, it shall be lawful for the jury who shall try the same, to find all or any of the said persons guilty of either stealing the property or of receiving it, knowing it to have been stolen, or to find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving it, knowing it to have been stolen. (a)

Issue and trial in criminal cases.

25. In all cases of felony the prisoner shall be arraigned, and where any person on being so arraigned shall plead not guilty, every such person shall be deemed and taken to put himself upon the inquest or country for trial, without any question being asked of him how he will be tried, and the inquest shall be charged only to inquire whether he be guilty or not guilty of the crime charged against him, and no more. And wherever a person shall be indicted for treason or felony, the jury impannelled to try such person shall not be charged to inquire concerning his lands, tenements or goods, nor whether he fled for such treason or felony. (b)

Prisoners standing mute.

26. If any prisoner shall, upon his arraignment for any offence with which he is indicted, stand mute, or not answer directly, or shall peremptorily challenge above the number of persons summoned as jurors for his trial to which he is by law entitled, the plea of not guilty shall be entered for him on the record, (c) the supernumerary challenges shall be disregarded, and the trial shall proceed in the same manner as if he had pleaded not guilty, and for his trial had put himself upon the country. (d)

Prosecutor's name to be indorsed on indictment.

27. No person shall be required to answer for any offence whatsoever, unless the prosecutor's name, if any there be, is indorsed thereon; and if no person shall avow himself the prosecutor, the court may hear witnesses, and determine whether there is such a private prosecutor, and if they shall be of opinion that there is such a prosecutor, then direct his name to be indorsed on such indictment. (e)

Distinct acts of embezzlement may be charged in same indictment.

28. It shall be lawful in cases of embezzlement by clerks, servants or other persons in the employ of another, to charge in the indictment, and proceed against an offender for any distinct acts of embezzlement, not exceeding three, which may have been committed by him against the same master or employer, within the space of six calendar months, from the first to the last of such acts, and in every such indictment, except where the offence shall relate to a chattel, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained, if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed, shall not be proved, or if he shall be proved to have embezzled any piece of coin or valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly. (g)

Nolle prosequi.

29. No district attorney shall, in any criminal case whatsoever, enter a *nolle prosequi*, either before or after bill found, without the assent of the proper court in writing first had and obtained. (h)

Plea of autrefois convict, or autrefois acquit.

30. In any plea of *autrefois acquit*, or *autrefois convict*, it shall be sufficient for any defendant to state, that he has been lawfully convicted or acquitted, as the case may be, of the offence charged in the indictment. (i)

24. Act 31 March 1860, § 24. P. L. 436.  
25. Ibid. § 25.

26. Ibid. § 26.  
27. Ibid. § 27.

28. Ibid. § 28.  
29. Ibid. § 29.

30. Ibid. § 30.

(a) This section is new, and is intended to remedy difficulties arising from the common law doctrines in relation to the joinder of offences and joint offenders. At common law, a felony and a misdemeanor, such as burglary and receiving stolen goods, could not be regularly joined; in larceny, counts for receiving were sometimes added, but the practice was regarded as of doubtful legality, until in the cases of *Rex v. Galloway*, 1 Mood. Cro. Cas. 234, and of *Rex v. Madden*, 1 Mood. Cro. Cas. 277, it was decided to be erroneous. In Pennsylvania, the uniform practice has been to unite counts for larceny and receiving, but in no other kind of felonious taking has such joinder been permitted. So, at common law, if two persons are charged with jointly receiving stolen goods, a joint act of receiving must be proved; proof that one received in the absence of the other, and afterwards delivered to him, will not suffice. *Rex v. Messingham*, 1 Mood. Cro. Cas. 257. The proposed section will obviate these technical difficulties, as it permits a count for receiving to be joined with all indictments for felonious taking, and authorizes the conviction of one or more of several persons, jointly indicted, for felonious taking or receiving, either as principals or receivers, according to their actual guilt. Report on the Penal Code 43.

(b) This section is new, and has been introduced to dispense with the useless forms which prevail in some of our criminal courts, following the ancient practice of the common law. Report on the Penal Code 43.

(c) Where a plea of "not guilty" is entered under this section, for a prisoner who stands mute, and there is a trial and

judgment, he cannot subsequently assign for error any matters appertaining to the precept, venire, drawing, summoning and returning of jurors, &c.; such case is within the 53d section of this act. 5 Wh. 67, 78.

(d) This section is taken from the 5th section of the act of 23d September 1791, 3 Sm. 40. Report on the Penal Code 44.

(e) This section is taken from one of the clauses of the act of 1705, 1 Sm. 56. The old law has been so amended as to enable the court to determine the question, in any case, whether there is such a prosecutor, and who he is, and if any, to order his name to be indorsed on the indictment. Report on the Penal Code 44. If there be no proof of a prosecutor, the defendant must plead without such indorsement. 1 D. 5.

(g) The provisions of this section are necessary for preventing the difficulties that may be hereafter experienced in the prosecution of the various fraudulent embezzlements prescribed against by the "Act to consolidate, revise and amend the penal laws of this commonwealth," and particularly by the 107th section thereof (tit. "Crimes" 107), against such embezzlement by clerks, servants and other persons in the employ of others. Report on the Penal Code 44.

(h) This section is taken from the proviso to the 1st section of the act of 3d May 1860, P. L. 654. Report on the Penal Code 44. See tit. "District Attorneys," 10, note a.

(i) This section proposes in favor of the accused, to simplify the pleas of heretofore acquitted, and heretofore convicted, and thus relieve them from all technical embarrassments; it is new. Report on the Penal Code 44.

## C. COURTS OF CRIMINAL JURISDICTION.

31. The courts of oyer and terminer and general jail delivery shall have power—(a) Courts of oyer and terminer. To inquire by the oaths and affirmations of good and lawful men of the county, of all crimes committed, or triable in such county.

II. To hear, determine and punish the same, and to deliver the jails of such county of all prisoners therein, according to law.

III. To try indictments found in the quarter sessions, and certified by the said court according to law; and the said courts shall have exclusive jurisdiction and power to try and punish all persons charged with any of the crimes herein enumerated, which shall be committed within the respective county, to wit:

(1.) All persons charged with any murder or manslaughter, or other homicide, and all persons charged with being accessory to any such crime.

(2.) All persons charged with treason against the commonwealth.

(3.) All persons charged with sodomy, buggery, rape or robbery, their counsellors, aiders and abettors.

(4.) All persons charged with the crime of voluntarily and maliciously burning any building, or other thing, made punishable in the same manner as arson. (b)

(5.) All persons charged with mayhem, or with the crime of cutting off the tongue, putting out the eye, slitting the nose, cutting off the nose, cutting off a lip, cutting off or disabling any limb or member of a person, by lying in wait, or with malice aforethought, and with intent in so doing to maim or disfigure such person, and their aiders and abettors and counsellors.

(6.) All persons charged with burglary.

(7.) Every woman who shall be charged with having endeavored privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which, if it were born alive, would be by law a bastard, so that it may not be known whether such issue was born dead or alive, or whether it was murdered or not.

(8.) All persons charged with the second or any subsequent offence of receiving, harboring or concealing any robber, burglar, felon or thief, or with the crime of receiving or buying any goods or chattels, which shall have been feloniously taken or stolen, knowing the same to be so taken or stolen.

32. The courts of quarter sessions of the peace shall have jurisdiction and power within the respective counties—

I. To inquire, by the oaths or affirmations of good and lawful men of the county, of all crimes, misdemeanors and offences whatsoever, against the laws of this commonwealth, which shall be triable in the respective county.

II. To inquire of, hear, determine and punish, in due form of law, all such crimes and misdemeanors and offences, whereof exclusive jurisdiction is not given, as aforesaid, to the courts of oyer and terminer of such county.

III. To take, in the name of the commonwealth, all manner of recognisances and obligations heretofore taken and allowed to be taken by any justice of the peace; and they shall certify such as shall be taken, in relation to any crime not triable therein, to the next court of oyer and terminer having power to take cognisance thereof.

IV. To continue, or discharge the recognisance and obligations of persons bound to keep the peace, or to be of good behavior, taken as aforesaid, or certified into such court by any justice of the peace of such county, and to inquire of, hear and determine, in the manner hitherto practised and allowed, all complaints which shall be found thereon.

V. The courts of quarter sessions shall also have jurisdiction in cases of fines, penalties or punishments, imposed by any act of assembly, for offences, misdemeanors or delinquencies, except where it shall be otherwise expressly provided and enacted.

VI. The said courts shall also have and exercise such other jurisdiction and powers, not herein enumerated, as may have been heretofore given to them by law.

Whenever any indictment shall be found in any court of quarter sessions, for any crime or offence not triable therein, it shall be the duty of said court to certify the same into the court of oyer and terminer next to be holden in such county, there to be heard and determined in due course of law.

The judges of the county courts of oyer and terminer and quarter sessions, and every of them, shall have power to direct their writs or precepts to all or any of the sheriffs or other officers of any of the counties, cities, boroughs or towns corporate of this commonwealth, to arrest and bring before them persons indicted for felonies and other offences, and amenable to the respective court; each of said courts shall have power to award process to levy and recover such fines, forfeitures and amercements, as shall be imposed, taxed or adjudged by them respectively; each of the said courts shall have full power and authority to establish such rules for regulating the practice thereof respectively, and for expediting the determination of suits, causes and proceedings therein, as in their

31. Act 31 March 1860, § 31. P. L. 437.

32. Ibid. § 32.

(a) The 31st and 32d sections are transcripts from the 14th, 15th, 16th, 17th, 18th, 20th, 21st and 22d sections of the act of 16th June 1836, P. L. 790. It has been thought proper, although left unrepealed, to introduce them here, in order to render these bills a complete consolidation of our statute laws relating to crimes, punishments and criminal procedure. As questions of jurisdiction frequently present themselves in criminal courts,

the laws defining and establishing such jurisdiction have their proper place here. The laws in reference to the constitution of these courts are to be found in the "Act relative to the organization of the courts of justice," passed April 14, 1834, P. L. 333; these have not been interfered with. Report on the Penal Code 44.

(b) See 8 Pittsburgh Leg. J. 290.

discretion they shall judge necessary or proper: *Provided*, That such rules shall not be inconsistent with the constitution and laws of this commonwealth; each of the said courts is empowered to issue writs of subpoena, under their official seal, into any county of this commonwealth, to summon and bring before the respective court any person to give testimony in any cause or matter depending before them, under the penalties hitherto appointed and allowed, in any such case, by the laws of this commonwealth.

Writs of error and certiorari.

33. Every person indicted in any court of quarter sessions, or in any county court ofoyer and terminer and general jail delivery, may remove the indictment, and all proceedings thereon, or a transcript thereof, into the supreme court by a writ of certiorari, or a writ of error, as the case may require: *Provided*, That no such writ of certiorari, or writ of error shall issue, or be available, to remove the said indictment and proceeding thereupon, or a transcript thereof, or to stay execution of the judgment thereupon rendered, unless the same shall be specially allowed<sup>(a)</sup> by the supreme court, or one of the justices thereof, upon sufficient cause to it or him shown,<sup>(b)</sup> or shall have been sued out, with the consent of the attorney-general; which special allowance or consent shall be in writing, and certified on the said writ.<sup>(c)</sup>

#### D. OF THE TRIAL.

Persons under bail not to be placed in the criminal bar.

34. No person who may hereafter be arraigned on any indictment, and who shall be bound by recognisance to appear and abide by the judgment of the court, shall be placed within the prisoner's bar to plead to such indictment, or be confined therein during his trial; and all persons shall have an opportunity of a full and free communication with their counsel.<sup>(d)</sup>

Persons indicted for treason to have copy of indictment.

35. Every person indicted for treason shall have a copy of the indictment<sup>(e)</sup> and a list of the jury and the witnesses to be produced on the trial for proving such indictment, mentioning the names and places of abode of such jurors and witnesses, delivered to him three whole days before the trial.<sup>(g)</sup>

Peremptory challenges.

36. On the trial of any indictment for treason or misprision of treason, murder, manslaughter, concealing the death of a bastard child, rape, robbery, burglary, sodomy, malicious maiming and arson, the accused shall be at liberty to challenge, peremptorily, twenty of the jurors, and on the trial of all other indictments the accused shall be at liberty to challenge, peremptorily, four of the jurors.<sup>(h)</sup>

Challenges by the commonwealth.

37. The commonwealth shall have the right, in all cases, to challenge, peremptorily, four persons,<sup>(i)</sup> and every peremptory challenge beyond the number allowed by law in any of the said cases, shall be entirely void, and the trial of such person shall proceed as if no such challenge had been made.

How challenges are to be conducted.

38. All challenges in criminal proceedings shall be conducted as follows, to wit: the commonwealth shall challenge one person, and then the defendant shall challenge one person, and so alternately, until all the challenges shall be made; but if the commonwealth shall refuse to make any challenge, the defendant shall, nevertheless, have the right to challenge the full number allowed him by law.

How to be determined.

39. When a challenge for a cause assigned shall be made in any criminal proceeding, the truth of such cause shall be inquired of and determined by the court.<sup>(k)</sup>

Trial of persons jointly indicted, and joint challenges.

40. In all cases in which two or more persons are jointly indicted for any offence, it shall be in the discretion of the court to try them jointly or severally, except that in cases of felonious homicide, the parties charged shall have the right to demand separate trials; <sup>(l)</sup> and in all cases of joint trials, the accused shall have the right to the same

33. Act of March 1860, § 33. P. L. 439.  
34. *Ibid.* § 34.

35. *Ibid.* § 35.  
36. *Ibid.* § 36.

37. *Ibid.* § 37.  
38. *Ibid.* § 38.

39. *Ibid.* § 39.  
40. *Ibid.* § 40.

(a) A writ of error issued without a special allocatur will be quashed. 2 S. & R. 453. 2 Wh. 113. So, also, if the allocatur be obtained before sentence. 16 S. & R. 319.

(b) It is never granted on mere technical matters, not going to the merits. 2 Barr 244. 3 S. & R. 199. 3 Y. 29. 6 B. 403. 4 B. 424. 1 Wh. 525. There must be strong ground to believe that if the case be not removed, some important principle of law, or the plain justice of the case, will be violated. 4 Pittsburgh Leg. J. 668.

(c) This section is taken from the 7th section of the act of 13th April 1791, 3 Sm. 30; and the 9th section of the act of 16th June 1836, P. L. 787. Report on the Penal Code 44.

(d) This section is taken from the act of 28th March 1808, 4 Sm. 529. Report on the Penal Code 45.

(e) The caption is a portion of the indictment, and a copy of it must be furnished to the prisoner. 2 D. 342.

(g) The word "trial" here means the trying of the cause by the jury, and not the arraignment and pleading preparatory to such trial by the jury. 4 Mas. 232. This section is taken from the 29th section of the act of congress of 30th April 1790. Brightly's U. S. Dig. 221.

(h) The 36th, 37th, 38th and 39th sections are intended to supply the 152d, 153d, 154th, 155th and 156th sections of the act of 14th April 1834, P. L. 368. The changes therein, in reference to challenges, are, that by the 36th section of this act the number of challenges allowed the accused in treason is twenty, whereas by the 152d section of the act of 1834, thirty-five challenges are allowed; and that by the 154th section of the act of 1834, the commonwealth is interdicted from challenging, without cause, in any case of felony, whereas by the 37th section of the present act, the commonwealth is only interdicted from challenging peremptorily in the cases enumerated in the 36th section, to wit: treason, misprision of treason, murder, manslaughter, concealing the death of a bastard child, rape, robbery, burglary, sodomy, malicious maiming and arson; and in all other felonies and misdemeanors, is allowed the same num-

ber of challenges as the defendant, to wit: four. The object of thus extending to the commonwealth the right of challenging, in the minor felonies, the same number of jurors as the defendant, arises from the fact, that by the present code a large number of offences, which were misdemeanors at common law, are now made felonies; hence, the excluding of the commonwealth from the right of challenge in any felony, is almost totally to deprive her of the right of challenge. In the practical administration of criminal justice, the right of the commonwealth to challenge four jurors peremptorily, is of the deepest importance; it is not an uncommon thing to find in a panel of jurors, one or more persons pledged to the defendant by personal or social sympathies, or influenced in his favor by worse motives; the right to peremptorily challenge four jurors, is the security of the public against such contingencies. The 39th section of the present act assigns to the court the authority of determining upon the truth and sufficiency of challenges for cause. Report on the Penal Code 45.

(i) This provision is not in conflict with the clause in the constitution, which provides "that trial by jury shall be as heretofore, and the right thereof shall remain inviolate." 1 Wr. 45.

(k) The power to challenge for cause may be exercised at any time before the oath is tendered to the jury. 11 H. 12. It is good cause of challenge that the juror has conscientious scruples on the subject of capital punishment. 17 S. & R. 155. Or that he has formed and expressed an opinion upon the evidence in the cause. 14 S. & R. 292. See 2 W. & S. 262. 1 Crauch C. C. 452. Or that the juror has been subpoenaed as a witness by the prisoner. 7 W. 585. Or that he is a tenant of one of the parties. 8 W. 304. Or that he had grossly misbehaved himself on a former occasion, declaring that he had tried and acquitted one the judge desired to have convicted; and that *Anders* 93 Tom Paine man, and would as lief swear on a spelling book as on the Bible." 11 H. 12.

(l) See 12 C. 305

number of peremptory challenges to which either would be entitled if separately tried, and no more.(a)

41. All courts of criminal jurisdiction of this commonwealth shall be and are hereby authorized and required, when occasion shall render the same necessary,(b) to order a *tales de circumstantibus*, either for the grand or petit jury,(c) and all talesmen shall be liable to the same challenges, fines and penalties as the principal jurors: *Provided*, That nothing herein contained shall repeal or alter the provisions of an act passed the 20th day of April 1858, entitled, "An act establishing a mode of drawing and selecting jurors in and for the city and county of Philadelphia."(d)

How tales may be awarded and juries summoned.

42. No alien shall, in any criminal case whatsoever, be entitled to a jury *de medietate lingue*, or partly of strangers.(e)

Of juries de medietate lingue.

43. The trial of all treason against the commonwealth, committed out of the jurisdiction of the state, shall be in the county where the offender is apprehended, or into which he shall first be brought.(g)

Place of trial for treason.

44. If any person shall become an accessory before the fact, to any felony, whether the same be a felony at common law, or by virtue of any act of assembly now in force or hereafter to be in force, such person may be indicted, tried, convicted and punished in all respects as if he were a principal felon.(h)

Of accessories before the fact.

45. If any person shall become an accessory after the fact, to any felony, whether the same be a felony at common law, or by virtue of any act of assembly now in force, or that may be hereafter in force, he may be indicted and convicted as an accessory after the fact, to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether

Of accessories after the fact.

41. Act 31 March 1860, § 41. P. L. 440.  
42. *Ibid.* § 42.

43. *Ibid.* § 43.  
44. *Ibid.* § 44.

45. *Ibid.* § 45.

(a) This section is new, and is introduced to settle a question in criminal practice, which has produced difficulty. At common law, upon a joint trial, each prisoner may challenge his full number, and every juror challenged as to one is withdrawn from the panel as to all the prisoners on trial, and thus, in effect, the prisoners in such a case possess the power of peremptory challenge to the aggregate of the numbers to which they are respectively entitled. The embarrassments from defect of jurors, resulting from the exercise of this right by numerous defendants jointly indicted, led the courts, at a very early period, to determine that they had the power, against the will of the prisoners, to sever the panel, and try them severally, if they insisted upon their right of several challenges. This settled the question that prisoners, jointly indicted, could, against their wishes, be tried separately; but whether prisoners, jointly indicted, could demand a *separate* trial, presented another question; some insisting that they possess such a right; others contending that such severance is a matter of sound discretion, to be exercised by the court, with that due regard and tenderness to prisoners, which characterizes our criminal jurisprudence; and this latter we regard as the better opinion. In the section under consideration this doctrine has been adopted, except as to cases of joint indictments for felonious homicide, in which it is proposed to give the accused the positive right to demand separate trials; in cases of joint trials, it is also proposed to limit the number of the challenges, of all the prisoners, to the number each would be entitled to if separately tried, and no more. As prisoners jointly indicted for felonious homicide have, by this section, the right to sever in their trials, persons so circumstanced will not be affected by this latter provision, in cases of joint trial, as their being so tried is a matter resting entirely in their own choice. Report on the Penal Code 45.

(b) The court may direct a special venire to issue to two citizens, instead of the sheriff or coroner, whenever in their opinion, the nature of the case requires it. 15 Leg. Int. 325.

(c) It is an irregularity to call talesmen, unless it appear of record, that the regular panel was exhausted, and an order for talesmen made; but such irregularity, if not objected to, is cured by the verdict, under the 53d section. 10 H. 94.

(d) This section is a summary of the 144th, 145th, 146th, 147th and 148th sections of the act of 14th April 1834, P. L. 367; which sections have been left unrepealed, as they apply equally to civil as well as criminal proceedings. Report on the Penal Code 46.

(e) This section is taken from the 149th section of the act of 14th April 1834, P. L. 368; which has also been left unrepealed for the same reason. Report on the Penal Code 46.

(f) This section is new, and necessary in the event of trials of treason against the state hereafter taking place. Report on the Penal Code 46.

(g) The principle of this section, which prescribes the same punishment against accessories before the fact in felony, under the various synonyms of aiders, abettors, counselors, comforters, &c., as against principals, is familiar to our criminal legislation; it is found in the 7th section of the act of 1718, 1 Sm. 113; in the 21 section of the act of 8th March 1780, 1 Sm. 499; in the 2d, 3d and 5th sections of the act of 5th April 1790, 2 Sm. 531; and in the 4th section of the act of 23d April 1829, 10 Sm. 431. There is, therefore, nothing new in the principle of this section, which is founded on the theory of the moral guilt of the accessory before the fact being equal to that of the principal offender. The new principle in the section is that which makes the accessory before the fact, guilty of a substantive offence, and which subjects him to punishment for his crime, without postponing it until the conviction of the actual perpetrator; or more precisely speaking, which abolishes in felonies (the technical distinction now existing between accesso-

ries before the fact and principal offenders. This was always the law as regards misdemeanors in which there are no accessories, all being regarded by law as principals; in felony, however, except in certain cases about to be noticed, an accessory cannot be tried before the conviction or outlawry of his principal, unless tried with him. In felonies of frequent occurrence, this was found a great and serious evil, which called for and received partial legislative correction; as early as the act of the 31st May 1718, 1 Sm. 105, it was provided that persons harboring, concealing or receiving robbers, burglars, felons or thieves, or receiving or buying any goods or chattels that should have been feloniously taken or stolen by any such robbers, &c., knowing the same to be stolen, might be proceeded against as is therein directed; and that if any such principal felon *could not be taken, so as to be prosecuted and convicted* for such offence, that nevertheless it shall be lawful to prosecute and punish every such person buying or receiving any goods stolen by such principal felon, knowing the same to be stolen, although the principal felon should not be convicted of the felony. This, however, embraced only one class of accessories, to wit, receivers of stolen goods, in cases where the principal was not amenable to justice; afterwards, by the act of 23d September 1791, 3 Sm. 41, it was provided "in all cases of felonies of death, robbery and burglary, it shall be lawful to punish receivers of such felons, robbers and burglars, by a fine and imprisonment, although the principal felons, robbers and burglars cannot be taken, so as to be prosecuted and tried for said offences; which conviction and sentence of said receivers shall exempt them from being prosecuted as accessories after the fact in case the principal felon, robber or burglar shall afterwards be taken and convicted. This act extended only to accessories after the fact, in cases in which the principals could not be taken.

The act of 11th April 1825, 8 Sm. 438, was passed to avoid a difficulty which afterwards arose in the prosecutions of receivers of stolen goods, in cases in which the principals were amenable to justice. The act of 1718 was taken from the 4th section of 4th and 5th Anne, chap. 31, which only authorized proceedings against such receivers before the conviction or attainder of their principals, when such principals could not be taken. Foster, in his discourse on accomplices, § 6, p. 373, says on this point: "I know attempts have been made, under various shapes, to prosecute the receiver as for a misdemeanor, while the principal hath been in custody and amenable, but not convicted; but I think such devices illegal." The act of 1825 solved the difficulty, by declaring that receivers of property, knowing it to have been feloniously stolen, may be prosecuted, although the principal be not before convicted, and whether he is amenable to justice or not.

It will thus be seen, that all our legislation with regard to the trial of accessories to felonies, before the conviction of their principals, applies only to accessories after the fact, a class of offenders who have had no primary connection with the original crime, and whose guilt only consists in having given comfort and succor to the actual offender after its perpetration; except in cases of receivers of stolen goods, this offence is often almost venial, consisting frequently in parents and friends, influenced by the ties of blood, or the impulses of affection, giving aid and comfort to an offender whose crime they abominate and deplore. It seems strange that the common law privilege, which exempted accessories from liability to justice until the conviction or attainder of the principal, should be taken away in cases of accessories after the fact, and left in those of accessories before the fact, whose guilt is always as great, and often much greater, than that of the principal. The 45th section proposes putting our statute laws on the subject of accessories to felonies in harmony with justice and reason. Report on the Penal Code 46-8.

the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony, if convicted as an accessory, may be punished; and the offence of such person, howsoever indicted, may be inquired of, tried, determined and punished, by any court which shall have jurisdiction to try the principal felon, in the same manner as if the act by reason of which such person shall have become accessory, had been committed at the same place as the principal felony: *Provided always*, That no person who shall be once duly tried for any such offence, whether as an accessory after the fact, or as for a substantive felony, shall be liable to be again indicted or tried for the same offence. (a)

Felonious striking or poisoning in one county, and death in another.

46. If any person hereafter shall be feloniously stricken, poisoned or receive other cause of death in one county, and die of the same stroke, poisoning or other cause of death in another county, then an indictment found therefor by jurors of the county where the death shall happen, shall be as good and effectual in law, as well against the principal in such murder as against the accessory thereto, as if the stroke, poisoning or other cause of death had been given, done or committed in the same county where such indictment shall be found; and the proper courts having jurisdiction of the offence shall proceed upon the same as they might or could do in case such felonious stroke, poisoning or other cause of death, and the death itself thereby ensuing, had been committed and happened all in one and the same county. (b)

Felonious striking or poisoning in the state and death out of the state.

47. If any person shall be feloniously stricken, poisoned or receive other cause of death within the jurisdiction of this state, and shall die of such stroke, poisoning or other cause of death at any place out of the jurisdiction of this state, an indictment therefor found by the jurors of the county in which such stroke, poisoning or other cause of death shall happen as aforesaid, shall be as good and effectual, as well against the principal in any such murder, as against the accessory thereto, as if such felonious stroke, poisoning or other cause of death, and the death thereby ensuing, and the offence of such accessory, had happened in the same county where such indictment shall be found; and the courts having jurisdiction of the offence shall proceed upon the same, as well against principal as accessory, as they could in case such felonious stroke, poisoning or other cause of death, and the death thereby ensuing, and the offence of such accessory, had both happened in the same county where such indictment shall be found. (c)

Proof of offences committed near county lines.

48. In order to obviate the difficulty of proof as to all offences committed near the boundaries of counties, in any indictment for felony or misdemeanor committed on the boundary or boundaries of two or more counties, or within the distance of five hundred yards of any such boundary or boundaries, it shall be sufficient to allege that such felony or misdemeanor was committed in any of the said counties; and every such felony or misdemeanor shall and may be inquired of, tried, determined and punished in the county within which the same shall be so alleged to have been committed, in the same manner as if it had been actually committed therein. (d)

Proof of offences committed during journeys.

49. In order to obviate the difficulty of proof as to offences committed during journeys from place to place, in any indictment for felony or misdemeanor committed on any person or on any property, upon any stage coach, stage, wagon, railway-car or other such carriage whatever, employed in any journey, it shall be sufficient to allege that such felony or misdemeanor was committed within any county or place through any part whereof such coach, wagon, cart, car or other carriage shall have passed in the course of the journey during which such felony or misdemeanor shall have been committed; and in all cases where the centre or other part of any highway shall constitute the boundaries of any two counties, it shall be sufficient to allege that the felony or mis-

46. Act 31 March 1860, § 46. P. L. 441.

47. *Ibid.* § 47.

48. *Ibid.* § 48.

49. *Ibid.* § 49.

(a) This section is only an extension of the existing laws, which, as will be seen from the preceding remarks, subjected accessories after the fact, and receivers, to punishment before the conviction or attainder of their principals. It embraces such accessories not only in common law felonies, but those created, or which hereafter may be created, by statute; it authorizes the conviction of such offenders either with or after the conviction of the principals, or for a substantive offence, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice. It also provides for the case of a party becoming an accessory after the fact in one county to a felony committed in another; giving jurisdiction over the crime of such accessory to the courts of the county having jurisdiction over the crime of the principal offender. This provision supplies the 22d and 23d sections of the act of 1718, 1 Sm. 119, made, probably, to meet a doubt at common law, whether an accessory in one county to a felony in another, was indictable in either. Report on the Penal Code 48.

(b) This section has been introduced to remove a difficulty which might arise in a case of homicide, where a man had died in one county from an injury, or other cause of death, received in another county. Hawkins, in his Pleas of the Crown, book 2, chap. 25, § 36, says, that "at the common law, if a man had died in one county of a stroke received in another, it seems to have been the more general opinion that, regularly, the homicide was indictable in neither of them, because the offence was not complete in either, and no grand jury could inquire of what happened out of their county." This inconvenience was remedied by 2d & 3d Edward VI., chap. 24, by which it was enacted,

that in such cases the trial should take place in the county where the death happened. This statute is among those reported by the judges of the Supreme Court, as being in force in Pennsylvania; hence the expediency of this section to meet such a case, should it hereafter arise. Report on the Penal Code 49.

(c) In the case of a wound, or other cause of death, being given in this state, and the party receiving the same dying in another state (a thing which might very readily occur, as in the case of duels), by the existing law it is at least doubtful whether a prosecution for homicide could be maintained in either; Hawkins, book 1, chap. 31, §§ 11, 12. If a mortal injury, or poison is given or administered maliciously in the state, and death ensues therefrom out of the state, the act which caused the death, and the malice which influenced the act, the two great essential elements of felonious homicide, have been perpetrated and manifested within our jurisdiction; it seems, therefore, fitting, that in such cases, jurisdiction over the crime should be exercised by the state. The section is new, but manifestly necessary in any penal system claiming to be complete. Report on the Penal Code 49.

(d) The 48th and 49th sections are new; they are intended to obviate difficulties which occur in laying the county, where a crime has been committed, so near county lines, as to render it doubtful in which of two counties it has been actually perpetrated; and to obviate similar difficulties, where the crime has been committed during journeys or voyages by land or water, in carriages or vessels of any kind, which have passed through various counties in the journey or voyage during which the crime has been committed. The sections will be found of real practical value. Report on the Penal Code 49.

demeanor was committed in either of the said counties through, or adjoining to, or by the boundaries of any part whereof such coach, wagon, cart, car or other carriage shall have passed in the course of the journey during which such felony or misdemeanor shall have been committed; and in any indictment for any felony or misdemeanor, committed on any person or on any property on board any vessel whatsoever, employed in any voyage or journey on any navigable river, canal or inland navigation, it shall be sufficient to allege that such felony or misdemeanor was committed in any county or place through any part whereof such vessel shall have passed in the course of the voyage or journey during which such felony or misdemeanor shall have been committed; and in all cases where the side or bank of any navigable river or creek, canal or inland navigation, or the centre or other part thereof, shall constitute the boundary of any two counties, it shall be sufficient to allege that such felony or misdemeanor was committed in either of the said counties through, or adjoining to, or by the boundary of any part thereof, such vessel shall have passed in the course of the voyage or journey during which such felony or misdemeanor shall have been committed; and every such felony or misdemeanor committed in any of the cases aforesaid, shall and may be inquired of, tried, determined and punished in the county or place within which the same shall be so alleged to have been committed, in the same manner as if it had actually been committed therein.

50. If on the trial of any person charged with any felony or misdemeanor, it shall appear to the jury upon the evidence, that the defendant did not complete the offence charged, but was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return, as their verdict, that the defendant is not guilty of the felony or misdemeanor charged, but is guilty of an attempt to commit the same; and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in the indictment; and no person so tried as herein lastly mentioned, shall be liable to be afterward prosecuted for an attempt to commit the felony or misdemeanor for which he was so tried. (a)

51. If upon the trial of any person for any misdemeanor, it shall appear that the facts given in evidence amount in law to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanor; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for felony on the same facts, unless the court before whom such trial may be had shall think fit, in its discretion, to discharge the jury from giving any verdict upon such trial, and direct such person to be indicted for felony; in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanor.

52. No person shall be deemed and adjudged an incompetent witness on the trial of any indictment, for or by reason of such person being entitled, in the event of the conviction of the defendant, to a restitution of his property feloniously taken, or the value thereof, or if fraudulently obtained, to a pecuniary remuneration or compensation therefor, or for or by reason of such witness being liable and subject to the payment of the costs of prosecution. (b)

53. No verdict in any criminal court shall be set aside, nor shall any judgment be arrested or reversed, nor sentence delayed, for any defect or error in the precept issued from any court, or in the venire issued for the summoning and returning of jurors, or for any defect or error in drawing, summoning or returning any juror, or panel of jurors, (c) but a trial, or an agreement to try on the merits, (d) or pleading guilty, or the general issue (e) in any case, shall be a waiver of all errors and defects in, or relative

50. Act 31 March 1860, § 50. P. L. 442.

51. *Ibid.* § 51.

52. *Ibid.* § 52.

53. *Ibid.* § 53.

(a) The 50th and 51st sections are new, and intended to facilitate the conviction of offenders, and avoid unnecessary delay in the administration of criminal justice. By the law as it now stands, if on the trial of an indictment for felony, it appears that some circumstance is wanted to establish the complete technical offence, the prisoner must be acquitted, although the proofs are perfect of an attempt to commit the crime; and on the other hand, where the indictment charges an attempt to commit a crime, and the proof establishes that the crime has actually been committed, the American courts have generally held that the prisoner must be acquitted, because the misdemeanor charged, is merged in the felony proved. The operation of the first of these doctrines is best exemplified by decided cases. Lord Hale, in his Pleas of the Crown, vol. 1, p. 508, thus recites one of these cases: "A. hath his keys tied to the strings of his purse; B., a cut-purse, takes his purse, with the money in it, out of his pocket, but the keys which were hanged to his purse strings, hanged in his pocket; A. takes B. with his purse in his hand, but the strings hanged to his pocket by the keys; it was ruled that this was no felony, for the keys and purse strings hanged in the pocket of A., whereby A. had still in law the possession of his purse, so that *licet, caput non asportavit*. So, where a thief went into a shop, took up some goods, intending to steal them, but before he had removed them from the spot on which they lay, discovered they were tied to the counter by a cord; upon being tried for stealing, it was held that the property never was either completely severed from the possession of the owner, nor completely in the possession of the prisoner, and he was acquitted." Sleigh's Criminal Law 29. In regard to the other doctrine sought to be changed by this section, viz.: that a misdemeanor

charged is merged in a felony proved, it has been frequently held in this country that where, on an indictment for an assault, attempt or conspiracy, with intent to commit a felony, it appeared that the felony was actually committed, it was the duty of the court to charge the jury, that the misdemeanor had merged, and that the defendant must be acquitted. Wharton's American Criminal Law §§ 564, 2294. In England, however, this doctrine has been shaken, if not repudiated by the cases of *Rex v. Neale*, 1 Dennison's Cro. Cas. 36, and *Rex v. Button*, 11 Ad. & Ellis (N. S.) 829. The section under consideration will, if adopted, destroy the future operation of a subtle fiction, having no origin in substantial common sense. Report on the Penal Code 50.

(b) This section is taken from the act of 29th March 1809, § 5 Sm. 48; and the 31st section of the act of 31st May 1718, 1 Sm 123. Report on the Penal Code 51.

(c) See 2 S. & R. 300. 4 P. L. J. 512.

(d) A trial on the merits is a waiver of all irregularities and defects in the mode of summoning and returning the jurors. 5 C. 429. After a trial it is too late to object to mistakes in the process as to the Christian and surname of some of the jurors by whom the verdict was rendered. 10 H. 94. If a person, not on the panel, is called, and permitted to sit, the irregularity is cured by this section. 3 H. 236. But if a stranger answer to the name of one of the panel, and is sworn as a juror, it is a mistrial, and not within the statute. *Com. v. Spring*, 10 Leg. Int. 54-6. 1 Am. L. R. 424. See 4 P. L. J. 521.

(e) If the prisoner stands mute, and the plea of not guilty is entered by the court, it is within the act. 5 Wh. 67. See 2 Ash. 90.

or appertaining to the said precept, venire, drawing, summoning and returning of jurors.<sup>(u)</sup>

Of the trial of prisoners committed.

54. If any person shall be committed for treason or felony, or other indictable offence, and shall not be indicted and tried some time in the next term, session of oyer and terminer, general jail delivery, or other court where the offence is properly cognisable, after such commitment, it shall and may be lawful for the judges or justices thereof,<sup>(b)</sup> and they are hereby required on the last day of the term, sessions or court, to set at liberty the said prisoner upon bail, unless it shall appear to them, upon oath or affirmation, that the witnesses for the commonwealth, mentioning their names, could not then be produced;<sup>(c)</sup> and if such prisoner shall not be indicted and tried the second term, session or court<sup>(d)</sup> after his or her commitment, unless the delay happen on the application or with the assent of the defendant, or upon trial he shall be acquitted, he shall be discharged from imprisonment:<sup>(e)</sup> *Provided always*, That nothing in this act shall extend to discharge out of prison, any person guilty of, or charged with treason, felony or other high misdemeanor in any other state, and who by the constitution of the United States ought to be delivered up to the executive power of such state, nor any person guilty of, or charged with a breach or violation of the laws of nations.<sup>(g)</sup>

Witnesses in forgeries.

55. Upon the trial of any indictment for making or passing, and uttering, any false, forged or counterfeited coin, or bank note, the court may receive in evidence, to establish either the genuineness or falsity of such coin or note, the oaths or affirmations of witnesses who may, by experience and habit, have become expert in judging of the genuineness or otherwise, of such coin or paper, and such testimony may be submitted to the jury without first requiring proof of the handwriting or the other tests of genuineness, as the case may be, which have been heretofore required by law; and in prosecutions for either of the offences mentioned or described in the 164th, 165th, 166th and 167th sections of the "Act to consolidate, revise and amend the penal laws of this commonwealth,"<sup>(h)</sup> the courts shall not require the commonwealth to produce the charter of either of said banks, but the jury may find that fact upon other evidence, under the direction of the court.<sup>(i)</sup>

Witnesses not to be imprisoned except in certain cases.

56. No witness in any case who enters his or her recognisance, in such sum as the magistrate may demand, to appear and testify in such prosecutions as require his testimony, shall be committed to prison by the judge, alderman or magistrate before whom any criminal charge may be preferred: *Provided however*, That in all cases triable in the oyer and terminer, where a positive oath is made, reduced to writing and signed by the deponent, setting forth sufficient reasons or facts to induce the firm belief on the part of the judge, magistrate or alderman, that any witness will abscond, elope or refuse to appear upon the trial, that then and in such case the judge, magistrate or alderman may exact bail of said witness to testify.<sup>(k)</sup>

Bills of exception and writs of error allowed.

57. Upon the trial of any indictment for murder or voluntary manslaughter,<sup>(l)</sup> it shall and may be lawful for the defendant or defendants to except to any decision of the court upon any point of evidence or law,<sup>(m)</sup> which exception shall be noted by the court, and filed of record as in civil cases,<sup>(n)</sup> and a writ of error to the supreme court may be taken by the defendant or defendants, after conviction and sentence.<sup>(o)</sup>

54. Act 31 March 1860, § 54. P. L. 443.

55. *Ibid.* § 55.

56. *Ibid.* § 56.

57. *Ibid.* § 57

(a) This section is a transcript of the act of 21st February 1814, 6 Sm. 111. The original act has been left unrepealed, and has been introduced here in order to give relative completeness to the code of criminal procedure. Report on the Penal Code 51.

(b) The application must be made to the court in which the prisoners were indicted. 2 Wh 502. 3 Y. 264. 7 W. & S. 110.

(c) This section only applies where there has been wilful delay on the part of the commonwealth. 16 S. & R. 305. 7 W. 366. Not where the trial is delayed by the prisoner. 3 Y. 266. 16 S. & R. 304. 2 Wh. 601. 7 W. 366. 1 D. 9.

(d) A prisoner can only claim his discharge on the last day of the second term after his arrest, when there has been a competent and regularly constituted court before whom he could have been indicted and tried. 5 C. 129.

(e) The act was designed to prevent wrongful restraints of liberty growing out of the malice and procrastination of the prosecutor; but not to shield a prisoner, in any case, from the consequences of any delay made necessary by the law itself; and, therefore, where the array of grand jurors was quashed at two successive terms after the arrest of the prisoner, for informality in selecting and drawing them, he is not entitled to a discharge. 5 C. 129.

(f) This section is a transcript of the 3d section of the act of 18th February 1785, 2 Sm. 277. The words, "or other indictable offence," after the word "felony," have been introduced in order to harmonize the language of the law with the actual practice under it, which has been to extend the provisions of the 3d section of the habeas corpus act, not only to commitments for treason or felony, but to commitments for all criminal offences. Ex parte Walton, 2 Wh. 501. The only change in the proviso of this section is the substitution of the words, "the constitution of the United States," for the words, "the confederation," of the original act. The original section has also been left unrepealed, so as to avoid any unnecessary interference with this important law. The commissioners consider its introduction into this act is judicious, composing, as it does, so important an element in our criminal jurisprudence. Report on the Penal Code 51.

(g) See tit. "Crimes," pl. 173-6.

(i) This section is framed from the 3d section of the act of 4th May 1852, P. L. 574; and the 13th section of the act 25th March 1824, 8 Sm. 238. Report on the Penal Code 52.

(k) This section is taken from the act of 22d April 1856, P. L. 506. Report on the Penal Code 52.

(l) A bill of exceptions to the admission or rejection of evidence, on the trial of one charged by indictment with a criminal offence, other than murder or voluntary manslaughter, is not the subject of consideration on a writ of error, although the bill may have been sealed by the court below. 2 W. 285.

(m) The prisoner must show that a substantial error was committed on the trial, in the admission or rejection of evidence, by which he has been injured; it is not sufficient that an abstract or technical error has taken place. 5 C. 429.

(n) The supreme court is limited to a review of the points so noted and filed of record by the court below. 5 C. 429. 1 Wr. 108. The act does not authorize an exception to the charge of the court. Com. v. Jacoby, 6 Pittsburgh Leg. J. 178.

(o) Sections 57 to 61 are taken from the 1st, 2d, 3d, 4th and 5th sections of the act of 6th November 1856, P. L. 795. The changes made therein, consist in striking out the whole of the proviso to the 1st section, and so much of the 4th section as provides for the oath or affirmation required, being filed in the prothonotary's office of the proper district. The effect of the proposed amendment will be, to supersede the necessity of a party convicted of murder or manslaughter, making an oath that his application for a writ of error is not for the purpose of delay, and to correct the manifest inconsistency in the proviso, in authorizing a defendant, convicted of voluntary manslaughter, to enter bail to appear and abide the sentence of the court, when by the previous part of the section, no writ of error can issue until after conviction and sentence. The commissioners believe that the oath demanded will stop few, if any, persons convicted of murder or voluntary manslaughter, from suing out a writ of error, to obtain a reversal of their condemnations; they think that such a temptation to perjury should not be placed in the way of a party so situated. Experience shows that even in civil proceedings, such oaths have but little influence in preventing litigation; how much less must they

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58. If during the trial upon any indictment for murder or voluntary manslaughter, the court shall be required by the defendant or defendants to give an opinion upon any point submitted and stated in writing, it shall be the duty of the court to answer the same fully, and file the point and answer with the records of the case.<sup>(a)</sup>

Written opinions to be filed.

59. No such writ shall be allowed, unless special application be made therefor, and cause shown within thirty days after sentence pronounced; and if the supreme court be sitting in banc in any district, the application shall be made, and cause shown there; if the said court be not sitting, application may be made to, and cause shown before one of the judges of that court, and upon the allowance of such writ, the said court or judge shall fix a time and place for hearing the said case, which time shall not be more than thirty days thereafter; if the said court shall be at that time sitting in banc in any district of the state, the said court or judge, upon the allowance of any such writ, shall make all such proper orders, touching notice to the commonwealth, and paper-books, as may be considered necessary.

Granting of writs of error regulated.

60. The writ of error shall issue from the prothonotary's office of the proper district, and all orders, decrees and judgments in the case shall also be entered of record there; but the application and final hearing may be made and had before the said supreme court while sitting in any other district.

When a writ of error to issue.

61. Upon the affirmance of the supreme court of the judgment in any case, the same shall be enforced pursuant to the directions of the judgment so affirmed, and the said court may make any further order requisite for carrying the same into effect; and if the supreme court shall reverse any judgment, they shall remand the record, with their opinion, setting forth the causes of reversal, to the proper court for further proceeding.

Proceedings after affirmance or reversal of judgment.

## E. OF COSTS.

62. In all prosecutions, cases of felony excepted, if the bill of indictment shall be returned "ignoramus," the grand jury returning the same shall decide and certify on such bill whether the county or the prosecutor shall pay the costs of prosecution; and in all cases of acquittals<sup>(b)</sup> by the petit jury on indictments for the offences aforesaid, the jury trying the same shall determine, by their verdict, whether the county,<sup>(c)</sup> or the prosecutor, or the defendant shall pay the costs,<sup>(d)</sup> or whether the same shall be apportioned between the prosecutor and the defendant, and in what proportions; and the jury, grand or petit, so determining, in case they direct the prosecutor to pay the costs or any portion thereof, shall name him in their return or verdict;<sup>(e)</sup> and whenever the jury shall determine as aforesaid, that the prosecutor or defendant shall pay the costs, the court in which the said determination shall be made shall forthwith pass sentence to that effect, and order him to be committed to the jail of the county until the costs are paid, unless he give security to pay the same within ten days.<sup>(g)</sup>

Power of grand and petit jurors over costs.

63. In all prosecutions where the petit jury trying the same shall acquit the defendant, and shall determine, by the verdict, that the prosecutor shall pay the costs<sup>(h)</sup> the defendant's bill for his subpoenas, serving the same, and attendance of his material and necessary witnesses, shall be included in the costs and paid accordingly.<sup>(i)</sup>

Of the defendant's costs.

64. The costs of prosecution accruing on all bills of indictments charging a party with felony, returned "ignoramus" by the grand jury, shall be paid by the county; and the costs of prosecution accruing on bills of indictment charging a party with felony, shall, if such party be acquitted by the petit jury on the traverse of the same, be paid by

Payment of costs generally.

58. Act 51 March 1860, § 58. P. L. 444.  
59. Ibid. § 59.60. Ibid. § 60.  
61. Ibid. § 61.62. Ibid. § 62.  
63. Ibid. § 63.

64. Ibid. § 64.

have in a criminal proceeding, where the matter in issue is life or liberty! The privilege given in the proviso, in a case of voluntary manslaughter, of entering bail to appear to abide by the sentence of the court, is utterly irreconcilable with the main section itself, which gives the writ of error after conviction and sentence; if the commissioners are permitted to speculate upon the causes of the incongruity between the section and its proviso, they would be inclined to suppose that the proviso was one of those amendments hastily made and adopted, which sometimes occur in rapid legislation. The only manner in which the proviso and the section can be reconciled, would be to suppose that the legislature intended, in case of conviction and sentence for voluntary manslaughter, to permit the defendant, suing out a writ of error, to go at large on bail until the final judgment of the court of errors; such a feature is entirely new in a system of criminal jurisprudence, based upon the common law. If such a privilege is to be given to a convicted felon, there seems no good reason that it should be exclusively extended to felonious homicide; as has been heretofore remarked, the line between murder and voluntary manslaughter is often so nicely characterized, that it requires much technical acumen to discriminate the differences between them; surely in a community in which law ought to protect life by every possible means, a party convicted by the verdict of a jury of his peers, of voluntary and felonious homicide, should not be permitted to go at large, while the sentence against him remains unreversed and unrepealed. We ought not, in our anxiety to guard the rights of the offender, to forget those of the community, an error which seems gradually insinuating itself into penal legislation and administration; the reasoning on this subject might be extended, but the commissioners think they have said enough to recommend their proposed modification of this act to legislative favor. Report on the Penal Code 52.

(a) This section does require the court to write out its charge to the jury. Com. v. Jacoby, 6 Pittsburgh Leg. J. 178.

(b) If the act be charged to have been done feloniously, the jury have no power over the costs. 6 W. 530. Nor where on

an indictment for a felony, a count for a misdemeanor is joined. 2 C. 154. The statute extends to the case of a defective indictment. 4 B. 194. 4 S. & R. 127. And to an acquittal on a plea of the statute of limitations. 2 C. 171. The jury cannot convict one of two defendants, and acquit the other, and direct the latter to pay the costs. 13 S. & R. 301. The court may set aside a verdict of acquittal, so far as it imposes costs on the prosecutor. 2 Gr. 66.

(c) If the jury acquit the defendant, and say nothing as to the costs, the county is not liable. 3 P. R. 365.

(d) This does not include the costs of a former bill, on which judgment was arrested. 2 C. 171.

(e) No person can be sentenced to pay costs as prosecutor, unless named by the jury. 7 W. 485. But where the grand jury ignored a bill for assault and battery, and directed the person upon whom it was alleged to have been committed, to pay the costs, it was held sufficient, although they omitted to designate him as prosecutor. Com. v. Carr, Quarter Sessions, Phila., 23 October 1847. MS. The act does not apply to persons concerned in prosecutions in their official capacity; 2 Am. L. R. 243; 11 Leg. Int. 58; and hence, in a prosecution for keeping a disorderly house, the jury cannot impose the costs on the constable who made the return. Com. v. Barr, Quarter Sessions, Lancaster, January 1848. MS.

(g) See 2 P. R. 240. 13 S. & R. 303. This section is taken from the 1st and 2d sections of the act of 8th December 1804. 1 Sm. 204; and the act of 12th April 1859. P. L. 528. The only change made in these laws is, that the like privilege of giving security for the payment of costs in ten days is given to the defendant, who, although acquitted, is ordered to pay the costs, as is given to the prosecutor in case he is ordered to pay the costs. Report on the Penal Code 53.

(h) If the jury acquit the defendant, and direct the costs of prosecution to be paid by the county, the latter is not liable for the attendance of the defendant's witnesses. 12 C. 317.

(i) This section is taken from the act of 9th February 1821. 7 Sm. 242. Report on the Penal Code 53.

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the county, (a) and in all cases of conviction (b) of any crime, all costs (c) shall be paid by the party convicted; but where such party shall have been discharged, according to law, (d) without payment of costs, the costs of prosecution shall be paid by the county; and in cases of surety of the peace, the costs shall be paid by the prosecutor or the defendant, or jointly between them, or the county, as the court may direct. (e)

Costs where separate bills are presented against joint offenders.

65. In all cases where two or more persons have committed an indictable offence, the names of all concerned (if a prosecution shall be commenced) shall be contained in one bill of indictment, for which no more costs shall be allowed than if the name of one person only was contained therein. (g)

**F. GENERAL PROVISIONS.**

Insane prisoners.

Jury to find the fact of insanity.

Defendant to be detained in custody.

Where defendant is found insane upon arraignment.

Where prisoner brought up to be discharged appears to be insane.

Insane defendant to be delivered to friends, &c.

How expenses to be paid in such cases.

Civil actions against felons.

Executions upon sentences of restitution.

66. In every case in which it shall be given in evidence upon the trial of any person charged with any crime or misdemeanor, that such person was insane at the time of the commission of such offence, and he shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether he was acquitted by them on the ground of such insanity; and if they shall so find and declare, the court before whom the trial is had shall have power to order him to be kept in strict custody, in such place and in such manner as to the said court shall seem fit, at the expense of the county in which the trial is had, so long as such person shall continue to be of unsound mind. (h)

67. The same proceedings may be had, if any person indicted for an offence shall, upon arraignment, be found to be a lunatic, by a jury lawfully impanelled for the purpose; or if, upon the trial of any person so indicted, such person shall appear to the jury, charged with such indictment, to be a lunatic, the court shall direct such finding to be recorded, and may proceed as aforesaid.

68. In every case in which any person charged with any offence shall be brought before the court to be discharged for want of prosecution, and shall by the oath or affirmation of one or more credible persons, appear to be insane, the court shall order the district attorney to send before the grand jury a written allegation of such insanity in the nature of a bill of indictment; and thereupon the said grand jury shall make inquiry into the case, as in cases of crimes, and make presentment of their finding to said court thereon; and thereupon the court shall order a jury to be impanelled to try the insanity of such person; but before a trial thereof be ordered, the court shall direct notice thereof to be given to the next of kin of such person, by publication or otherwise, as the case requires, and if the jury shall find such person to be insane, the like proceedings may be had as aforesaid.

69. If the kindred or friends of any person who may have been acquitted as aforesaid on the ground of insanity, or in the default of such, the guardians, overseers or supervisors of any county, township or place, shall give security in such amount as shall be satisfactory to the court, with condition that such lunatic shall be restrained from the commission of any offence by seclusion or otherwise, it shall be lawful for the court to make an order for the enlargement of such lunatic, and his delivery to his kindred or friends, or as the case may be, to such guardians, overseers or supervisors.

70. The estate and effects of every such lunatic shall, in all cases, be liable to the county for the reimbursement of all costs and expenses paid by such county in pursuance of such order; but if any person acquitted on the grounds of insanity, shall have no estate or effects, the county, township or place to which such lunatic may be chargeable under the laws of this commonwealth relating to the support and employment of the poor, shall, after notice of his detention aforesaid, be liable for all costs and expenses as aforesaid, in like manner as if he had become a charge upon any township not liable for his support under the laws aforesaid.

71. In all cases of felony heretofore committed, or which may hereafter be committed, it shall and may be lawful for any person injured or aggrieved by such felony, to have and maintain his action against the person or persons guilty of such felony, in like manner as if the offence committed had not been feloniously done; and in no case whatever, shall the action of the party injured, be deemed, taken or adjudged to be merged in the felony, or in any manner affected thereby. (i)

72. The imprisonment awarded as part of the punishment of any offender, shall not stop or avoid the awarding or taking out of execution to levy such respective sums recovered against them, as such offenders refuse or neglect to pay, when such writs are taken out, which executions shall be directed to the sheriff or coroner of the proper

65. Act 31 March 1860, § 65. P. L. 445.  
66. Ibid. § 66.

67. Ibid. § 67.  
68. Ibid. § 68.

69. Ibid. § 69.  
70. Ibid. § 70.

71. Ibid. § 71.  
72. Ibid. § 72.

(a) See 10 C. 440.  
(b) This includes convictions for drunkenness and vagrancy. 4 C. 173. 5 C. 38. Provided the defendants be sentenced to hard labor, and the commitments follow the sentences as recorded. 12 C. 349. The case of a prosecutor on a bill returned ignoramus, is not within the act; nor that of a defendant acquitted, but ordered to pay the costs by the petit jury; nor where the prosecutor is ordered to pay costs on an acquittal. 4 S. & R. 541. Nor where the case is determined by nolle prosequi. 12 S. & R. 94. 6 H. 493. Or the indictment is quashed. 3 R. 487. But it extends to cases where the party may be discharged under the insolvent laws; or where judgment has been arrested, or reversed on error. 12 S. & R. 95. Or where the defendant has been pardoned after conviction. 4 S. & R. 440.  
(c) This does not include costs of an attachment against a

witness, for contempt. 2 S. & R. 292.  
(d) Unless the discharge be a legal one, the county is not liable. 6 P. L. J. 237.  
(e) This section is a consolidation of the 11th and 15th sections of the act of 23d September 1791. 3 Sm. 43-4; and the 13th section of the act of 28th March 1814. 6 Sm. 229; and the 1st section of the act of 20th March 1797. 3 Sm. 281; and embraces the cases provided for by them. Report on the Penal Code 53.  
(g) This section is taken from the act of 28th March 1805, 4 Sm. 235. Report on the Penal Code 54.  
(h) Sections 66 to 70 are taken from the 58th, 59th, 60th, 61st and 62d sections of the act of 13th June 1836, P. L. 603. Report on the Penal Code 54. See 6 C. 522. 10 C. 184.  
(i) This section is new; its object is sufficient to manifest without further explanation. Report on the Penal Code 54.

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county, requiring him to levy the sums due upon such recoveries as aforesaid, of the lands and tenements, goods and chattels of such offenders, returnable to the next term or session of the court where such conviction was had, which shall be executed accordingly; (a) and the lands, goods and chattels thereby seized shall be sold and conveyed by the said officers, and such sales shall be as available and effectual in law as any other sales of land taken and sold for the payment of debts, by virtue of writs of execution awarded out of the courts of common pleas in the respective counties. (b)

73. If any person who hath been, or shall be legally indicted in any court of criminal jurisdiction within this commonwealth, of treason, felony of death, robbery, burglary, Outlawry. sodomy or buggery, or as accessories before the fact to any of the same offences, did not or will not appear to answer to such indictment, or having appeared, shall escape before trial, the same indictment, record and proceedings shall be removed by writ of certiorari Certiorari. into the supreme court of this commonwealth, and it shall and may be lawful for the same court to award a writ of *capias*, directed to the sheriff of the county where the fact shall be charged to have been committed; and if the party indicted shall be supposed, Capias. by the indictment, to inhabit or be conversant in any other county, then also to the sheriff of such county; which writ or writs shall be delivered to the said sheriff or sheriffs, at least two months before the day of the return thereof, commanding the said sheriff or sheriffs to take the person so indicted as aforesaid, if he may be found in his or their bailiwicks, and him safely keep, so that he may have his body before the justices of the said supreme court, at the next supreme court to be holden for the said commonwealth, to answer to the said indictment, or prosecute his traverse thereupon, as the case may be, and to be further dealt with as the law shall direct; and if the same sheriff or sheriffs shall make return to the same writ or writs of *capias*, that the person indicted as aforesaid, Alias *capias*. cannot be found in his bailiwick, then, after such return, a second writ of *capias* may issue out of the said supreme court, and be delivered at least three months (c) before the return day thereof, to the sheriff of the county where the fact shall be charged to have been committed; and in case the party shall be supposed, by the indictment, to inhabit or be conversant in any other county, then another writ of *capias* shall also issue, and be delivered at least three months before the return day thereof, to the sheriff of such county; which writ or writs of *capias* shall be returnable before the justices of the same court, (d) on the first day of the second term next after the teste of the said second writ of *capias*, so that a term shall intervene between the teste of the return days of the same writ or writs, whereby the said sheriff or sheriffs shall be commanded to take the said person so indicted as aforesaid, if he may be found in his or their bailiwicks, and him safely keep, so that he may have his body before the justices of the said supreme court at the day of the return thereof, to answer or prosecute his traverse as aforesaid; but if he cannot be found in his or their bailiwicks, then to cause public proclamation to be Proclama- tion. made on three several days (e) in one of the courts of quarter sessions of the peace to be held for the said counties respectively, between the teste and return days of the same writ or writs, that the party so indicted shall appear before the said justices of the said supreme court, at a supreme court to be holden at the time and place contained in the same writs, to answer such indictment or prosecute his traverse thereof, as the case may be, or through default thereof, he will at the return of the same writ or writs be outlawed, and attainted of the crime whereof he was indicted as aforesaid; and the said second writ of *capias*, directed to the sheriff of the county where the crime hath been, or shall be charged to have been committed, shall contain a further clause commanding the said sheriff, in case the person indicted as aforesaid cannot be found in his bailiwick, Advertise- ment. to cause public advertisement to be made in one or more of the public newspapers of this state, once a week, in six succeeding weeks, between the teste and return of the said second writ of *capias*, specifying therein the coming of the said second writ of *capias* to his hands, with the teste thereof, and the time and place of return to be made thereof, naming the person indicted as aforesaid, with his addition of degree, mystery (g) and place of abode, (h) as contained in the writ, stating the nature of the offence charged against him, and commanding him to appear before the justices of the said supreme court, at the day and place directed by the said second writ of *capias*, to answer to the said indictment, or prosecute his traverse thereof, as the case may be, or through default thereof at the return of the said second writ of *capias*, he will be outlawed and attainted of the crime whereof he shall have been indicted as aforesaid; and if upon the return Attainder of the same writ or writs last mentioned, by the said sheriff or sheriffs, that the directions of the said writ or writs had been fully complied with and pursued, and the person indicted as aforesaid shall not yield himself to one of the said sheriffs, so that he may have his body before the justices of the said supreme court at the day and place as directed by the said writ or writs, or having surrendered himself, shall escape from his custody, or having been bailed on his surrender or caption, shall not appear, so that through want of his appearance at the time and place the said supreme court shall appoint for his trial, no trial of his offence can be had, the justices of the said supreme court shall in either of these cases pronounce and declare the said person indicted as

73. Act 31 March 1860, § 73. P. L. 447.

(a) A conveyance made to elude the provisions of this section, would be fraudulent and void at common law. 5 B. 114.

(b) This section is taken from the 30th section of the act of 31st May 1718, 1 Sm. 122. Report on the Penal Code 54.

(c) See 1 D. 88, 92.

(d) 1 D. 88, 92.

(e) 1 D. 88, 92.

(g) 2 D. 92.

(h) 2 D. 92. 1 D. 60.

- aforesaid, and not appearing at the time and place appointed for his trial as aforesaid, to be outlawed and attainted of the crime whereof he shall have been indicted as aforesaid; the said supreme court to pronounce the judgment of outlawry against the principal offender, previously to the declaration of outlawry against the accessory, against whom, in all other respects, it shall be lawful to carry on the proceedings together, and at the same time the said supreme court shall declare the legal punishment for the same crime; and wherever imprisonment shall be a part of the sentence for any of the said offences, the term thereof shall commence from the time the person outlawed shall, subsequent to his outlawry, actually be in the custody of the sheriff of the county where the offence was or shall be committed, which sentence shall be fully and particularly entered upon the records of the said supreme court; and the said sentence of outlawry shall have the legal effect of a judgment upon verdict or confession against the person so outlawed, for the offence whereupon he shall have been outlawed, unless and until the same outlawry shall be afterwards avoided by the judgment of the same court, on plea pleaded in the nature of a writ of error.
- Accessories.** When any person outlawed as aforesaid, shall be taken either by *capias ullagatum*, or otherwise, or being in the sheriff's custody, shall be brought to the bar of the supreme court, the court shall, upon the suggestion and prayer of the attorney-general, award execution (a) to be done upon him, unless the prisoner shall plead either *ore tenus*, or in writing, as his counsel shall advise, that he was not the person who was outlawed, or shall assign errors, in fact or in law, sufficient to prevent the award of execution, in which case the court shall proceed to determine the same either by an inquest or by their own judgment, agreeably to law; and the prisoner shall by such plea have all the benefit and advantage of all legal matters in his favor, as if he or she had brought a writ of error and had assigned the several matters pleaded as errors: *Provided*, If any person outlawed shall within the space of one year next after the outlawry pronounced against him, yield him to one of the justices of the supreme court, and offer to traverse the indictment whereon the said outlawry shall be pronounced as aforesaid, that then he shall be received to the same traverse; and being thereupon found not guilty, by the verdict of a jury, of the offence for which he shall have been outlawed as aforesaid, he shall be clearly acquitted and discharged of the said outlawry, and of all penalties and forfeitures by reason of the same, as fully as if no such outlawry had been had, anything hereinbefore contained to the contrary thereof notwithstanding.
- Sentence.** All the costs and charges of the said proceedings to outlawry shall be borne and paid by the county where the crime is laid to have been committed: *Provided always*, That if the person or persons so outlawed shall have real or personal estate, the same or so much thereof as shall be necessary, shall be sold in the manner provided by the seventy-second section of this act, and the net proceeds of such sales shall be applied to the payment of the said costs and charges, or so far as the same shall extend, in exoneration of the county. (b)
- Effect of outlawry.** 74. Whenever any person shall be sentenced to imprisonment at labor by separate or solitary confinement, for any period not less than one year, the imprisonment and labor shall be had and performed in the state penitentiary for the proper district: *Provided*, That nothing in this section contained shall prevent such person from being sentenced to imprisonment and labor, by separate or solitary confinement, in the county prisons now or hereafter authorized by law to receive convicts of a like description: *And provided also*, That no convict shall be sentenced by any court of this commonwealth, to either of the penitentiaries thereof, for any term which shall expire between the fifteenth of November and the fifteenth of February of any year. (c)
- How execution to be awarded.** 75. No person shall be sentenced to imprisonment at labor, by separate or solitary confinement, for a period of time less than one year, except in the counties where, in the opinion of the court pronouncing the sentence, suitable prisons have been erected for such confinement and labor; and all persons sentenced to simple imprisonment for any period of time, shall be confined in the county jail where the conviction shall take place: *Provided*, That in the counties where suitable prisons for separate or solitary confinement at labor do not exist, and the sentence shall be for less than one year, simple
- When outlawry may be reversed.**
- Costs.**
- Sentences of separate or solitary confinement.**
- Sentences of less than one year, and simple imprisonment.**

74. Act 31 March 1860, § 74. P. L. 449.

75. *Ibid.* § 75.

(a) 1 D. 87, 91.

(b) This section is taken from the 1st, 2d and 3d sections of the act of 23d September 1791, 3 Sm. 37, and is nearly a transcript thereof. They form in themselves as good a system of outlawry as can now be suggested, and are so skilfully and ably drawn, as to require no amendment of importance. Although proceedings in outlawry have been rarely resorted to in our state, yet they are indispensably necessary in every complete system of criminal jurisprudence. Report on the Penal Code 54.

(c) Whilst the 74th and 75th sections, except the proviso to the 74th section, are new in form, no material alteration is made in the law as it now stands. The 74th section requires that sentences of imprisonment at labor by separate or solitary confinement for a period of time not less than one year, shall be performed in the state penitentiary of the proper district, or in such county prisons as are now, or may hereafter be authorized to receive convicts of a like description; and the 75th section prohibits sentences of imprisonment at labor by separate or solitary confinement for a less period of time than one year, except in the counties where suitable prisons have been or shall hereafter be erected for such confinement and labor.

This section also provides that in all cases where the sentence is for simple imprisonment only, the offender shall be confined in the county where the conviction shall take place. The sections taken together require: 1. That all persons sentenced to simple imprisonment, shall be confined in the county where the offender is convicted. 2. That no person shall be sentenced to imprisonment at labor by separate or solitary confinement for a less period than one year, except in the counties where, in the opinion of the court passing the sentence, prisons are provided suitable for such confinement and labor. 3. That all imprisonment at labor by separate or solitary confinement, where the sentences exceed one year, shall be in the state penitentiary for the proper district, except in the counties in whose prisons convicts of a like description are authorized to be imprisoned, and in those counties, such convicts may be sent to the county prisons as heretofore. The provision contained in the last proviso to the 74th section, is copied from the 1st section of the act of 18th February 1847. P. L. 126. Report on the Penal Code 54. In New York, a similar law to that contained in this proviso, was held to be merely directory, and a failure to comply with its requirements, not to avoid the sentence. *Adelphi* 104

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imprisonment shall be substituted in all cases for the separate and solitary confinement at labor required by the "Act to consolidate, revise and amend the penal laws of this commonwealth."

76. Whenever, hereafter, any person shall be condemned to suffer death by hanging, Execution in capital cases. for any crime of which he shall have been convicted, the said punishment shall be inflicted upon him within the walls or yard of the jail of the county in which he shall have been convicted; and it shall be the duty of the sheriff or coroner of the said county to attend and be present at such execution, to which he shall invite the presence of a physician, the district attorney of the county, and twelve reputable citizens, who shall be selected by the sheriff; and the said sheriff shall, at the request of the criminal, permit such ministers of the gospel, not exceeding two, as he may name, and any of his immediate relatives, to attend and be present at such execution, together with such officers of the prison, and such of the sheriff's deputies as the said sheriff or coroner, in his discretion, may think it expedient to have present; and it shall be only permitted to the persons above designated to witness the said execution: *Provided*, That no person under age shall be permitted, on any account, to witness the same. And after the execution, the said sheriff or coroner shall make oath or affirmation, in writing, that he proceeded to execute the said criminal, within the walls or yard aforesaid, at the time designated by the death warrant of the governor; and the same shall be filed in the office of the clerk of the court of oyer and terminer of the aforesaid county, and a copy thereof published in two or more newspapers, one, at least, of which shall be printed in the county where the execution took place.(a)

77. All indictments which shall hereafter be brought or exhibited for any crime or misdemeanor, murder and voluntary manslaughter excepted, shall be brought or exhibited within the time and limitation hereafter expressed, and not after; (b) that is to say, all indictments and prosecutions for treason, arson, sodomy, buggery, robbery, burglary, perjury, counterfeiting, forgery, uttering or publishing any bank note, check or draft, knowing the same to be counterfeited or forged, shall be brought or exhibited within five years next after the offence shall have been committed; and all indictments and prosecutions for other felonies not named or excepted heretofore in this section, and for all misdemeanors, perjury excepted, shall be brought or exhibited within two years next after such felony or misdemeanor shall have been committed: (c) *Provided however*, That if the person against whom such indictment shall be brought or exhibited, shall not have been an inhabitant of this state, or usual resident therein, during the said respective terms for which he shall be subject and liable to prosecution as aforesaid, then such indictment shall or may be brought or exhibited against such person at any period within a similar space of time during which he shall be an inhabitant of, or usually resident within this state: *And provided also*, That indictments for misdemeanors committed by any officer of a bank, or other corporation, may be commenced and prosecuted at any time within six years from the time the alleged offence shall have been committed.(d) Limitation of prosecutions.

78. All fines imposed upon any party, by any court of criminal jurisdiction, shall be decreed to be paid to the commonwealth; but the same shall be collected and received, Fines to be decreed to be paid to the state, for the use of the county. for the use of the respective counties in which such fines shall have been imposed as aforesaid, as is now directed by law.(e)

76. Act 31 March 1860, § 76. P. L. 450.

77. *Ibid.* § 77.

78. *Ibid.* § 78.

(a) This section is taken from the act of 10th April 1834, P. L. 254. Report on the Penal Code 55.

(b) The finding of an informal presentment is not sufficient to take the case out of the statute. 1 Cranch C. C. 485. Nor will a former indictment, on which a nolle prosequi was entered. 3 McLean, 469.

(c) The limitation need not be specially pleaded; it may be taken advantage of on the general issue. 4 C. 259. See 3 Cranch C. C. 442. 5 Cranch C. C. 38, 60, 368.

(d) This section considerably extends the existing laws relating to the limitation of criminal prosecutions; these only relate to misdemeanors, in all of which, prosecutions must be commenced within two years, if the alleged offender is accessible to justice, except in forgeries, perjuries and misdemeanors by bank officers, the limitations in the latter cases being six years; the present section extends the principle to all crimes, murder and voluntary manslaughter excepted. Where the alleged offender is accessible to justice, prosecutions should not be unnecessarily delayed; such delays do not often take place from worthy motives; charges are often kept suspended over the heads of the accused to subvert the ends of the accuser, and the accused kept in a state of moral slavery, to which no human being should be subjected; it is true, that stale prosecutions are

looked upon with an unfavorable eye by courts and juries, but the very existence of this feeling in criminal tribunals is a strong argument in itself in favor of reasonable limitations in criminal prosecutions. In the more serious class of felonies and misdemeanors, the limitation has been extended to five years; in those of less malignity, the limitation of two years has been adopted. The existing laws on this subject are the 1st section of the act of 10th April 1848, P. L. 428; the 7th section of the act of 16th April 1849, P. L. 664; the 36th section of the act of 25th April 1850, P. L. 575; the act of 10th March 1852, P. L. 124; and the act of 24th April 1857, P. L. 305. The act of 1852, which provides for a general limitation of two years in all cases of misdemeanors, forgeries and perjuries excepted, may be regarded as having repealed all antecedent laws; the act of 1857, though purporting by its title to be a repeal of the act of 1852, is only a modification thereof, extending the limitation in cases of prosecutions for misdemeanors of bank or other corporation officers to five years. Report on the Penal Code 55.

(e) This section is a re-enactment of the existing law, and is introduced here for the purpose of giving more completeness to the code. Report on the Penal Code 55.

## Cumberland Road.

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| <ol style="list-style-type: none"> <li>1. Road accepted from the United States.</li> <li>2. Appointment of superintendents. Term. Vacancies, how filled. Oath of office. Bond.</li> <li>3. Superintendent in Fayette and Somerset counties.</li> <li>4. Powers of the superintendents.</li> <li>5. Compensation. Accounts.</li> <li>6. Toll-gates to be erected. Tolls. May be commuted. Certain parties not to be charged toll.</li> <li>7. When tolls may be increased. How payment may be enforced.</li> <li>8. Rates of toll increased. Exemptions.</li> <li>9. Suits for collection of tolls. Plea of non-joinder not to be received. Vehicles may be detained till tolls be paid.</li> <li>10. Drivers to report number of passengers. Penalty for neglect.</li> <li>11. Book of entries to be evidence of unpaid tolls.</li> <li>12. Estimates to be made of tolls, not reported. Commutations. Evidence.</li> <li>13. Penalty for fraudulent evasion of toll.</li> <li>14. Commissioners to establish rules. Subject to approval of</li> </ol> | <ol style="list-style-type: none"> <li>the courts.</li> <li>15. Tolls to be collected although no gates be passed. To be collected by action.</li> <li>16. Location of gates may be changed. Rates of toll may be raised in certain cases.</li> <li>17. Toll-gatherers to be appointed; who shall account quarterly. Commissioners to render annual accounts, on oath.</li> <li>18. Tolls to be applied to preservation of road. Limitation of power to increase tolls.</li> <li>19. Directors to be set up. Penalty for violation.</li> <li>20. Penalty for delaying travellers, or demanding excessive tolls.</li> <li>21. Penalty for injuring or obstructing road.</li> <li>22. Toll-gatherers to keep accounts.</li> <li>23. How penalties recoverable.</li> <li>24. Penalty for driving rough-shod, &amp;c.</li> <li>25. Culverts to be constructed along the road.</li> <li>26. Payment of salaries and expenses. Repairs of road.</li> <li>27. When proceeds may be applied to payment of creditors.</li> </ol> |
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Road accept- 1. The surrender by the United States of so much of the Cumberland road as lies ed from U. S. within the state of Pennsylvania, is hereby accepted by this state; and the commissioners to be appointed under this act are authorized to erect toll-gates on the whole or any part of said road, at such times as they may deem it expedient and proper to do so.

Appoint- 2. At the first session happening after the passage of this act, it shall be the duty of ment of superintend- the court of quarter sessions of Washington county to appoint a suitable person to be ents. superintendent of that section of the Cumberland road within this commonwealth which lies between the Monongahela river and the Virginia state line; [and it shall also be the duty of the court of quarter sessions of Fayette county, at the first session of the said court happening after the passage of this act, to appoint a suitable person to be superintendent of that section of the Cumberland road within this commonwealth which lies between the Monongahela river and the Maryland state line;] (a) which appointments shall severally continue for two years, if they shall discharge the duties hereinafter prescribed in a proper manner; and in case of the death, resignation or removal, the vacancy shall be filled by the same courts of the proper county: The said superintendents shall be sworn, in open court, to discharge the duties of their trust with honesty and fidelity; and shall, before entering upon the duties of their respective trusts, give bond, in such sum and with such security as the said respective courts may deem sufficient; the bonds to be given in the name of the commonwealth, and shall be conditioned for the faithful discharge of their trust in all things.

Term. 3. The governor of this commonwealth shall appoint one person to be superintendent of Superintend- said road, in Fayette and Somerset counties, for the term of two years from the date of ent in Fayette and Somerset counties. said appointment, at a salary not exceeding two hundred dollars per annum, to be paid out of the tolls collected upon said road, whose duties shall be those of superintendent of said road, as now directed by the law of this commonwealth, authorizing the court of Fayette county to appoint a superintendent, approved the 22d day of April 1856.

Powers of the superintendents. 4. Each of the said superintendents so appointed, shall have over their respective sections of said road all the powers heretofore conferred upon commissioners of said road, and all the powers conferred upon superintendents by the fourth section of the act to which this is a supplement, (b) and also all the powers which have heretofore been conferred upon trustees authorized to be appointed for said road.

Compensation. 5. For compensation, the said superintendents shall each receive a certain per centage of the gross revenues of their respective sections, which per centage shall be ascertained and allowed by the court, at the end of each year; at which time it shall be the duty of the said superintendents to make a full and just exhibit of the receipts and expenditures on their respective sections, to the court from which he received his appointment; which accounts, before they are certified, shall receive the consideration and examination of the court, and for this purpose the court may appoint an auditor, if necessary.

Accounts. 6. For the purpose of keeping so much of the said road in repair as lies within the Toll-gates to be erected. state of Pennsylvania, and paying the expenses of collection and other incidental expenses, the commissioners shall cause to be erected on so much of the said road as passes within this state, at least six gates; and as soon as said gates and toll-houses shall be erected, it shall be the duty of the toll-collectors, and they are hereby required to demand and receive for passing the said gates, the tolls hereafter mentioned; and they may stop any person riding, leading or driving any horse, cattle, sulky, chair, phaeton,

1. Act 1 April 1835, § 3. P. L. 102.      3. Act 1 May 1861, § 1. P. L. 678.      5. *Ibid.* 3.  
 2. Act 22 April 1856, § 1. P. L. 523.      4. Act 22 April 1856, § 2. P. L. 523.      6. Act 4 April 1831, § 2. P. L. 419.

(a) See *infra* 3.

(b) See act 8 April 1848. P. L. 395-7 Add. 103

shall be responsible for the payment of the expenses of his retention in jail.

*Rewards for the Apprehension of Escaped Prisoners.  
Act of February 1, 1860.*

SECTION 1. When any person shall make his escape from any county of this Territory after having been sentenced by the court to suffer any penalty, it shall be the duty of the court to inform immediately the governor thereof, giving a description of such fugitive.

§ 2. The governor is hereby authorized to offer a reward, to be paid out of the funds of the Territory, to any person who shall find and deliver such fugitive: *Provided*, that such reward shall be at the will of the governor.

*Reward for Accused Persons. Act of 1874, Ch. 12.*

SECTION 1. In cases of murder or other felony, when the person or persons accused of the crime shall be at large, the governor, when in his judgment it shall be necessary to secure the apprehension of the accused, shall be authorized to issue his proclamation offering a reward, not exceeding five hundred dollars, for the apprehension and delivery of the accused to the proper office.

§ 2. The auditor of public accounts is hereby authorized to draw a warrant on the treasury of the Territory, in favor of the person entitled to a reward, under the provisions of the preceding section, for the amount thereof, upon the presentation by such person of his account certified and approved by the governor.

*Deadly Weapons. Act of 1869, Ch. 32*

SECTION 1. It shall be unlawful for any person to carry deadly weapons, either concealed or otherwise, on or about their persons within any of the settlements of this Territory, except it be in the lawful defense of themselves, their families or their property, and the same being then and there threatened with danger, or by order of legal authority, or on their own landed property, or in execution of an order of court.

§ 2. Deadly weapons, in the meaning of this act, shall be construed to mean all kinds and classes of pistols,

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whether the same be a revolver, derringer, repeater, or any other kind or class of pistol; any and all kinds of bowie knives, daggers, poniards, butcher knives, dirk knives and all such weapons with which cuts can be given or by which wounds can be inflicted by thrusting, including sword canes and such sharp-pointed canes with which deadly thrusts can be given, and all kinds of slung-shots, and any other kinds of deadly weapon, by whatever name it may be called, by which a dangerous wound can be inflicted.

§ 3. The penalty for the violation of the preceding sections of this act shall not be less than ten dollars nor more than fifty dollars for each offense, or not less than ten days' imprisonment nor more than fifty days' imprisonment in the county jail, or both; such fine and imprisonment in the discretion of the jury trying the case.

§ 4. Any person who shall draw a deadly weapon on another, or who shall handle a deadly weapon in a threatening manner at or towards another, in any part of this Territory, except in the lawful defense of himself, his family, or his property, or by order of legal authority, upon conviction thereof before the proper tribunal, shall, for each offense, be fined in a sum not less than twenty-five dollars nor more than seventy-five dollars, or by imprisonment in the county jail for a term of not less than twenty days or more than sixty days, or be punished by both such fine and imprisonment, in the discretion of the jury trying the cause.

§ 5. Any person who shall draw or use any deadly weapon in any ball, dance, or other public gathering of the people, or near where any election authorized by law is being held in any part of the Territory, except it be in the lawful defense of himself, his family, or his property, or in obedience to legal authority, shall, upon conviction before the proper tribunal, be punished by a fine not less than fifty dollars nor more than one hundred dollars for each offense, or by imprisonment in the county jail for a term of not less than one month nor more than three months for each offense, or by both such fine and imprisonment, in the discretion of the jury trying the cause.

§ 6. Justices of the peace, as well as the District Court, shall have jurisdiction of all offenses under the preceding sections of this act; and in all cases of prosecution under this act, in which a plea of guilty shall be entered, the court shall proceed to hear and determine the case, and

shall assess the penalty, upon conviction, without the intervention of a jury, unless the accused shall demand a trial by jury. [As amended, 1876, Ch. 35.]

§ 7. A conviction of any person under this act shall not be a bar to a prosecution and conviction of the same person for an assault and battery, aggravated assault, assault with a deadly weapon, assault with intent to kill, or murder, manslaughter, or other crime, and where the words "weapons" or "deadly weapons" are used in this act, such word or words shall be construed to mean the weapons described in section two of this act.

§ 8. It shall not be necessary, in the trial of any cause arising under the provisions of this act, to prove that the person charged was not in the lawful defense of himself, his family or his property; but the accused must prove to the satisfaction of the jury that the act charged was done in the lawful defense of himself, his family, or his property, before the jury can acquit.

§ 9. Any lawful voter of the Territory may without a warrant arrest parties who may violate the preceding sections of this act, and take such persons before a justice of the peace of the county in which the offense was committed, for complaint and trial, and such trial shall be had as soon as possible, giving due time for summoning witnesses.

§ 10. All fines collected by virtue of the preceding sections of this act shall go, one-third to the Territory, one-third to the county in which the offense was committed, and one-third to the person or attorney who, on the part of the Territory, procured the conviction.

§ 11. Persons traveling may be permitted to carry arms within settlements or towns of this Territory, for one hour after arriving in such settlements or town, and while going out of such towns or settlements; and sheriffs and constables of the various counties of this Territory and their lawfully appointed deputies may carry weapons in the legal discharge of the duties of their respective office, when the same may be necessary, but it shall be for the jury to decide from the evidence whether such carrying of weapons was necessary or not, and for an improper carrying or using deadly weapons by any officer mentioned in this section, he shall be punished as other persons are punished for a violation of the preceding sections of this act.

§ 12. It shall be the duty of the keeper of each and

STATUTES AT LARGE

A. D. 1870. } dred dollars, and one per cent. for all sums over that amount ; for search for each paper, fifteen cents ; for certificate and seal, fifty cents ; for copying papers on file in office, per copy sheet of one hundred words, twenty-five cents ; for final discharge of executor, administrator or guardian, two dollars ; for proceedings in dower, inclusive of all charges, twenty dollars ; for proceedings in lunacy, inclusive, five dollars.  
 Approved March 1, 1870.

No. 287. AN ACT TO INCORPORATE THE COOPERS' TRADES-UNION, OF CHARLESTON.

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That A. R. Mitchell, A. F. Gregorie, Edward Jones, James Chapman, and such other persons as may now, or hereafter shall be, associated with them, are hereby made and declared to be a body politic and corporate by the name and style of the Coopers' Trades-Union, of Charleston.

SEC. 2. That said Coopers' Trades-Union, of Charleston, shall have succession of officers and members according to its by-laws, and shall have power to make by-laws, not repugnant to the laws of the land, and to have, use and keep a common seal, and the same to alter at will, to sue and be sued, plead and be impleaded, in any Court in this State. It is hereby empowered to retain, possess, and enjoy all such property, real and personal, as it may possess or be entitled to, or which shall hereafter be given, bequeathed to, or in any manner acquired by it, and to sell, alien, or transfer the same.

Powers and privileges.

SEC. 3. That this Act shall be a public Act, and continue in force for the term of twelve years from the date of its ratification.

Approved March 1, 1870.

No. 288. AN ACT TO DEFINE THE CRIMINAL JURISDICTION OF TRIAL JUSTICES.

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That Trial Justices shall have and exercise within their respective Counties all the powers, authority and jurisdiction, in criminal cases, hereinafter set forth.

Penalties not exceeding \$100.

SEC. 2. Trial Justices shall have jurisdiction of all offences which may be subject to the penalties of either fine or forfeiture not exceeding one hundred dollars, or imprisonment in the Jail or Work House not exceeding thirty days, and may impose any sentence within those limits, singly or in the alternative.

Assault and battery.

SEC. 3. They may punish by fine not exceeding one hundred dollars, or imprisonment in the Jail or House of Correction not exceeding thirty days, all assault and batteries, and other breaches of the peace, when the offence is not of a high and aggravated nature, requiring, in their judgment, greater punishment.

Rioters, &c.

SEC. 4. They may cause to be arrested all affrayers, rioters, disturbers

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and breakers of the peace, and all who go armed offensively, to the terror of the people, and such as utter menaces or threatening speeches, or otherwise dangerous and disorderly persons.

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Persons arrested for any of said offences shall be examined by the Trial Justice before whom they are brought, and may be tried before him, and, if found guilty, may be required to find sureties of the peace, and be punished within the limits prescribed in Section 2, or, when the offence is of a high and aggravated nature, they may be committed or bound over for trial before the Court of General Sessions.

Sureties.

SEC. 5. They shall have jurisdiction of larcenies, by stealing of the property of another, of money, goods or chattels, or any bank note, bond, promissory note, bill of exchange, or other bill, order or certificate; or any book of accounts for or concerning money or goods due, or to become due, or to be delivered; or any deed or writing containing a conveyance of land or any other valuable contract in force; or any receipt, release or defeasance; or any writ, process or public record, if the property stolen does not exceed twenty dollars in value.

Larceny.

SEC. 6. They shall have jurisdiction of the offences of buying, receiving or aiding in the concealment of stolen goods or other property, where they would have jurisdiction of the larceny of the same goods or property.

Stolen Goods.

SEC. 7. They shall have jurisdiction of the offences of obtaining property by any false pretence, or by any privy or false token, or by any game, device, slight of hand, pretensions to fortune telling, trick or other means, by the use of cards or other implements or instruments, where they would have jurisdiction of a larceny of the same property, and may punish said offences the same as larceny.

False pretence.

SEC. 8. They shall cause to be arrested all persons, found within their Counties, charged with any offence, and persons who, after committing any offence within the County, escape out of the same; examine into treasons, felonies, grand larcenies, high crimes and misdemeanors; and commit or bind over for trial those who appear to be guilty of crimes or offences not within their jurisdiction, and punish those guilty of such offences within their jurisdiction.

SEC. 9. All proceedings before Trial Justices, in criminal cases, shall be commenced on information, under oath, plainly and substantially setting forth the offence charged, upon which, and only which, shall a warrant of arrest issue.

When proceedings to commence.

The information may be amended at any time before trial.

All proceedings before Trial Justices shall be summary, or with only such delay as a fair and just examination of the case requires.

SEC. 10. Every person arrested and brought before a Trial Justice charged with an offence within his jurisdiction, shall be entitled, on demand, to a trial by jury, to be selected in the manner indicated by Section 6 of the Act entitled "An Act to provide for the temporary appointment of Magistrates, and to define their powers and duties," ratified 24th day of September, A. D. 1868.

Trial by Jury.

SEC. 11. Trial Justices are authorized to issue all necessary processes to carry their powers into effect, and may exercise all the powers heretofore conferred by law upon Magistrates.

SEC. 12. Every person convicted before a Trial Justice of any offence whatever, and sentenced, may appeal from the sentence to the next term

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of the Court of General Sessions for the County. The appellant shall be committed, to abide the sentence of said Court, until he recognizes to the State in such reasonable sum, and with such sureties, as the Court requires, with condition to appear at the Court appealed to, and at any subsequent term to which the case is continued, if not previously surrendered and discharged, and so, from term to term, until the final decree, sentence or order of the Court thereon; and to abide such final sentence, order or decree, and not depart without leave; and, in the meantime, to keep the peace, and be of good behavior.

SEC. 13. All Acts and parts of Acts inconsistent or supplied by this Act are hereby repealed.

Approved March 1, 1870.

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No. 289. AN ACT TO AUTHORIZE TRUSTEES TO INVEST FUNDS IN THE BONDS OF THE STATE OF SOUTH CAROLINA.

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That Guardians, Trustees, Administrators, Executors, Probate Judges, and Clerks of Courts, and all other persons holding funds in trust for investment, are hereby authorized to invest the same in bonds of the State of South Carolina. And they are hereby relieved from all responsibility for said investment, except for the safe keeping of the bonds: Provided, That as to officers of the Court, there be no order of the Court directing a different investment.

Approved March 1, 1870.

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No. 290. AN ACT TO FIX THE PER DIEM AND MILEAGE OF THE MEMBERS OF THE GENERAL ASSEMBLY.

*Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That the members of the next General Assembly shall receive the same mileage and per diem as now allowed the members of the present General Assembly by the provisions of the Constitution of this State, as ratified by the people on the 14th, 15th and 16th days of April, 1868.

Approved March 1, 1870.

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No. 291. AN ACT TO INCORPORATE THE COMET LIGHT INFANTRY, AND THE RANDOLPH RIFLEMEN, BOTH OF THE CITY OF CHARLESTON, AND, ALSO, THE LINCOLN GUARDS, OF SAINT STEPHENS, AND THE SANTEE NATIONAL GUARDS.

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That Samuel Dickerson, P. L.

for the like offense, he shall be sentenced to be confined in the penitentiary for one year.

Id. § 28.  
1 Va. Cas. 151-2.

26. When any person is convicted of two or more offenses, before sentence is pronounced for either, the confinement to which he may be sentenced upon the second, or any subsequent conviction, shall commence at the termination of the previous terms of confinement.

Code Va., p. 815,  
§ 29.  
10 Gratt. 755.

27. When a person is convicted of selling, or offering or exposing for sale, at retail, spirituous liquors, wine, porter, ale, or beer, or drink of like nature, and it is alleged in the indictment or presentment on which he is convicted, and admitted, or by the jury found, that he has been before convicted of the like offense, he shall be fined as provided in the third section of chapter thirty-two, and may, at the discretion of the court, be confined in jail not exceeding six months.

Acts of 1868, p.  
124, ch. 149, § 1.

28. No criminal prosecution for any felony or misdemeanor shall be maintained in the courts of this state against any person for any act done in the suppression of the late rebellion; and it shall be a sufficient defense to such prosecution, to show that such act was done in obedience to the orders, or by the authority, of any civil or military officer of this state, or of the re-organized government of Virginia, or of the government of the United States; or that said act was done in aid of the purposes and policy of said authorities, in retarding, checking, and suppressing the said rebellion.

## CHAPTER CLIII.

### FOR PREVENTING THE COMMISSION OF CRIMES.

- SEC.
1. Conservators of the peace; power to bind to good behavior.
  2. } Duty of, on complaint that a crime is in-
  3. } tended.
  4. } Proceedings when accused appears.
  5. } Right of accused to appeal.
  6. } Power of court upon such appeal, and when
  7. } the accused is committed.

- SEC.
8. Person going armed with deadly weapon, when required to give recognizance, etc.
  9. Affray, etc., in the presence of constable.
  10. In presence of justice; duty of justice where person brought before him, etc.
  11. Proceedings where person suspected of unlawful retailing of spirituous liquors.

Code of Va., p.  
817, § 1.  
Const. art. 7, § 9.  
Acts of 1863, p.  
234, ch. 132, § 1.

1. Every justice and constable shall be a conservator of the peace, within his county. As such conservator, every justice shall have power to require from persons not of good fame, security for their good behavior for a term not exceeding one year.

Code Va., p. 817,  
§ 2.

2. If complaint be made to any justice, as such conservator, that there is good cause to fear that a person intends to commit an offense against the person or property of another, he shall examine on oath the complainant, and any witnesses who may be produced, reduce the complaint to writing, and cause it to be signed by the complainant.

Id. p. 818, § 3.  
Munf. 453.

3. If it appear proper, such justice shall issue a warrant, reciting the complaint, and requiring the person complained of forthwith to be apprehended and brought before him or some other justice.

4. When such person appears, if the justice, on hearing the parties, consider that there is not good cause for the complaint, he shall discharge the said person, and may give judgment in his favor against the complainant for his costs. If he consider that there is good cause therefor, he may require a recognizance of the person against whom it is, and give judgment against him for the costs of the prosecution, or any part thereof; and, unless such recognizance be given, he shall commit him to jail, by a warrant, stating the sum and time in and for which the recognizance is directed. The justice giving judgment under this section for costs may issue a writ of fieri facias thereon, if an appeal be not allowed; and proceedings thereupon may be according to the two hundred and twenty-seventh section of chapter fifty.

5. A person from whom such recognizance is required may, on giving it, appeal to the circuit court of the county; and in such case the officer from whose judgment the appeal is taken shall recognize such of the witnesses as he thinks proper.

6. The court may dismiss the complaint, or affirm the judgment, and make what order it sees fit as to the costs. If it award costs against the appellant, the recognizance which he may have given shall stand as a security therefor. When there is a failure to prosecute the appeal, such recognizance shall remain in force, although there be no order of affirmance. On any appeal the court may require of the appellant a new recognizance, if it see fit.

7. Any person committed to jail under this chapter may be discharged by the circuit court, or the judge thereof in vacation, upon such terms as may be deemed reasonable.

8. If any person go armed with a deadly or dangerous weapon, without reasonable cause to fear violence to his person, family, or property, he may be required to give a recognizance, with the right of appeal, as before provided, and like proceedings shall be had on such appeal.

9. If any person shall, in the presence of a constable and within his county, make an affray, or threaten to beat, wound, or kill another, or to commit violence against his person or property; or contend with angry words to the disturbance of the peace; or improperly or indecently expose his person; or appear in a state of gross intoxication in a public place; such constable, as such conservator, may, without warrant or other process, or further proof, arrest such offending person and carry him before some justice of the township in which such offense is committed, who, upon hearing the testimony of such constable and other witnesses, if any are then and there produced, if, in his opinion the offense charged be proved, shall require the offender to give a bond or recognizance, with security, to keep the peace and be of good behavior for a term not exceeding one year.

10. If any offense enumerated in the preceding section be com-

mitted in the presence of a justice within his county, or the offender being brought before him, the commission thereof be proved to his satisfaction, he may, besides requiring a bond or recognizance with security, as provided in the preceding section, impose a fine upon the offender not exceeding five dollars. If such bond or recognizance be not then and there given, or such fine be not then and there paid, the said justice shall commit the offender to the jail of his county, there to remain until such bond or recognizance be given, and such fine be paid; but no imprisonment under this section shall continue more than ten days, at the end of which the sheriff or jailor shall discharge the prisoner, unless he has been commanded by sufficient authority to detain him for some other cause.

Code of Va., p.  
818, § 10.  
Acts of 1865, p.  
57, ch. 61.

11. If any justice suspect any person of selling, by retail, wine, or ardent spirits, or a mixture thereof, contrary to law; or of selling, or offering or exposing for sale, any intoxicating liquor, or keeping open any distillery, bar, office, stall, or room in his possession, or under his control, at which such liquor had theretofore usually been sold, or permitting any person to drink any intoxicating liquor at the same, on the day of an election, and within two miles of the place of such election, or during the night succeeding such day, contrary to the eleventh section of chapter five, such justice shall summon the person suspected of such offense, and such witnesses as he may think proper, to appear before him; and upon the person so suspected appearing, or failing to appear, if the justice, on examining the witnesses under oath, find sufficient cause, he shall direct the prosecuting attorney for the county to institute a prosecution against the person so suspected, and shall recognize the material witnesses, or cause them to be summoned, to appear at the next term of the circuit court of the county. Such justice may also require the person suspected to enter into recognizance to keep the peace and be of good behavior for a time not exceeding one year. If recognizance be given by the person so suspected, the condition thereof shall be deemed to be broken, if during the time for which it is given, such person shall sell, by retail, wine, or ardent spirits, or a mixture thereof, contrary to law, or violate in any particular the eleventh section of chapter five.

## CHAPTER CLIV.

### OF INQUESTS UPON DEAD BODIES.

SEC.

1. Duty of justice upon being notified of death by violence, etc.
2. Warrant and summons, how executed.
3. Jury formed; their oath.
4. How witnesses compelled to attend; how evidence taken.
5. Inquisition.
6. Inquisition, evidence, etc., returned; witnesses recognized.

SEC.

7. Justice to issue warrant for the arrest of accused, if not in custody.
8. When deceased a stranger, body to be buried, etc.; costs, how paid.
9. Justice may require physicians to attend inquest.
10. Penalty on justice for neglect of duty.
11. Inquest may be taken on Sunday.

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days' imprisonment. jail nor less than one day nor more than ten days, or both, in the discretion of the court or jury before whom the trial is had.

AN ACT REGULATING THE RIGHT TO KEEP AND BEAR ARMS.

12 Aug., 1870; took effect 12 Oct., 1870. Vol. 21, part 1, p. 63. Persons not to bear arms at public assemblies. Social intercourse and elections not to be made dangerous.

ART. 6511. [1] If any person shall go into any church or religious assembly, any school-room or other place where persons are assembled for educational, literary, or scientific purposes, or into a ball room, social party, or other social gathering, composed of ladies and gentlemen, or to any election precinct on the day or days of any election, where any portion of the people of this state are collected to vote at any election, or to any other place where people may be assembled to muster or to perform any other public duty, or any other public assembly, and shall have about his person a bowie-knife, dirk, or butcher-knife, or firearms, whether known as a six-shooter, gun, or pistol of any kind, such person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than fifty or more than five hundred dollars, at the discretion of the court or jury trying the same: *Provided*, That nothing contained in this section shall apply to locations subject to Indian depredations: *And provided further*, That this act shall not apply to any person or persons whose duty it is to bear arms on such occasions in discharge of duties imposed by law.

Art. 6512.

Kinds of weapons prohibited.

Fine \$50 to \$500. Notes, 111, 167.

Scalp-lifting country excepted.

Armed officials.

AN ACT TO REGULATE THE KEEPING AND BEARING OF DEADLY WEAPONS.

12 April, 1871; took effect 12 June, 1871. Vol. 21, part 2, p. 25. Carrying arms a misdemeanor, punishable by fine and forfeiture, unless, &c. Patriots and militiamen excepted. Art. 6511.

ART. 6512. [1] Any person carrying on or about his person, saddle, or in his saddle-bags, any pistol, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife, or any other kind of knife manufactured or sold for the purpose of offense or defense, unless he has reasonable grounds for fearing an unlawful attack on his person, and that such ground of attack shall be immediate and pressing; or unless having or carrying the same on or about his person for the lawful defense of the state, as a militiaman in actual service, or as a peace officer or policeman, shall be guilty of a misdemeanor, and, on conviction thereof, shall, for the first offense, be punished by fine of not less than twenty-five nor more than one hundred dollars, and shall forfeit to the county the weapon or weapons so found on or about his person; and for every subsequent offense may, in addition to such fine and forfeiture, be imprisoned in the county jail for a term not exceeding sixty days; and in every case of fine under this section the fines imposed and collected shall go into the treasury of the county in which they may have been imposed: *Provided*, That this section shall not be so construed as to prohibit any person from keeping or bearing arms on his or her own premises, or at his or her own place of business, nor to prohibit sheriffs or other revenue officers, and other civil officers, from keeping or bearing arms while engaged in the discharge of their official duties, nor to prohibit persons traveling in the state from keeping or carrying arms with their baggage: *Provided further*, That members of the legislature shall not be included under the term "civil officers" as used in this act.

Fine \$25 to \$100 for first offense.

Imprisonment for second offense. Notes 111, 167.

People at home and officials excepted.

Legislators not "civil officers."

Art. 6512. Justification must be immedi-

ART. 6513. [2] Any person charged under the first section of this act, who may offer to prove, by way of defense, that he was

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in danger of an attack on his person, or unlawful interference with his property, shall be required to show that such danger was immediate and pressing, and was of such a nature as to alarm a person of ordinary courage; and that the weapon so carried was borne openly and not concealed beneath the clothing; and if it shall appear that this danger had its origin in a difficulty first commenced by the accused, it shall not be considered as a legal defense.

ate and pressing danger;

and weapon not concealed.

Impending danger.

ART. 6514. [3] If any person shall go into any church or religious assembly, any school-room, or other place where persons are assembled for amusement, or for educational or scientific purposes, or into any circus, show, or public exhibition of any kind, or into a ball-room, social party, or social gathering, or to any election precinct on the day or days of any election, where any portion of the people of this state are collected to vote at any election, or to any other place where people may be assembled to muster, or to perform any other public duty, (except as may be required or permitted by law,) or to any other public assembly, and shall have or carry about his person a pistol, or other firearm, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife, or any other kind of knife manufactured and sold for the purposes of offense and defense, unless an officer of the peace, he shall be guilty of a misdemeanor, and, on conviction thereof, shall, for the first offense, be punished by a fine of not less than fifty, nor more than five hundred dollars, and shall forfeit to the county the weapon or weapons so found on his person; and for every subsequent offense may, in addition to such fine and forfeiture, be imprisoned in the county jail for a term of not more than ninety days.

Attending public meetings armed an offense to be punished in like manner. Society protected and attempted civilization.

Character of arms prohibited.

Fine \$50 to \$100 for first offense, and imprisonment for perseverance.

ART. 6515. [4] This act shall not apply to nor be enforced in any county of the state which may be designated in a proclamation of the governor as a frontier county, and liable to incursions of hostile Indians.

Governor may exempt frontier counties by proclamation.

ART. 6516. [5] All fines collected under the provisions of this act shall be paid into the treasury of the county, and appropriated exclusively to the keeping in repair and maintenance of public roads, and all weapons forfeited to the county under the provisions of this act shall be sold as may be prescribed by the county court, and the proceeds appropriated to the same purpose.

Art. 6517. All fines under this act must be paid into county treasury.

ART. 6517. [6] It shall be the duty of all sheriffs, constables, marshals, and their deputies, and all policemen and other peace officers, to arrest any person violating the first or third sections of this act, and to take such person immediately before a justice of the peace of the county where the offense is committed, or before a mayor or recorder of the town or city in which the offense is committed, who shall investigate and try the case without delay. On all such trials the accused shall have the right of a trial by jury, and of appeal to the district court; but, in case of appeal, the accused shall be required to give bond, with two or more good and sufficient sureties, in a sum of not less than one hundred, nor more than two hundred dollars, if convicted under the first section, and in a sum of not less than two hundred, nor more than one thousand dollars, if convicted under the third section of this act; said bond to be payable to the state of Texas, and approved by the magistrate, and conditioned that the defendant will abide the judgment of the district court that may be rendered

Peace officers to arrest offenders, &c.

Jury trial and appeal allowed. Appeal bond.

Payable to State.

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Forfeiture.

in the case; and in case of forfeiture the proceedings thereon shall be as is or may be prescribed by law in similar cases; and all moneys collected on any bond or judgment upon the same, shall be paid over and appropriated as provided in the fifth section of this act.

Art. 6516.

Art. 6517.  
Officer failing to arrest to be discharged.  
Arts. 6512, 6514.

ART. 6518. [7] Any officer named in the sixth section of this act who shall refuse or fail to arrest any person whom he is required to arrest by said section on his own information, or where knowledge is conveyed to him of any violation of the first or third sections of this act, shall be dismissed from his office on conviction in the district court, on indictment or information, or by such other proceedings or tribunal as may be provided by law, and, in addition, shall be fined in any sum not exceeding five hundred dollars, at the discretion of the court or jury.

And fined not more than \$500.

District courts to have concurrent jurisdiction.

ART. 6519. [8] The district courts shall have concurrent jurisdiction under this act, and it is hereby made the duty of the several judges of the district courts of this state to give this act especially in charge to the grand juries of their respective counties.

Governor to publish the act.

ART. 6520. [9] It is hereby made the duty of the governor to publish this act throughout the state; and this act shall take effect and be in force from and after the expiration of sixty days after its passage.

TITLE XIII.—OF OFFENSES AGAINST PUBLIC POLICY AND ECONOMY.

Arts. 2035-2038.

CHAPTER I.—ILLEGAL BANKING AND PASSING SPURIOUS MONEY.

2 Dec., 1871; took effect from passage. Vol. 21, part 3, p. 82.  
Officers to publish semi-annual returns; punishment for failure.  
Arts. 5932-6011.

AN ACT CONCERNING PRIVATE CORPORATIONS.

ART. 6521. [79] Every such corporation shall semi-annually, in the months of July and January, publish in one or more newspapers in the county where such corporation shall have its place of business, a statement, verified by the oath of its president or secretary, setting forth its actual financial condition, and the amount of its property and liabilities, under a penalty of five hundred dollars to the state, to be recovered by indictment against the president, cashier, or directors, and shall also deposit a copy of said statement, verified as aforesaid, in the office of the secretary of state.

How recovered.

Arts. 2043.

CHAPTER III.—OF SELLING TO INDIANS.

31 Aug., 1866.  
Art. 6347 for caption.  
Selling liquor to Indians.

ART. 6522. [408] If any person shall give or barter, or cause to be sold, given, or bartered, any ardent spirits, or any spirituous or intoxicating liquors, or firearms, or ammunition, to any Indian of the wild or unfriendly tribes, he shall be fined not less than ten nor more than one hundred dollars. Justices of the peace and mayors shall have jurisdiction under this article.

Who may punish.

CHAPTER IV.—GAMING.

11 May, 1871; took effect from passage. Vol. 21, part 2, p. 84.  
Arts. 2046, 2054.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO ADOPT AND ESTABLISH A PENAL CODE FOR THE STATE OF TEXAS," APPROVED AUGUST 26, A. D. 1856, AND TO REPEAL AN ACT ENTITLED "AN ACT TO AMEND ARTICLES 412 AND 418 OF AN ACT TO ADOPT AND ESTABLISH A PENAL CODE FOR THE STATE OF TEXAS," APPROVED DECEMBER 16, A. D. 1863.

Keeping a gaming table or bank punished.

ART. 6523. [412] If any person shall keep or exhibit, for the purpose of gaming, any gaming table or bank, of any name or

or order of the magistrate, and shall also stand as a security for any costs which shall be ordered by the court appealed to, to be paid by the appellant.

SEC. 14. *Party committed, how discharged.*—Any person committed for not finding sureties or refusing to recognize as required by the court or magistrate, may be discharged by any judge or justice of the peace, on giving such security as was required.

SEC. 15. *Recognizances to be transmitted to district court.*—Every recognizance taken in pursuance of the foregoing provision shall be transmitted by the magistrate to the district court for the county, on or before the first day of the next term, and shall be there filed or recorded by the clerk.

SEC. 16. *When person may be ordered to recognize, without process.*—Any person who shall in the presence of any magistrate mentioned in the first section of this chapter, or before any court of record, make an affray or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person, who in the presence of such court or magistrate shall contend with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace, and being of good behavior, for a term not exceeding six months, and, in case of a refusal, may be committed as before directed.

SEC. 17. *Carrying dangerous weapons, how punished.*—Whoever goes armed with a dirk, dagger, sword, pistol or pistols, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury or violence to his person, or to his family or property, may, on complaint of any other person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.

SEC. 18. *Judgment on recognizance remitted, when.*—Whenever upon an action brought on any such recognizances, the penalty thereof is adjudged forfeited, the court may remit such portion of the penalty on the petition of any defendant, as the circumstances of the case render just and reasonable.

SEC. 19. *Surety in recognizance may take and surrender principal—new recognizance may be given.*—Any surety in a recognizance to keep the peace, or for good behavior, or both, has authority and right to take and surrender his principal, and upon such surrender shall be discharged and exempted from all liability for any act of the principal subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person so surrendered may recognize anew with sufficient sureties, before any justice of the peace for the residue of the term, and thereupon shall be discharged.

## CHAPTER 52.

AN ACT to Prevent the Carrying of Fire Arms and Other Deadly Weapons.

*Be it enacted by the Council and House of Representatives of the Territory of Wyoming:*

Carrying weapons within city, town or village limits, prohibited.

SECTION. 1. That hereafter it shall be unlawful for any resident of any city, town or village, or for any one not a resident of any city, town or village, in said Territory, but a sojourner therein, to bear upon his person, concealed or openly, any fire arm or other deadly weapon, within the limits of any city, town or village.

Non-resident to be first notified.

SEC. 2. That if any person not a resident of any town, city or village of Wyoming Territory, shall, after being notified of the existence of this act by a proper peace officer, continue to carry or bear upon his person any fire arm or other deadly weapon, he or she, shall be deemed to be guilty of a violation of the provisions of this act and shall be punished accordingly.

Violation of this act a misdemeanor.

SEC. 3. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than five dollars nor more than fifty dollars, and, in the default of the payment of any fine which may be assessed against him, shall be imprisoned in the county jail for not less than five days nor more than twenty days.

Penalty.

In force.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved, December 2nd, 1875.

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LAWS OF ARIZONA.

SEC. 3. This Act shall take effect from and after its passage.

Approved March 18, 1889.

No. 12.

AN ACT

Concerning the Transaction of Judicial Business on Legal Holidays.

*Be it enacted by the Legislative Assembly of the Territory of Arizona:*

SECTION 1. No Court of Justice shall be open, nor shall any Judicial business be transacted on any Legal Holiday, except for the following purposes:

1. To give, upon their request, instructions to a Jury when deliberating on their verdict.
2. To receive a verdict or discharge a Jury.
3. For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature; provided, that the Supreme Court shall always be open for the transaction of business; and provided further, that injunctions, attachments, claim and delivery and writs of prohibition may be issued and served on any day.

SEC. 2. All Acts and parts of Acts in conflict with this Act are hereby repealed.

SEC. 3. This Act shall be in force and effect from and after its passage.

Approved March 18, 1889.

No. 13.

AN ACT

Defining and Punishing Certain Offenses Against the Public Peace.

*Be it Enacted by the Legislative Assembly of the Territory of Arizona:*

SECTION 1. If any person within any settlement, town, village or city within this Territory shall carry on or about his person, saddle, or in his saddlebags, any pistol, dirk, dagger, slung shot, sword cane, spear, brass knuckles, bowie knife, or any other kind of knife manufactured or sold for purposes of offense or defense, he shall be punished by a fine of not less than twenty-five nor more than one hundred dollars; and in addition thereto, shall forfeit to the County in which he is convicted, the weapon or weapons so carried.

SEC. 2. The preceding article shall not apply to a person in actual service as a militiaman, nor as a peace officer

## CARRYING DEADLY WEAPONS.

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around the head of Panther Creek, to the divide between Hat Creek and Ellis Creek, thence on the divide between Hat and Ellis Creeks in an easterly direction to the Salmon River, thence up the main channel of said Salmon River to the place of beginning.

SEC. 2. This act to take effect and be in force, from and after its passage.

Approved February 4, 1889.

## CARRYING DEADLY WEAPONS.

## AN ACT

## REGULATING THE USE AND CARRYING OF DEADLY WEAPONS IN IDAHO TERRITORY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That it is unlawful for any person, except United States officials, officials of Idaho Territory, County officials, Peace officers, Guards of any jail, and officers or employees of any Express Company on duty, to carry, exhibit or flourish any dirk, dirk-knife, sword, sword-cane, pistol, gun or other deadly weapons, within the limits or confines of any city, town or village or in any public assembly of Idaho Territory. Every person so doing is guilty of a misdemeanor and is punishable by fine not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for a period of not less than twenty days nor more than fifty days, or by both such fine and imprisonment.

SEC. 2. One half of all fines collected under the provisions of this act shall be paid to the officer making the arrest, which amount shall be payment in full for his services. The other one half shall be paid into the Common School Fund of the county, after deducting the necessary costs of the prosecution of the case.

SEC. 3. All acts or parts of acts in conflict with this act are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved February 4, 1889.

3. If any judge or justice have notice of a riotous, tumultuous, or unlawful assembly in the county in which he resides, and fail to proceed immediately to the place of such assembly, or as near as he may safely, or fail to exercise his authority for suppressing it and arresting the offenders, he shall be fined not exceeding one hundred dollars.

4. If any person engaged in such assembly, being commanded as aforesaid to disperse, fail to do so without delay, any such judge or justice may require the aid of a sufficient number of persons, in arms or otherwise, and proceed, in such manner as he may deem expedient, to disperse and suppress such assembly, and arrest and secure those engaged in it.

5. If by any means, taken under authority of this chapter, to disperse any such assembly, or arrest and secure those engaged in it, any person present, as spectator or otherwise, be killed or wounded, any judge or justice exercising such authority, and every one acting under his order, shall be held guiltless; and if the judge or justice, or any person acting under the order of either of them, be killed or wounded in taking such means, or by the rioters, all persons engaged in such assembly shall be deemed guilty of such killing or wounding.

6. If any rioter pull down or destroy, in whole or in part, any dwelling house, or assist therein, he shall be confined in the penitentiary not less than one nor more than five years; and though no such house so be injured, every rioter, and every person unlawfully or tumultuously assembled, shall be confined in jail not more than one year and fined not exceeding one hundred dollars.

7. If a person carry about his person any revolver or other pistol, dirk, bowie knife, razor, slung shot, billy, metallic or other false knuckles, or any other dangerous or deadly weapon of like kind or character, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than two hundred dollars, and may, at the discretion of the court, be confined in jail not less than one nor more than twelve months; and if any person shall sell or furnish any such weapon as is hereinbefore mentioned to a person whom he knows, or has reason, from his appearance or otherwise, to believe to be under the age of twenty-one years, he shall be punished as hereinbefore provided; but nothing herein contained shall be so construed as to prevent any person from keeping or carrying about his dwelling house or premises, any such revolver or other pistol, or from carrying the same from the place of purchase to his dwelling house, or from his dwelling house to any place where repairing is done, to have it repaired, and back again. And if upon the trial of an indictment for carrying any such pistol, dirk, razor or bowie knife, the defendant shall prove to the satisfaction of the jury that he is a quiet and peaceable citizen, of good character and standing in the community in which he lives, and at the time he was found with such pistol, dirk, razor or bowie knife, as charged in the in-

(See Acts 1872-3,  
ch. 226, § 168.)  
Acts 1882, ch.  
135.  
7 Gratt. 597.  
34 W. Va. 74.

dictment, he had good cause to believe and did believe that he was in danger of death or great bodily harm at the hands of another person, and that he was in good faith, carrying such weapon for self-defence and for no other purpose, the jury shall find him not guilty. But nothing in this section contained shall be so construed as to prevent any officer charged with the execution of the laws of the State, from carrying a revolver or other pistol, dirk or bowie knife.

Acts 1866, p. 23.

8. If any person shall wilfully disturb, molest or interrupt any literary society, school, or society formed for intellectual improvement, or any other school or society organized under the laws of this State, or any school, society, or meeting formed or convened for improvement in music, either vocal or instrumental, or for any moral and social amusement, the person so offending shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than five dollars, and may be imprisoned in the county jail not exceeding ten days. (See ch. 149, sec. 19, of this code.)

Acts 1882, ch. 135.

9. If two or more persons under the name of "Red Men," "Regulators," "Vigilance Committee," or any other name or without a name combine or conspire together for the purpose of inflicting any punishment or bodily injury upon any other person or persons, or for the purpose of destroying, injuring, or taking and carrying away any property, real or personal, not their own, every such person, whether he has done any act in pursuance of such combination or conspiracy or not, shall be guilty of a misdemeanor and fined not less than fifty, nor more than five hundred dollars, and may, at the discretion of the court, be confined in jail not less than one nor more than twelve months.

Id.  
25 W. Va. 685.

10. If any person, in pursuance of such combination or conspiracy as is mentioned in the next preceding section, shall inflict any punishment or bodily injury upon another person, or shall destroy, injure, or take and carry away, any property, real or personal, not his own, he shall be guilty of a felony, and confined in the penitentiary not less than two nor more than ten years. And if, on the trial of an indictment under this section, it be proved that two or more persons, the defendant being one, were present, aiding and abetting in the commission of the offence charged therein, it shall be presumed that such offence was committed in pursuance of such combination or conspiracy, in the absence of satisfactory proof to the contrary. And all persons who shall be present, aiding and abetting, at the commission of any offence mentioned in this section, shall be deemed conspirators within the meaning of this, and the next preceding section.

Acts 1882, ch. 135.

11. No person called as a witness for the State on the trial of any person for an offence mentioned in either of the two next preceding sections, shall be excused from answering any question which may be asked him as such witness, and which would be otherwise legal and proper, on the ground that the answer to such question would or might degrade him, or expose him to punishment; but no such

to repeal all acts inconsistent herewith,' and acts supplementary and amendatory thereof, and to repeal all acts and parts of acts inconsistent herewith," be and the same are hereby amended so as to read as follows:

### TITLE III.

Additional  
powers of  
council.

SEC. 8. The common council in addition to the powers and duties specially conferred upon them in this act, shall have the management and control of the finances, rights and interests, and all property, real and personal, belonging to the city, and make such orders and by-laws relating to the same as they shall deem proper and necessary; and they shall have the power within said city to enact, make, continue, establish, modify, amend and repeal such ordinances, by-laws and regulations as they may deem desirable within said city, for the following purposes:

Vice.

First. To prevent vice and immorality, to preserve peace and good order, to regulate the police of the city, to prevent and quell riots, disturbances and disorderly assemblages;

Disorderly  
houses.

Second. To restrain and prevent disorderly and gaming houses, and houses of ill-fame, all instruments and devices used for gaming, and to prohibit all gaming and fraudulent devices, and regulate or restrain billiard tables and bowling alleys;

Liquors.

Third. To forbid and prevent the vending or other disposition of liquors and intoxicating drinks in violation of the laws of the State, and to forbid the selling or giving to be drunk any intoxicating liquors to any child or young person without the consent of his or her parents or guardian and to prohibit, restrain and regulate the sale of all goods, wares and personal property at auction, except in cases of sale authorized by law, and to fix the fees to be paid by and to the auctioneers;

Auctions.

Exhibitions.

Fourth. To prohibit, restrain, license and regulate all sports, exhibitions of all natural or artificial curiosities, caravans of animals, theatrical exhibitions, circuses or other public performances and exhibitions for money;

Nuisances.

Fifth. To abate or remove nuisances of every kind, and to compel the owner or occupant of any grocery, tallow-chandler shop, butcher's stall, soap factory, tannery, stable, privy, hog pen, sewer or other offensive or unwholesome house or place, to cleanse, remove or abate the same from time to time, as often as they may deem necessary for the health, comfort and convenience of the inhabitants of the city. To compel the owner, lessee or agent to remove buildings that are liable to fall by reason of being burnt, decayed or not properly erected;

Dangerous  
buildings.

Location  
of slaughter  
houses.

Sixth. To direct the location of all slaughter houses, markets and buildings for storing gunpowder or other combustible materials, and to regulate the manner of keeping the same;

Seventh. To regulate, restrain or prohibit the buying, selling, carrying and using of firearms, weapons, gunpowder, fire-crackers or fireworks, manufactured or prepared therefrom, or from other combustible material, and the exhibition of fireworks, and the discharge of firearms, and the lights in barns, stables and other buildings, and to restrain and prohibit the making of bonfires in streets, yards, alleys and other public places; Firearms, combustibles, etc.

Eighth. To prevent the encumbering of streets, sidewalks, crosswalks, lanes, alleys, bridges, aqueducts, wharves or slips in any manner whatever; Encumbering streets.

Ninth. To prevent and punish horse racing and immoderate riding or driving in any street, and to authorize the stopping and detaining of any person who shall be guilty of immoderate riding or driving in any street; and to prevent any person from leaving a horse or horses or other animal standing upon the streets of said city without being securely tied, held or fastened so as to prevent their escape; Horse racing.

Tenth. To determine and designate the routes and grades of any railroad to be laid in said city, and to regulate the use of locomotives, engines and cars upon the railroads within the city; to compel such railroads to erect and maintain safety gates at street crossings; Railroad grades, etc.

Eleventh. To regulate, restrain or prohibit bathing in any public water, and to provide for (cleansing) cleaning Saginaw river of driftwood and other obstructions; Bathing, etc.

Twelfth. To restrain and punish drunkards, vagrants, mendicants, street beggars and persons soliciting alms or subscriptions for any purpose whatever; Drunkards, vagrants, etc.

Thirteenth. To establish one or more pounds, and to restrain, regulate or prohibit the running at large of horses, cattle, swine and other animals, geese and poultry, and to authorize the impounding and sale of the same for the penalty incurred and the cost of their keeping and impounding; Pounds.

Fourteenth. To regulate or prevent the running at large of dogs; to impose taxes upon the owners of dogs and to punish dog fights and those engaged in aiding and abetting the same, in the streets and elsewhere in said city. To provide for the issuing of licenses to the owners and keepers of dogs, and to compel the owners and keepers thereof to pay for and obtain such licenses; to require them to be muzzled and to authorize the killing of dogs not licensed or running at large in violation of the ordinances of the city; and to authorize the killing of dogs impounded, which shall not be redeemed within the time prescribed by the ordinance regulating the same; Dogs.

Fifteenth. To prohibit any person from bringing and depositing within the limits of said city any dead carcass or other unwholesome or offensive substance, and to require the removal and destruction thereof, if any person shall have on his premises such substance or any putrid meats, fish, hides Carcasses, etc.

CHAP. 25] CRIMES AND PUNISHMENT.  
Art. 44-45.

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(2498) § 579. Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed by this chapter, or by some of the statutes which it specifies as continuing in force, is guilty of a misdemeanor. Extortion under color of official right.

(2499) § 580. Every person who, by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge or right of action created, is punishable in the same manner as if the actual delivery of such property or payment of the amount of such debt, demand, charge or right of action were obtained. Obtaining signature by extortion.

(2500) § 581. Every person who, with intent to extort any money or other property from another, sends to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat, such as is specified in the second section of this article, is punishable in the same manner as if such money or property were actually obtained by means of such threat. Sending threatening letter.

(2501) § 582. Every person who unsuccessfully attempts by means of any verbal threat such as is specified in the second section of this article, to extort money or other property from another is guilty of a misdemeanor. Attempting to extort money.

ARTICLE 45.—CONCEALED WEAPONS.

<p>Section. (2502) 583. Prohibited weapons enumerated. (2503) 584. Same. (2504) 585. Minors. (2505) 586. Public officials, when privileged. (2506) 587. Arms, when lawful to carry.</p>	<p>Section. (2507) 588. Degree of punishment. (2508) 589. Public buildings and gatherings. (2309) 590. Intent of persons carrying weapons. (2310) 591. Pointing weapon at another. (2511) 592. Violation of certain sections.</p>
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(2502) § 583. It shall be unlawful for any person in the Territory of Oklahoma to carry concealed on or about his person, saddle, or saddle bags, any pistol, revolver, bowie knife, dirk, dagger, slung-shot, sword, cane, spear, metal knuckles, or any other kind of knife or instrument manufactured or sold for the purpose of defense except as in this article provided. Prohibited weapons enumerated.

The provisions of the statute in reference to the crime of carrying concealed weapons are not in conflict with any constitutional provision or organic law and are therefore valid. *Walburn v. Territory*, 9 Ok., 23, 59 Pac., 972.

(2503) § 584. It shall be unlawful for any person in the Territory of Oklahoma, to carry upon or about his person any pistol, revolver, bowie knife, dirk knife, loaded cane, billy, metal knuckles, or any other offensive or defensive weapon, except as in this article provided. Same.

(2504) § 585. It shall be unlawful for any person within this Territory, to sell or give to any minor any of the arms or weapons designated in sections one and two of this article. Minors.

(2505) § 586. Public officers while in the discharge of their duties or while going from their homes to their place of duty, or returning therefrom, shall be permitted to carry arms, but at no other time and under no other circumstances: Provided, however, That if any public officer be found carrying such arms while under the influence of intoxicating drinks, he shall be deemed guilty of a violation of this article as though he were a private person. Public officials when privileged.

ACTS, 1906. — CHAPS. 172, 173.

Repeal.

SECTION 3. Chapter one hundred and eight of the acts of the year nineteen hundred and two and all other acts or parts of acts inconsistent herewith are hereby repealed.

SECTION 4. This act shall take effect upon its passage.

*Approved March 16, 1906.*

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**Chap.172** AN ACT TO REGULATE BY LICENSE THE CARRYING OF CONCEALED WEAPONS.

*Be it enacted, etc., as follows:*

Licenses may be granted for carrying concealed weapons, etc.

SECTION 1. The justice of a court, or trial justices, the board of police or mayor of a city, or the selectmen of a town, or persons authorized by them, respectively, may, upon the application of any person, issue a license to such person to carry a loaded pistol or revolver in this Commonwealth, if it appears that the applicant has good reason to fear an injury to his person or property, and that he is a suitable person to be so licensed.

Penalty for carrying concealed weapon without permission.

SECTION 2. Whoever, except as provided by the laws of this Commonwealth, carries on his person a loaded pistol or revolver, without authority or permission as provided in section one of this act, or whoever carries any stiletto, dagger, dirk-knife, slung-shot or metallic knuckles, shall upon conviction be punished by a fine of not less than ten nor more than one hundred dollars, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment. *Approved March 16, 1906.*

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**Chap.173** AN ACT TO PROVIDE FOR THE FURTHER IMPROVEMENT OF THE COMMONWEALTH'S FLATS AT SOUTH BOSTON.

*Be it enacted, etc., as follows:*

Improvement of the Commonwealth's flats at South Boston.

SECTION 1. For the purpose of enforcing and executing the provisions and requirements of existing laws relating to the Commonwealth's flats at South Boston, and for the payment of money which may be needed to carry out the provisions of chapter two hundred and thirty-nine of the acts of the year eighteen hundred and seventy-five, the sum of five hundred thousand dollars is hereby appropriated from the Commonwealth's Flats Improvement Fund, established by chapter two hundred and thirty-seven of the acts of the year eighteen hundred and seventy-eight.

SECTION 2. This act shall take effect upon its passage.

*Approved March 19, 1906.*

1909.

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To the person raising the best mule colt under six months of age, \$15.00; To the person raising the best horse colt under six months old \$15.00. To the person raising the best acre of corn \$25.00; To the person raising the best acre of wheat, \$15.00; To the person raising the best acre of oats, \$15.00; To the person raising the best acre of sweet or irish potatoes, \$10.00 each; To the person raising the best acre of hay, \$5.00.

2. It shall be the duty of the commissioner of agriculture and industries to provide rules under which the results of the contestants may be declared and awards made.

Payment au-  
thorized.

3. "That the commissioner of agriculture and industries is hereby required and authorized to pay the several prizes enumerated above out of the funds provided for the expense of the agricultural department by sections 52 and 73 of the Code of 1907."

Approved Aug. 26, 1907.

No. 215)

AN ACT

(S. 50

To regulate the right to carry a pistol in this State.

Unlawful to  
carry con-  
cealed pistol.

Section 1. Be it enacted by the Legislature of Alabama, That it shall be unlawful for any person to carry a pistol concealed about his person.

Does not apply  
to sheriff,  
etc.

Section 2. It shall be unlawful for any person to carry a pistol about his person on premises not his own or under his control, provided this section shall not apply to any sheriff or his deputy or police officer of an incorporated town or city in the lawful discharge of the duties of his office or United States Marshal or their deputies, rural free delivery mail carriers in the discharge of their duties as such or bonded constable in the discharge of their duties as such.

Violations.

Section 3. Any person violating the provisions of this act must on conviction be fined not less than fifty dollars and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than six months.

May give evi-  
dence of good  
reason.

Section 4. The defendant may give evidence that at the time of carrying the pistol he had good reason to apprehend an attack which the

jury may consider in mitigation of the fine or justification of the offense.

Section 5. In an indictment for a violation of this act, it shall be sufficient to charge that the defendant carried a pistol concealed about his person or on premises not his own or under his control and the excuse if any must be proved by the defendant on the trial, to the satisfaction of the jury.

Sufficient to charge defendant carried pistol.  
Excuse must be proved.

Section 6. All laws and parts of laws in conflict with the provisions of this act be and the same are hereby repealed.

Conflicting laws repealed.

Approved Aug. 26, 1909.

No. 217.) AN ACT (S. 7.

To authorize and empower the commissioners court, board of revenue, or other court or county officers of similar or like jurisdiction to donate or appropriate funds from the county treasury to aid in the construction or improvement of necessary buildings and the maintenance and support of those State schools known as county high schools established under the act of the Legislature approved August 7, 1907, and to ratify and confirm all appropriations heretofore made for such purposes and to repeal all laws and parts of laws in conflict therewith.

Section 1. Be it enacted by the Legislature of Alabama, That on and after the approval of this act by the governor it shall be lawful for the commissioners court, board of revenue, or other court or officers of the county of similar or like jurisdiction to donate or appropriate funds from the county treasury to aid in the construction or improvement of necessary buildings and the maintenance and support of those State schools known as county high schools, established in the several counties of the State under an act of the Legislature entitled an act "to provide for the establishment of high schools in this State, and to make appropriations for said schools," approved August 7th, 1907, such donations or appropriations to be applied to the benefits of said schools

Lawful to appropriate funds to aid in construction, etc. of county high schools.

## SPECIAL LAWS OF TEXAS.

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vocations and trades, professions or callings, which are licensed by the State of Texas or which are taxed by said State; provided, that no tax assessed on such occupation, trade, vocation, profession or calling shall be more than one-half the amount levied thereon by said State, and said commission shall have the power to prescribe penalties against all persons pursuing any occupation, vocation, trade, profession or calling so taxed, without having first paid the tax due, and secured a proper license therefor.

(w) *Riots.*—Power to prevent and suppress riots, affrays, noise, breach of the peace, assaults, disturbances or disorderly assembly in any public or private place within the limits of said city, and to provide punishment therefor; to prohibit and restrain the firing of guns, and pistols in the city limits, and to prohibit and restrain the carrying of pistols.

(x) *Racing.*—To prevent and prohibit and suppress horse racing, immoderate or careless riding or driving in the streets of said city, or in any public place therein, to suppress racing in the streets of said city by means of animals or vehicles.

(y) *Streets.*—To regulate the use of all streets, alleys, parks, squares, sidewalks and public grounds within said city, and to prevent and suppress all encroachments on said streets, sidewalks, alleys or parks or other public places, and to prevent and suppress all obstructions of every kind and character on the said streets, sidewalks, alleys, parks and other public grounds within said city.

(z) *Saloons.*—Power to close drinking saloons, dramshops and other public places where intoxicating liquors are sold or given away, and to close any theater or variety show when necessary or expedient; to make and enforce all needful regulations for saloons, dramshops and other places where intoxicating liquors are sold or given away. The said commission shall have the power to prescribe by ordinance that no intoxicating liquors shall be sold or given away within the corporate limits of the said city, in any certain prescribed district in said corporation in which there are more residences than business houses, said districts to be accurately defined by said ordinances.

Said commission shall have the power to cancel and forfeit any city license issued by said City of Marshall to the owner or proprietor of any saloon or other place where intoxicating liquors are sold, under such license, within the limits of said city upon conviction of the person owning such license, of any offense against the laws of Texas, or of the City of Marshall pertaining to such liquor business, or to the sale of liquor under such license, and after forfeiture of such license by said commission, no other license for the sale of spirituous, vinous or malt liquors shall be issued or sold by the said city unto such convicted person for the period of two years.

(aa) *Theaters.*—Power to permit, regulate or forbid theaters, balls, variety shows and other public amusements, and to suppress the same whenever the preservation of order, tranquility or public safety may require.

(bb) *Ticket Scalpers.*—To prevent and prohibit the sale by any other person than a duly authorized agent, of any non-transferable ticket, pass,

**Chap.547** AN ACT TO RATIFY AND CONFIRM CERTAIN ACTS OF THE  
TOWN OF SOUTH HADLEY.

*Be it enacted, etc., as follows:*

Certain acts  
confirmed.

SECTION 1. The action of the town of South Hadley at a special town meeting held on the ninth day of May, nineteen hundred and eleven, in voting that taxes for the year nineteen hundred and eleven be payable September first, nineteen hundred and eleven, and that if taxes are unpaid on October first, nineteen hundred and eleven, interest shall be added thereto at the rate of six per cent per annum from September first, nineteen hundred and eleven, is hereby ratified and confirmed.

SECTION 2. This act shall take effect upon its passage.

*Approved June 14, 1911.*

**Chap.548** AN ACT RELATIVE TO THE CARRYING OF CONCEALED WEAPONS.

*Be it enacted, etc., as follows:*

1906, 172,  
§ 1, amended.

Licenses  
may be issued  
for carrying  
concealed  
weapons.

SECTION 1. Section one of chapter one hundred and seventy-two of the acts of the year nineteen hundred and six is hereby amended by striking out the word "loaded", in the fifth line, so as to read as follows: — *Section 1.* The justice of a court, or trial justices, the board of police or mayor of a city, or the selectmen of a town, or persons authorized by them, respectively, may, upon the application of any person, issue a license to such person to carry a pistol or revolver in this commonwealth, if it appears that the applicant has good reason to fear an injury to his person or property, and that he is a suitable person to be so licensed.

1906, 172,  
§ 2, amended.

Penalty.

SECTION 2. Section two of said chapter one hundred and seventy-two, as amended by section one of chapter three hundred and fifty of the acts of the year nineteen hundred and eight, is hereby further amended by striking out the word "loaded", in the third line; by striking out the word "twenty-five", in the seventh line, and inserting in place thereof the word: — fifty, — and by inserting after the word "not", in the ninth line, the words: — less than one month and not, — so as to read as follows: — *Section 2.* Whoever, except as provided by the laws of this commonwealth, carries on his person a pistol or revolver, without authority or permission as provided in section one of this act, or whoever carries any

## ACTS, 1911. — CHAP. 549.

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stiletto, dagger, dirk-knife, slung-shot or metallic knuckles, shall upon conviction be punished by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment for a term not less than one month and not exceeding one year, or by both such fine and imprisonment.

SECTION 3. Section nine of chapter two hundred and eleven of the Revised Laws is hereby amended by inserting after the word "billy", in the fourth line, the words: — revolver or pistol, loaded or unloaded, — and also by striking out all after the word "by", in the fifth line, and inserting in place thereof the following: — imprisonment for not less than three months and not more than three years, — so as to read as follows: — *Section 9.* Whoever, when arrested upon a warrant for an alleged crime and whoever, when arrested while committing a crime or a breach or disturbance of the public peace, is armed with or has on his person any slung-shot, metallic knuckles, billy, revolver or pistol, loaded or unloaded, or other dangerous weapon, shall be punished by imprisonment for not less than three months and not more than three years.

R. L. 211,  
§ 9, amended.

Penalty for  
carrying cer-  
tain weapons.

SECTION 4. Chapter two hundred and eighty-three of the acts of the year nineteen hundred and eleven is hereby repealed.

Repeal.

*Approved June 14, 1911.*

AN ACT TO ESTABLISH THE SALARIES OF MARY E. HALLEY AND MARY A. NASON, MEMBERS OF THE INSPECTION DEPARTMENT OF THE DISTRICT POLICE.

*Chap. 549*

*Be it enacted, etc., as follows:*

SECTION 1. The salaries of Mary E. Halley and Mary A. Nason, members of the district police, shall hereafter be at the rate of fifteen hundred dollars per annum.

Mary E.  
Halley and  
Mary A.  
Nason.

SECTION 2. All acts and parts of acts inconsistent herewith are hereby repealed.

Repeal.

SECTION 3. This act shall take effect upon its passage. (*The foregoing was laid before the governor on the eighth day of June, 1911, and after five days it had "the force of a law", as prescribed by the Constitution, as it was not returned by him with his objections thereto within that time.*)

Act 22. Carrying Deadly Weapons.

**ACT 22**

**AN ACT**

TO AMEND SECTION 3089 OF THE REVISED LAWS OF HAWAII.

*Be it Enacted by the Legislature of the Territory of Hawaii:*

SECTION 1. Section 3089 of the Revised Laws of Hawaii is hereby amended so as to read as follows:

“Section 3089. Persons not authorized; punishment. Any person not authorized by law, who shall carry, or be found armed with any bowie-knife, sword-cane, pistol, air-gun, slung-shot, or other deadly weapon, shall be liable to a fine of not more than Two Hundred and Fifty Dollars and not less than Ten Dollars, or in default of payment of such fine, to imprisonment for a term not exceeding one year, nor less than three months, upon conviction for such offense, unless good cause be shown for having such dangerous weapon; and any such person may be immediately arrested without warrant by the high sheriff, or any sheriff, policeman, or other officer or person.”

SECTION 2. This Act shall take effect from and after the date of its approval.

Approved this 19th day of March, A. D. 1913.

WALTER F. FREAR,  
Governor of the Territory of Hawaii.

<sup>1</sup> Where a male person of the age of sixteen years and under the age of eighteen years has been convicted of juvenile delinquency or of a misdemeanor, the trial court may, instead of sentencing him to imprisonment in a state prison or in a penitentiary, direct him to be confined in a house of refuge established by the managers of the society for the reformation of juvenile delinquents in the city of New York; under the provisions of the statute relating thereto. Where a female person not over the age of twelve years is convicted of a crime amounting to felony, or where a female person of the age of twelve years and not over the age of sixteen years is convicted of a crime, the trial court may, instead of sentencing her to imprisonment in a state prison or in a penitentiary, direct her to be confined in the New York State Training School for Girls, under the provisions of the statute relating thereto, but nothing in this section shall affect any of the provisions contained in section twenty-one hundred and ninety-four.

§ 2. All acts or parts of acts inconsistent with this act are hereby repealed.

§ 3. This act shall take effect immediately.

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## Chap. 608.

AN ACT to amend the penal law generally, in relation to the carrying, use and sale of dangerous weapons.

Became a law May 21, 1913, with the approval of the Governor. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Section eighteen hundred and ninety-seven of chapter eighty-eight of the laws of nineteen hundred and nine, entitled "An act providing for the punishment of crime, constituting chapter forty of the consolidated laws," as amended by chapter one hundred and ninety-five of the laws of nineteen hundred and eleven, is hereby amended to read as follows:

§ 1897. **Carrying and use of dangerous weapons.** A person who attempts to use against another, or who carries, or possesses, any instrument or weapon of the kind commonly known as a blackjack,

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<sup>1</sup> Following sentence new.

slungshot, billy, sandclub, sandbag, metal knuckles, bludgeon, bomb or bombshell,<sup>1</sup> or who, with intent to use the same unlawfully against another, carries or possesses a dagger, dirk, dangerous knife, razor, stiletto, or any other dangerous or deadly instrument or weapon, is guilty of a felony.

Any person under the age of sixteen years, who shall have, carry, or have in his possession, any of the articles named or described in the last section, which is forbidden therein to offer, sell, loan, lease or give to him, shall be guilty of a misdemeanor.

Any person over the age of sixteen years, who shall have in his possession in any city, village or town of this state, any pistol, revolver or other firearm of a size which may be concealed upon the person, without a written license therefor, issued to him<sup>2</sup> as hereinafter prescribed, shall be guilty of a misdemeanor.

Any person over the age of sixteen years, who shall have or carry concealed upon his person in any city, village, or town of this state, any pistol, revolver, or other firearm without a written license therefor,<sup>3</sup> issued as hereinafter prescribed and licensing such possession and concealment, shall be guilty of a felony.

Any person not a citizen of the United States, who shall have or carry firearms, or any dangerous or deadly weapons in any place, at any time, shall be guilty of a felony,<sup>4</sup> unless authorized by license issued as hereinafter prescribed.

<sup>5</sup> It shall be the duty of any magistrate in this state to whom an application therefor is made by a commissioner of correction of a city or by any warden, superintendent or head keeper of any state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted of or accused of crime, or offences, or held as witnesses in criminal cases, to issue to each of such persons as may be designated in such applications, and who is in the regular employ in such institution of the state, or of any county, city, town or village therein, a license authorizing such

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<sup>1</sup> Inclusion of bomb and bombshell, new.

<sup>2</sup> Remainder of sentence formerly read: "by a police magistrate of such city or village, or by a justice of the peace of such town, or in such manner as may be prescribed by ordinance in such city, village or town, shall be guilty of a misdemeanor."

<sup>3</sup> Remainder of sentence formerly read: "theretofore issued to him by a police magistrate of such city or village, or by a justice of the peace of such town, or in such manner as may be prescribed by ordinance of such city, village or town, shall be guilty of a felony."

<sup>4</sup> Word "public" omitted.

<sup>5</sup> Remainder of sentence new

<sup>6</sup> Following paragraph new.

person to have and carry concealed a pistol or revolver while such person remains in the said employ.

<sup>6</sup> It shall be the duty of any magistrate in this state, upon application therefor, by any householder, merchant, storekeeper or messenger of any banking institution or express company in the state, and provided such magistrate is satisfied of the good moral character of the applicant, and provided that no other good cause exists for the denial of such application, to issue to such applicant a license to have and possess a pistol or revolver, and authorizing him (a) if a householder, to have such weapon in his dwelling, and (b) if a merchant, or storekeeper, to have such weapon in his place of business, and (c) if a messenger of a banking institution or express company, to have and carry such weapon concealed while in the employ of such institution or express company.

<sup>6</sup> In addition, it shall be lawful for any magistrate, upon proof before him that the person applying therefor is of good moral character, and that proper cause exists for the issuance thereof, to issue to such person a license to have and carry concealed a pistol or revolver without regard to employment or place of possessing such weapon, provided, however, that no such license shall be issued to any alien, or to any person not a citizen of and usually resident in the state of New York, except by a judge or justice of a court of record in this state, who shall state in such license the particular reason for the issuance thereof, and the names of the persons certifying to the good moral character of the applicant.

<sup>6</sup> Any license issued in pursuance of the provisions of this section may be limited as to the date of expiration thereof and may be vacated and cancelled at any time by the magistrate, judge or justice who issued the same or by any judge or justice of a court of record. Any license issued in pursuance of this section and not otherwise limited as to place or time or possession of such weapon, shall be effective throughout the state of New York, \*notwithstanding the provisions of any local law or ordinance.

This section shall not apply to the regular and ordinary transportation of firearms as merchandise, nor to sheriffs, policemen, or to other duly appointed peace officers, nor to duly authorized military or civil organizations, when parading, nor to the members thereof when going to and from the place of meeting of their respective organizations.

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\* So in original.

<sup>6</sup> Following paragraph new.

§ 1914, as  
added by  
L. 1911,  
ch. 195,  
amended.

§ 2. Section nineteen hundred and fourteen of such chapter, as added by chapter one hundred and ninety-five of the laws of nineteen hundred and eleven, is hereby amended to read as follows:

§ 1914. Sale of pistols, revolvers and other firearms. <sup>7</sup>No pistol, revolver or other firearms of a size which may be concealed upon the person, shall be sold, or given away, or otherwise disposed of, except to a person expressly authorized under the provisions of section eighteen hundred and ninety-seven of the penal law to possess and have such firearm.

<sup>7</sup>Any person selling or disposing of such firearm in violation of this provision of this section shall be guilty of a misdemeanor.

Every person selling a pistol, revolver or other firearm of a size which may be concealed upon the person, whether such seller is a retail dealer, pawnbroker, or otherwise, shall keep a register in which shall be entered at the time of sale, the date of sale, name, age, occupation and residence of every purchaser of such a pistol, revolver or other firearm, together with the calibre, make, model, manufacturer's number or other mark of identification on such pistol, revolver or other firearm. Such person shall also, before delivering the same to the purchaser, require such purchaser to produce a license<sup>8</sup> for possessing or carrying the same, as required by law, and shall also enter in such register the date of such permit, the number thereof, if any, and the name of the magistrate or other officer by whom the same was issued. Every person who shall fail to keep a register and to enter therein the facts required by this section or who shall fail to exact the production of a permit to possess or carry such pistol, revolver or other firearm, if such permit is required by law, shall be guilty of a misdemeanor. Such register shall be open at all reasonable hours for the inspection of any peace officer. Every person becoming the lawful possessor of such a pistol, revolver or other firearm, who shall sell, give or transfer the same to another person without first notifying the police authorities, shall be guilty of a misdemeanor. This section shall not apply to wholesale dealers.

In effect  
Sept. 1,  
1913.

§ 3. This act shall take effect September first, nineteen hundred and thirteen.

<sup>7</sup> Following sentence new.

<sup>8</sup> Word "license" substituted for word "permit."

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before the injury and the average weekly wages which he is able to earn thereafter, but not more than sixteen dollars a week; and in no case shall the amount of such compensation be more than four thousand dollars.

*Approved May 29, 1919.*

**Chap.206** AN ACT RELATIVE TO THE SALARY OF THE PAROLE CLERK AT THE MASSACHUSETTS REFORMATORY.

*Be it enacted, etc., as follows:*

1917, 293 (G),  
amended.

Parole clerk  
at Massachu-  
setts reformatory,  
salary,  
etc.

Chapter two hundred and ninety-three of the General Acts of nineteen hundred and seventeen is hereby amended by striking out the words "an annual salary of sixteen hundred dollars", in the ninth and tenth lines, and substituting the words:— such annual salary, not to exceed nineteen hundred dollars, as shall be fixed by the director of prisons with the approval of the governor and council, — so as to read as follows:— The director of the bureau of prisons is hereby authorized to designate as parole clerk one of the officers at the Massachusetts reformatory mentioned in section twenty-one of chapter two hundred and twenty-three of the Revised Laws, as affected by chapter four hundred and fifty-four of the acts of the year nineteen hundred and ten. He shall perform such duties relating to the parole of inmates of the reformatory as the director may prescribe. While performing the duties of parole clerk, such officer shall receive such annual salary, not to exceed nineteen hundred dollars, as shall be fixed by the director of prisons with the approval of the governor and council, in full for all services rendered by him, and shall be subject to the provisions of chapter six hundred and one of the acts of the year nineteen hundred and eight and acts in amendment thereof.

*Approved May 29, 1919.*

**Chap.207** AN ACT RELATIVE TO THE CARRYING OF CONCEALED WEAPONS.

*Be it enacted, etc., as follows:*

1906, 172, § 1,  
etc., amended.

SECTION 1. Section one of chapter one hundred and seventy-two of the acts of nineteen hundred and six, as amended by section one of chapter five hundred and forty-eight of the acts of nineteen hundred and eleven, is hereby further amended by inserting after the word "property", in the seventh and eighth lines, the words:— or for any

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other proper purpose, — so as to read as follows: — *Section 1.* The justice of a court, or trial justices, the board of police or mayor of a city, or the selectmen of a town, or persons authorized by them, respectively, may, upon the application of any person, issue a license to such person to carry a pistol or revolver in this commonwealth, if it appears that the applicant has good reason to fear an injury to his person or property, or for any other proper purpose, and that he is a suitable person to be so licensed.

Licenses for carrying weapons may be issued in certain cases.

SECTION 2. Section two of said chapter one hundred and seventy-two, as amended by section one of chapter three hundred and fifty of the acts of nineteen hundred and eight and by section two of said chapter five hundred and forty-eight is hereby further amended by striking out all after the word “than”, in the sixth line, and substituting the words: — one hundred nor more than five hundred dollars or by imprisonment for a term of not less than six months and not more than five years, or by both such fine and imprisonment, — so as to read as follows: — *Section 2.* Whoever, except as provided by the laws of this commonwealth, carries on his person a pistol or revolver, without authority or permission as provided in section one of this act, or whoever carries any stiletto, dagger, dirk-knife, slung-shot or metallic knuckles, shall upon conviction be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for a term of not less than six months and not more than five years, or by both such fine and imprisonment.

1906, 172, § 2, etc., amended.

Penalty for carrying certain weapons without a license.

SECTION 3. Section nine of chapter two hundred and eleven of the Revised Laws, as amended by section three of chapter five hundred and forty-eight of the acts of nineteen hundred and eleven, is hereby further amended by striking out all after the word “punished”, in the sixth line, and substituting the following: — by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment for a term of not less than six months and not more than five years, or by both such fine and imprisonment, — so as to read as follows: — *Section 9.* Whoever, when arrested upon a warrant for an alleged crime and whoever, when arrested while committing a crime or a breach or disturbance of the public peace, is armed with or has on his person any slung-shot, metallic knuckles, billy, revolver or pistol, loaded or unloaded, or other dangerous weapon, shall be punished by a fine of not less than one hundred nor more

R. L. 211, § 9, etc., amended.

Penalty for carrying certain weapon when arrested.

than five hundred dollars, or by imprisonment for a term of not less than six months and not more than five years, or by both such fine and imprisonment.

*Approved May 29, 1919.*

**Chap. 208** AN ACT RELATIVE TO THE SETTLEMENT BY PUBLIC ADMINISTRATORS OF THE ESTATES OF CERTAIN DECEASED PERSONS.

*Be it enacted, etc., as follows:*

Appointment of public administrators as administrators with the will annexed or as administrators of goods and estates not already administered, etc.

SECTION 1. If there is occasion for the appointment of an administrator with the will annexed, under the provisions of section six of chapter one hundred and thirty-seven of the Revised Laws, as amended by chapter five hundred and eighty-eight of the acts of nineteen hundred and eleven, or for the appointment of an administrator of the goods and estates not already administered of a deceased person, under the provisions of section eight of the said chapter, and it appears that there are no known heirs of the deceased person living, a public administrator of the county shall be appointed to such trust.

R. L. 138, § 12, etc., amended.

SECTION 2. Section twelve of chapter one hundred and thirty-eight of the Revised Laws, as amended by section one of chapter ninety of the General Acts of nineteen hundred and seventeen, is hereby further amended by inserting after the word "administrator", in the second line, the words: — or by the executor or administrator with the will annexed of a person who died leaving no known heirs, — so as to read as follows: — *Section 12.* When an estate has been fully administered by a public administrator, or by the executor or administrator with the will annexed of a person who died leaving no known heirs, he shall deposit the balance of such estate remaining in his hands with the treasurer and receiver general, who shall receive and hold it for the benefit of those who may have lawful claims thereon. At any time within six years after a public administrator has made such deposit, the probate court may, upon the application of the administrator and if it appears that there are reasonable grounds to believe that certain persons have lawful claims upon the said balance, enter a decree directing that the same be repaid to the public administrator. The treasurer and receiver general shall thereupon pay over all money deposited in the treasury to the credit of the estate to the public ad-

Public administrators, executors or administrators with the will annexed to deposit balances of estates with treasurer and receiver general, etc.

the real estate in, along or by the Quequechan river under the provisions of chapter eighty of the General Laws.

Repayment to  
Watuppa  
Reservoir  
Company of  
certain expense,  
etc., appor-  
tionment of  
expense, etc.

The expense of maintaining and operating said dam and pumping station shall be annually repaid to the Watuppa Reservoir Company by the city of Fall River and the amount so paid, not in excess of the special benefit arising therefrom, shall be apportioned by the assessment commission on the real estate in, along or by the Quequechan river. Such apportionment shall remain in force until changed as hereinafter provided, and shall be assessed annually upon the designated real estate. The provisions of chapter eighty of the General Laws with relation to the collection and abatement of betterment assessments and to interest thereon shall apply to such assessments.

Appointment  
of new assess-  
ment commis-  
sion.

After five years from the date of such apportionment the mayor of Fall River shall, on the petition of any party in interest, appoint a new assessment commission, which shall be appointed and act and shall make a new apportionment in the manner and form hereinbefore provided; and such apportionment shall remain in force until changed in like manner.

Repeals, etc.

SECTION 5. All provisions of chapter three hundred and eleven of the Special Acts of nineteen hundred and sixteen, as amended by chapter five hundred and forty-four of the acts of nineteen hundred and twenty, which are inconsistent with the provisions of this act are hereby repealed, but no action taken under the authority of said statute is hereby made invalid, and the improvement therein authorized is to proceed without interruption.

Assessment  
commissioners  
not obliged to  
comply with  
certain require-  
ments of law.

In the assessment of betterments under this act the assessment commissioners shall not be obliged to include in the order of taking or to prepare or file the description, plan and estimate required by the provisions of section two of chapter eighty of the General Laws.

SECTION 6. This act shall take effect upon its passage.

*Approved May 29, 1922.*

**Chap. 485 AN ACT RELATIVE TO THE SALE AND CARRYING OF FIRE-ARMS.**

*Be it enacted, etc., as follows:*

G. L. 140,  
§ 121, amended.

SECTION 1. Section one hundred and twenty-one of chapter one hundred and forty of the General Laws is hereby amended by striking out all after the word "inches" in the

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sixth line down to and including the word "towns" in the seventh line, so as to read as follows: — *Section 121*. In sections one hundred and twenty-two to one hundred and twenty-nine, inclusive, "firearms" includes a pistol, revolver or other weapon of any description, loaded or unloaded, from which a shot or bullet can be discharged and of which the length of barrel, not including any revolving, detachable or magazine breech, does not exceed twelve inches. Said sections shall not apply to antique firearms incapable of use as firearms nor to sales of firearms at wholesale.

Sale of firearms.  
Definition of word "firearms."

Sections not applicable to certain firearms.

SECTION 2. Said chapter one hundred and forty is hereby amended by striking out section one hundred and twenty-two and inserting in place thereof the following: — *Section 122*. The licensing authorities in any town may, in their discretion, grant licenses to persons to sell, rent or lease firearms and may fix a fee for such license. Every such license shall specify the street and number, if any, of the building where the business is to be carried on and the license shall not protect a licensee who carries on his business in any other place.

G. L. 140, § 122, amended.

Licenses to sell, rent, etc., firearms.

SECTION 3. Said chapter one hundred and forty is hereby further amended by inserting after section one hundred and twenty-two the following new section: — *Section 122A*. The licensing authorities shall record all licenses issued under the preceding section in books kept for the purpose, shall furnish the licensee with a sales record book to be kept by him as provided in section one hundred and twenty-three and shall, upon the granting of any license, send notice thereof to the commissioner of public safety. The said books shall be supplied by the commissioner, upon application of the licensing authorities, at a price not in excess of the cost thereof.

G. L. 140, new section after § 122.

Record of licenses issued, etc.

Notice to commissioner of public safety, etc.

SECTION 4. Said chapter one hundred and forty is hereby further amended by striking out section one hundred and twenty-three and inserting in place thereof the following: — *Section 123*. The license shall be expressed to be and shall be subject to the following conditions: First, That the provisions in regard to the nature of the license and the building in which the business may be carried on under it shall be strictly adhered to. Second, That every licensee shall before delivery of a firearm make or cause to be made a true entry in a sales record book to be furnished by the licensing authorities and to be kept for that purpose, specifying the description of the firearm, the make, number, whether single barrel, magazine, revolver, pin, rim or central fire, whether sold, rented or leased, the date and hour of such delivery, and the full

G. L. 140, § 123, amended.

Conditions of licenses.

Conditions of  
licenses.

name, sex, residence and occupation of the purchaser, exchanger or hirer. The said book shall be open at all times to the inspection of the licensing authorities and of the police. Third, That the license or a copy thereof, certified by the recording officer of the licensing authorities or by the clerk of the town by which it is issued, shall be displayed on the premises in a position where it can easily be read. Fourth, That no firearms shall be displayed in any outer window of said premises or in any other place where they can readily be seen from the outside. Fifth, That the licensee shall, once a week, send a copy of the record of sales made by him for the preceding seven days to the licensing authorities and to the commissioner of public safety. Sixth, That every firearm shall be delivered securely wrapped and fastened and shall be unloaded when delivered. Seventh, That no delivery of a firearm shall be made on the day of the application for the purchase, rent or lease thereof, except to a person having a permit to carry a firearm issued under section one hundred and thirty-one. Eighth, That the license shall be subject to forfeiture as herein provided for breach of any of its conditions, and that, if the licensee is convicted of a violation of any such condition, his license shall thereupon become void.

G. L. 140, § 125,  
amended.

SECTION 5. Section one hundred and twenty-five of said chapter one hundred and forty is hereby amended by striking out, in the first line, the word "board" and inserting in place thereof the word: — authorities, — and by striking out all after the word "heard" in the second line down to and including the word "council" in the third line, so as to read as follows: — *Section 125.* The licensing authorities, after notice to the licensee and reasonable opportunity for him to be heard, may declare his license forfeited, or may suspend his license for such period of time as they may deem proper, upon satisfactory proof that he has violated or permitted a violation of any condition thereof or has violated any law. The pendency of proceedings before a court shall not suspend or interfere with the power to declare a forfeiture. If the license is declared forfeited, the licensee shall be disqualified to receive a license for one year after the expiration of the term of the license so forfeited.

Forfeiture or  
suspension of  
licenses.

G. L. 140, § 127,  
amended.

SECTION 6. Section one hundred and twenty-seven of said chapter one hundred and forty is hereby amended by striking out, in the first line, the word "boards" and inserting in place thereof the word: — authorities, — so as to read as follows: — *Section 127.* Licensing authorities may trans-

Transfer of  
licenses.

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fer licenses from one location to another within the town in which the licenses are in force, but such transfer shall be granted only to the original licensee and upon the same terms and conditions upon which the license was originally granted.

SECTION 7. Said chapter one hundred and forty is hereby further amended by inserting after section one hundred and twenty-nine the following new section: — *Section 129A*. No unnaturalized foreign born person shall, within the commonwealth, own or have in his possession or under his control a firearm as defined in section one hundred and twenty-one, unless such person has a permit under section one hundred and thirty-one to carry such firearm. Any violation of this section shall be punished by a fine of not less than one hundred dollars or by imprisonment for not more than three months, or both.

G. L. 140, new section after § 129.

Permit required for possession, etc., of firearms by aliens.

Penalty.

SECTION 8. Section one hundred and thirty of said chapter one hundred and forty is hereby amended by inserting after the word "fifteen" in the second line the words: — , or to an unnaturalized foreign born person who has not a permit to carry firearms under section one hundred and thirty-one, — so as to read as follows: — *Section 130*. Whoever sells or furnishes to a minor under the age of fifteen, or to an unnaturalized foreign born person who has not a permit to carry firearms under section one hundred and thirty-one, any firearm, air gun or other dangerous weapon or ammunition therefor shall be punished by a fine of not less than ten nor more than fifty dollars, but instructors and teachers may furnish military weapons to pupils for instruction and drill.

G. L. 140, § 130, amended.

Penalty for selling firearms, etc., to certain minors and to certain aliens.

SECTION 9. Said chapter one hundred and forty is hereby further amended by striking out section one hundred and thirty-one and inserting in place thereof the following: — *Section 131*. The justice of a court or a trial justice, the board of police or mayor of a city, the selectmen of a town, or the commissioner of public safety, or persons authorized by them may, upon the application of any person residing or having a place of business within the jurisdiction of the person issuing the license, issue a license to such person to carry a pistol or revolver in the commonwealth if it appears that the applicant has good reason to fear an injury to his person or property or for any other proper purpose, and that he is a suitable person to be so licensed. Such license shall be issued for a term not to exceed one year, but may be for a less period, and all such licenses shall be revocable at the will of the person or body issuing the same. Said licenses shall be issued

G. L. 140, § 131, amended.

Licenses to carry pistols or revolvers, issuance, duration, etc.

on forms furnished by the commissioner of public safety and a copy of every license so issued shall within one week after the granting thereof be sent to the said commissioner.

G. L. 269, § 12, amended.

SECTION 10. Section twelve of chapter two hundred and sixty-nine of the General Laws is hereby amended by inserting after the word "shot" in the third line the words: — , sword cane, pistol cane, bludgeon, blackjack, — so as to read as follows: — *Section 12.* Whoever manufactures or causes to be manufactured, or sells or exposes for sale, an instrument or weapon of the kind usually known as slung shot, sword cane, pistol cane, bludgeon, blackjack, or metallic knuckles, shall be punished by a fine of not less than fifty nor more than two hundred dollars or by imprisonment for not more than six months.

Penalty for manufacture, sale, etc., of slung shots, sword canes, etc.

Expiration of licenses heretofore issued.

SECTION 11. All licenses heretofore issued under section one hundred and thirty-one of chapter one hundred and forty of the General Laws or the corresponding provisions of earlier laws shall expire on January first, nineteen hundred and twenty-three.

*Approved May 29, 1922.*

**Chap. 486** AN ACT MAKING UNIFORM THE LAWS RELATIVE TO PARTNERSHIPS.

*Be it enacted, etc., as follows:*

G. L. new chapter after chapter 108.

SECTION 1. The General Laws is hereby amended by inserting after chapter one hundred and eight the following new chapter, to be numbered one hundred and eight A, and to be entitled, "Partnerships."

CHAPTER 108A.

PARTNERSHIPS.

Uniform Partnership Act. Definition of terms.

*Section 1.* This chapter may be cited as the Uniform Partnership Act.

*Section 2.* In this chapter, "court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation, or profession.

"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvent law.

"Conveyance" includes every assignment, lease, mortgage or encumbrance.

"Real property" includes land and any interest or estate in land.

Interpretation of knowledge and notice.

*Section 3.* (1) A person has "knowledge" of a fact within the meaning of this chapter, not only when he has actual

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treasurer or the inheritance tax appraiser of the county of the superior court having jurisdiction as provided in section fifteen of this act.

(6) This act shall become effective and in force contemporaneously with the taking effect of amendments to sections one thousand four hundred one and one thousand four hundred two of the Civil Code, which amendments were enacted at the forty-fifth session of the legislature of the State of California and known as chapter eighteen of the statutes of 1923, and not otherwise.

Act takes effect.

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### CHAPTER 338.

*An act to add a new section to the Civil Code to be numbered three thousand fifty-one a, fixing a limit on the amount of a lien on property held under the provisions of section three thousand fifty-one of said code.*

[Approved June 13, 1923.]

*The people of the State of California do enact as follows:*

SECTION 1. A new section is hereby added to the Civil Code to be numbered three thousand fifty-one a and to read as follows:

3051a. That portion of any lien, as provided for in the next preceding section, in excess of one hundred dollars, for any work, services, care, or safekeeping rendered or performed at the request of any person other than the holder of the legal title, shall be invalid, unless prior to commencing any such work, service, care, or safekeeping, the person claiming such lien shall give actual notice in writing either by personal service or by registered letter addressed to the holder of the legal title to such property, if known. In the case of automobiles, the person named as legal owner in the registration certificate, shall be deemed for the purpose of this section, as the holder of the legal title.

Limitation on amount recoverable where written notice not given.

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### CHAPTER 339.

*An act to control and regulate the possession, sale and use of pistols, revolvers and other firearms capable of being concealed upon the person; to prohibit the manufacture, sale, possession or carrying of certain other dangerous weapons within this state; to provide for registering all sales of pistols, revolvers or other firearms capable of being concealed upon the person; to prohibit the carrying of concealed firearms except by lawfully authorized persons; to provide for the confiscation and destruction of such weapons in certain cases; to prohibit the ownership, use, or possession of any of such weapons by certain classes of persons; to prescribe penalties for violations of this act and increased penalties for repeated violations hereof; to*

*authorize, in proper cases, the granting of licenses or permits to carry firearms concealed upon the person; to provide for licensing retail dealers in such firearms and regulating sales thereunder; and to repeal chapter one hundred forty-five of California statutes of 1917, relating to the same subject.*

[Approved June 13, 1923.]

*The people of the State of California do enact as follows:*

Manufacture,  
sale, carry-  
ing, etc.,  
certain  
dangerous  
weapons  
prohibited.

SECTION 1. On and after the date upon which this act takes effect, every person who within the State of California manufactures or causes to be manufactured, or who imports into the state, or who keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandelub, sandbag, or metal knuckles, or who carries concealed upon his person any explosive substance, other than fixed ammunition, or who carries concealed upon his person any dirk or dagger, shall be guilty of a felony and upon a conviction thereof shall be punishable by imprisonment in a state prison for not less than one year nor for more than five years.

Aliens and  
felons must  
not possess  
certain  
firearms.

SEC. 2. On and after the date upon which this act takes effect, no unnaturalized foreign born person and no person who has been convicted of a felony against the person or property of another or against the government of the United States or of the State of California or of any political subdivision thereof shall own or have in his possession or under his custody or control any pistol, revolver or other firearm capable of being concealed upon the person. The terms "pistol," "revolver," and "firearms capable of being concealed upon the person" as used in this act shall be construed to apply to and include all firearms having a barrel less than twelve inches in length. Any person who shall violate the provisions of this section shall be guilty of a felony and upon conviction thereof shall be punishable by imprisonment in a state prison for not less than one year nor for more than five years.

Committing  
felony while  
carrying  
dangerous  
weapon.

SEC. 3. If any person shall commit or attempt to commit any felony within this state while armed with any of the weapons mentioned in section one hereof or while armed with any pistol, revolver or other firearm capable of being concealed upon the person, without having a license or permit to carry such firearm as hereinafter provided, upon conviction of such felony or of an attempt to commit such felony, he shall in addition to the punishment prescribed for the crime of which he has been convicted, be punishable by imprisonment in a state prison for not less than five nor for more than ten years. Such additional period of imprisonment shall commence upon the expiration or other termination of the sentence imposed for the crime of which he stands convicted and shall not run concurrently with such sentence. Upon a second conviction under like circumstances such additional period of impris-

onment shall be for not less than ten years nor for more than fifteen years, and upon a third conviction under like circumstances such additional period of imprisonment shall be for not less than fifteen nor for more than twenty-five years, such terms of additional imprisonment to run consecutively as before. Upon a fourth or subsequent conviction under like circumstances the person so convicted may be imprisoned for life or for a term of years not less than twenty-five years, within the discretion of the court wherein such fourth or subsequent conviction was had.

In the trial of a person charged with committing or attempting to commit a felony against the person of another while armed with any of the weapons mentioned in section one hereof, or while armed with any pistol, revolver or other firearm capable of being concealed upon the person, without having a license or permit to carry such firearm as hereinafter provided, the fact that he was so armed shall be prima facie evidence of his intent to commit such felony.

Evidence.

SEC. 4. In no case shall any person punishable under the preceding sections of this act be granted probation by the trial court, nor shall the execution of the sentence imposed upon such person be suspended by the court.

No probation or suspension of sentence

SEC. 5. Except as otherwise provided in this act, it shall be unlawful for any person within this state to carry concealed upon his person or within any vehicle which is under his control or direction any pistol, revolver or other firearm capable of being concealed upon the person without having a license to carry such firearm as hereinafter provided in section eight hereof. Any person who violates the provisions of this section shall be guilty of a misdemeanor, and if he has been convicted previously of any felony, or of any crime made punishable by this act, he is guilty of a felony.

Carrying certain firearms without license.

This section shall not be construed to prohibit any citizen of the United States, over the age of eighteen years, who resides or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by section two hereof, from owning, possessing or keeping within his place of residence or place of business any pistol, revolver or other firearm capable of being concealed upon the person, and no permit or license to purchase, own, possess or keep any such firearm at his place of residence or place of business shall be required of any such citizen. Firearms carried openly in belt holsters shall not be deemed to be concealed within the meaning of this section, nor shall knives which are carried openly in sheaths suspended from the waist of the wearer.

Exceptions.

SEC. 6. Nothing in the preceding section shall be construed to apply to or affect sheriffs, constables, marshals, policemen, whether active or honorably retired, or other duly appointed peace officers, nor to any person summoned by any such officers to assist in making arrests or preserving the peace while said person so summoned is actually engaged in assisting such officer; nor to the possession or transportation by any merchant of unloaded firearms as merchandise; nor to members of

Police officers, soldiers, etc., excepted.

the army, navy, or marine corps of the United States, or the national guard, when on duty, or to organizations which are by law authorized to purchase or receive such weapons from the United States, or from this state; nor to duly authorized military or civil organizations while parading, nor to the members thereof when going to and from the places of meeting of their respective organizations; nor to members of any club or organization now existing, or hereafter organized, for the purpose of practicing shooting at targets upon the established target ranges, whether public or private, while such members are using any of the firearms referred to in this act upon such target ranges, or while going to and from such ranges; or to licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from such hunting or fishing expedition.

Nuisances.

SEC. 7. The unlawful concealed carrying upon the person or within the vehicle of the carrier of any dirk, dagger, pistol, revolver, or other firearm capable of being concealed upon the person, is a nuisance. Any such weapons taken from the person or vehicle of any person unlawfully carrying the same are hereby declared to be nuisances, and shall be surrendered to the magistrate before whom said person shall be taken, except that in any city, city and county, town or other municipal corporation the same shall be surrendered to the head of the police force or police department thereof. The officers to whom the same may be so surrendered, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the preservation thereof is necessary or proper to the ends of justice, shall annually, between the first and tenth days of July, in each year, destroy or cause to be destroyed such weapons to such extent that the same shall become and be wholly and entirely ineffective and useless for the purpose for which it was manufactured; *provided, however*, that in the event any such weapon has been stolen and is thereafter recovered from the thief or his transferee, the same shall not be destroyed but shall be restored to the lawful owner thereof, so soon as its use as evidence has been served, upon his identification of the weapon and proof of ownership thereof. Blackjacks, slungshots, billys, sandelubs, sandbags and metal knuckles are hereby declared to be nuisances and shall be subject to confiscation and summary destruction whenever found within the state; *provided*, that upon the certificate of a judge or of the district attorney that the ends of justice will be subserved thereby, such weapon shall be preserved until the necessity for its use ceases.

Destruction  
of weapons.Licenses to  
carry  
firearms.

SEC. 8. It shall be lawful for the sheriff of a county, and the board of police commissioners, chief of police, city marshal, town marshal, or other head of the police department of any city, city and county, town, or other municipal corporation of this state, upon proof before said board, chief, marshal or other police head, that the person applying therefor is of good moral character, and that good cause exists for the issuance thereof, to issue to such person a license to carry con-

cealed a pistol, revolver or other firearm for a period of one year from the date of such license. All applications for such licenses shall be filed in writing, signed by the applicant, and shall state the name, occupation, residence and business address of the applicant, his age, height, weight, color of eyes and hair, and reason for desiring a license to carry such weapon. Any license issued upon such application shall set forth the foregoing data and shall, in addition, contain a description of the weapon authorized to be carried, giving the name of the manufacturer, the serial number and the caliber thereof. When such licenses are issued by a sheriff a record thereof shall be kept in the office of the county clerk; when issued by police authority such record shall be maintained in the office of the authority by whom issued. Such applications and licenses shall be uniform throughout the state, upon forms to be prescribed by the attorney general.

SEC. 9. Every person in the business of selling, leasing or otherwise transferring a pistol, revolver or other firearm, of a size capable of being concealed upon the person, whether such seller, lessor or transferrer is a retail dealer, pawnbroker or otherwise, except as hereinafter provided, shall keep a register in which shall be entered the time of sale, the date of sale, the name of the salesman making the sale, the place where sold, the make, model, manufacturer's number, caliber or other marks of identification on such pistol, revolver or other firearm. Such register shall be prepared by and obtained from the state printer and shall be furnished by the state printer to said dealers on application at a cost of three dollars per one hundred leaves in duplicate and shall be in the form hereinafter provided. The purchaser of any firearm, capable of being concealed upon the person shall sign, and the dealer shall require him to sign his name and affix his address to said register in duplicate and the salesman shall affix his signature in duplicate as a witness to the signatures of the purchaser. Any person signing a fictitious name or address is guilty of a misdemeanor. The duplicate sheet of such register shall on the evening of the day of sale, be placed in the mail, postage prepaid and properly addressed to the board of police commissioners, chief of police, city marshal, town marshal or other head of the police department of the city, city and county, town or other municipal corporation wherein the sale was made: *provided*, that where the sale is made in a district where there is no municipal police department, said duplicate sheet shall be mailed to the county clerk of the county wherein the sale is made. A violation of any of the provisions of this section by any person engaged in the business of selling, leasing or otherwise transferring such firearm is a misdemeanor. This section shall not apply to wholesale dealers in their business intercourse with retail dealers, nor to wholesale or retail dealers in the regular or ordinary transportation of unloaded firearms as merchandise by mail, express or other mode of shipment, to points outside of the city, city and county, town or municipal corporation wherein

Applications.

Record.

Dealers registers.

Cost.

Signatures.

Disposition of duplicate sheets.

Penalty.

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STATUTES OF CALIFORNIA.

[Ch. 339

Form of register.

they are situated. The register provided for in this act shall be substantially in the following form:

Form of Register.

Series No.-----  
Sheet No.-----

ORIGINAL.

Dealers' Record of Sale of Revolver or Pistol.

State of California.

Notice to dealers: This original is for your files. If spoiled in making out, do not destroy. Keep in books. Fill out in duplicate.

Carbon duplicate must be mailed on the evening of the day of sale, to head of police commissioners, chief of police, city marshal, town marshal or other head of the police department of the municipal corporations wherein the sale is made, or to the county clerk of your county if the sale is made in a district where there is no municipal police department. Violation of this law is a misdemeanor. Use carbon paper for duplicate. Use indelible pencil.

Sold by----- Salesman-----  
City, town or township -----  
Description of arm (state whether revolver or pistol)-----  
Maker----- Number----- Caliber-----  
Name of purchaser -----age-----years.  
Permanent residence (state name of city, town or township, street and number of dwelling)-----  
Height -----feet-----inches. Occupation-----  
Color -----skin-----eyes-----hair-----  
If traveling or in locality temporarily, give local address  
-----  
-----  
Signature of purchaser-----  
(Signing a fictitious name or address is a misdemeanor.) (To be signed in duplicate.)  
Witness-----, salesman.  
(To be signed in duplicate.)

Series No.-----  
Sheet No.-----

DUPLICATE.

Dealers' Record of Sale of Revolver or Pistol.

State of California.

Notice to dealers: This carbon duplicate must be mailed on the evening of the day of sale as set forth in the original of this register page. Violation of this law is a misdemeanor.

Sold by ----- Salesman-----  
City, town or township -----  
Description of arm (state whether revolver or pistol)-----  
Maker -----number-----caliber-----

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FORTY-FIFTH SESSION.

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Name of purchaser \_\_\_\_\_ age \_\_\_\_\_ years.  
Permanent address (state name of city, town or township,  
street and number of dwelling) \_\_\_\_\_

Height \_\_\_\_\_ feet \_\_\_\_\_ inches. Occupation \_\_\_\_\_  
Color \_\_\_\_\_ skin \_\_\_\_\_ eyes \_\_\_\_\_ hair \_\_\_\_\_  
If traveling or in locality temporarily, give local address \_\_\_\_\_

Signature of purchaser \_\_\_\_\_  
(Signing a fictitious name or address is a misdemeanor.) (To  
be signed in duplicate.)

Witness \_\_\_\_\_, salesman.  
(To be signed in duplicate.)

SEC. 10. No person shall sell, deliver or otherwise transfer any pistol, revolver or other firearm capable of being concealed upon the person to any person whom he has cause to believe to be within any of the classes prohibited by section two hereof from owning or possessing such firearms, nor to any minor under the age of eighteen years. In no event shall any such firearm be delivered to the purchaser upon the day of the application for the purchase thereof, and when delivered such firearm shall be securely wrapped and shall be unloaded. Where neither party to the transaction holds a dealer's license, no person shall sell or otherwise transfer any such firearm to any other person within this state who is not personally known to the vendor. Any violation of the provisions of this section shall be a misdemeanor.

Restrictions on transfer of certain firearms.

SEC. 11. The duly constituted licensing authorities of any county, city and county, city, town or other municipality within this state, may grant licenses in form prescribed by the attorney general, effective for not more than one year from date of issue, permitting the licensee to sell at retail within the said county, city and county, city, town or other municipality pistols, revolvers, and other firearms capable of being concealed upon the person, subject to the following conditions, for breach of any of which the license shall be subject to forfeiture:

Local licenses for sale of certain firearms.

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

3. No pistol or revolver shall be delivered

(a) On the day of the application for the purchase, and when delivered shall be unloaded and securely wrapped; nor

(b) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity.

4. No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of said premises where it can readily be seen from the outside.

Penalty for dealing in certain firearms without license.

SEC. 12. Any person who, without being licensed as above provided, engages in the business of selling or otherwise transferring, or who advertises for sale, or offers or exposes for sale or transfer, any pistol, revolver or other firearm capable of being concealed upon the person is guilty of a misdemeanor.

Tampering with marks on certain firearms.

SEC. 13. No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol or revolver. Possession of any such firearm upon which the same shall have been changed, altered, removed, or obliterated, shall be presumptive evidence that such possessor has changed, altered, removed, or obliterated the same. Violations of this section shall be punished by imprisonment in the state prison for not less than one year nor more than five years.

Penalty.

Expiration of current licenses.

SEC. 14. All licenses heretofore issued within this state permitting the carrying of pistols or revolvers concealed upon the person shall expire at midnight of December 31, 1924.

Antique pistols, etc.

SEC. 15. This act shall not apply to antique pistols or revolvers incapable of use as such.

Constitutionality.

SEC. 16. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Stats. 1917, p. 221, repealed.

SEC. 17. That certain act entitled, "An act relating to and regulating the carrying, possession, sale or other disposition of firearms capable of being concealed upon the person; prohibiting the possession, carrying, manufacturing and sale of certain other dangerous weapons and the giving, transferring and disposition thereof to other persons within this state; providing for the registering of the sales of firearms; prohibiting the carrying or possession of concealed weapons in municipal corporations; providing for the destruction of certain dangerous weapons as nuisances and making it a felony to use or attempt to use certain dangerous weapons against another," approved May 4, 1917, is hereby repealed.

1923.] SALE AND USE OF PISTOLS AND REVOLVERS.

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SUBSTITUTE FOR SENATE BILL No. 265.

CHAPTER 252

AN ACT CONCERNING THE POSSESSION, SALE AND USE OF PISTOLS AND REVOLVERS.

*Be it enacted by the Senate and House of Representatives in General Assembly convened:*

SECTION 1. The term "pistol" and the term "revolver", as used in this act, shall mean any firearm having a barrel less than twelve inches in length.

Terms "pistol" and "revolver" defined.

SEC. 2. No person shall advertise, sell, deliver, offer or expose for sale or delivery or have in his possession with intent to sell or deliver any pistol or revolver at retail without having a permit therefor issued as hereinafter provided.

Permit for selling pistol or revolver to be obtained.

SEC. 3. The chief of police or, where there shall be no chief of police, the warden of the borough or the first selectman of the town, as the case may be, may, upon the application of any person, issue a permit in such form as may be prescribed by the superintendent of state police for the sale at retail of pistols and revolvers within the jurisdiction of the authority issuing such permit. Upon the application of any person having a bona fide residence or place of business within the jurisdiction of any such authority or, upon the application of any bona fide resident of the United States having a permit or license to carry any firearm issued by the authority of any state or sub-division of the United States, such chief of police, warden or selectman may issue a permit to such person to carry a pistol or revolver within the jurisdiction of the authority issuing the same, provided such authority shall find that such applicant intends to make no use of any pistol or revolver which he may be permitted to carry thereunder other than a proper use and that such person is a suitable person to receive such permit. The superintendent of state police may, upon application, issue to any holder of any permit to carry any pistol or revolver hereinbefore provided for, a permit to carry a pistol or revolver within the state. Each permit to carry any pistol or revolver shall be issued in triplicate and one of the copies issued by the superintendent of state police shall be delivered to the person to whom issued, one shall be delivered forthwith to the authority issuing the local permit and one shall be retained by the superintendent of state police, and the local authority issuing any such permit shall forthwith deliver one of such copies to the person to whom issued and one copy to the superintendent of state police and shall retain one of such copies.

Local authority may issue permit.

Local authorities may issue permit to carry any fire arm within their jurisdiction.

Superintendent of state police may grant permits to carry pistol or revolver in confines of state.

SEC. 4. The fee for each permit originally issued under the provisions of this act shall be one dollar and for each renewal

Fees for permits.

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SALE AND USE OF PISTOLS AND REVOLVERS. [Jan.,

thereof twenty-five cents, which fees shall be paid by the authority issuing the same to the municipality wherein issued or the state, as the case may be, and each permit issued hereunder shall be valid for one year from the date of issuance.

Sales to be made in place of business mentioned in permit.

SEC. 5. No sale of any pistol or revolver shall be made except in the room, store or place described in the permit for the sale of pistols and revolvers, and such permit or a copy thereof certified by the authority issuing the same shall be exposed to view within the room, store or place where pistols or revolvers shall be sold or offered or exposed for sale, and no sale or delivery of any pistol or revolver shall be made unless the purchaser or person to whom the same is to be delivered shall be personally known to the vendor of such pistol or revolver or the person making delivery thereof or unless the person making such purchase or to whom delivery thereof is to be made shall provide evidence of his identity. The vendor of any pistol or revolver shall keep a record of every pistol or revolver sold in a book kept for that purpose, which record shall be in such form as shall be prescribed by the superintendent of state police and shall include the date of the sale, the caliber, make, model and manufacturer's number of such pistol or revolver and the name, address and occupation of the purchaser thereof, which record shall be signed by the purchaser and by the person making the sale, each in the presence of the other, and shall be preserved by the vendor of such pistol or revolver for a period of at least six years.

Vendor to keep record of sale of fire arms.

Permit to carry fire arms may be revoked.

SEC. 6. Any permit for the carrying of any pistol or revolver issued under the provisions of this act may be revoked by the authority issuing the same. The revocation of either of such permits shall be a revocation of the other and, upon the revocation of any permit, such permit shall be forthwith delivered to the authority issuing the same. Upon the revocation of any local permit, the authority issuing the same shall forthwith notify the superintendent of state police and upon the revocation of any permit issued by the superintendent of state police, said superintendent shall forthwith notify the authority issuing such local permit.

Sale of pistols or revolvers to aliens restricted.

SEC. 7. No person, firm or corporation shall sell at retail, deliver or otherwise transfer any pistol or revolver to any alien, nor shall any person deliver any pistol or revolver at retail except upon written application therefor and no sale or delivery of any pistol or revolver shall be made upon the date of the filing or receipt of any written application for the purchase thereof, and when any pistol or revolver shall be delivered in connection with the sale or purchase, such pistol or revolver shall be enclosed in a package, the paper or wrapping of which shall be securely fastened, and no pistol or revolver when delivered on any sale or purchase shall be loaded or con-

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tain therein any gunpowder or other explosive or any bullet, ball or shell. Upon the delivery of any pistol or revolver the purchaser shall sign in triplicate a receipt for such pistol or revolver which shall contain the name, address and occupation of such purchaser, the date of sale, caliber, make, model and manufacturer's number and a general description thereof. One of such triplicate receipts shall, within twenty-four hours thereafter, be forwarded by the vendor of such pistol or revolver to the superintendent of state police and one to the authority issuing the permit for the sale of such pistol or revolver and the other shall be retained by such vendor for at least six years.

SEC. 8. No person shall make any false statement or give any false information connected with any purchase, sale or delivery of any pistol or revolver, and no person shall sell, barter, hire, lend, give or deliver to any minor under the age of eighteen years any pistol or revolver.

Giving of false information or the sale to persons under eighteen years of age prohibited.

SEC. 9. No person shall carry any pistol or revolver in or upon any vehicle or upon his person, except when such person shall be within his dwelling house or place of business, without a permit to carry the same issued as hereinbefore provided.

Carrying of pistol or revolver without permits restricted.

SEC. 10. The provisions of section nine of this act shall not apply to the carrying of any pistol or revolver by any marshal, sheriff or peace officer, or to any soldier, sailor or marine in the service of the United States or this state when on duty or going to or from duty, or to any member of any military organization when on parade or when going to or from any place of assembly, or to the transportation of pistols or revolvers as merchandise, or to any person carrying any pistol or revolver while contained in the package in which it was originally wrapped at the time of sale and while carrying the same from the place of sale to the purchaser's residence or place of business, or to any person removing his household goods or effects from one place to another, or to any person while carrying any such pistol or revolver from his place of residence or business to a place or person where or by whom such pistol or revolver is to be repaired or while returning to his place of residence or business after the same shall have been repaired.

When and by whom pistols and revolvers may be carried without securing a permit.

SEC. 11. No person shall change, alter, remove or obliterate the name of any maker or model or any maker's number or other mark of identification on any pistol or revolver. The possession of any pistol or revolver upon which any identifying mark, number or name shall have been changed, altered, removed or obliterated shall be prima facie evidence that the person owning or in possession of such pistol or revolver has changed, altered, removed or obliterated the same.

Tampering with identification mark of any pistol or revolver prohibited.

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LICENSING OF INSURANCE AGENTS.

[Jan.,

Penalty.

SEC. 12. Any person violating any provision of section nine or eleven of this act shall be fined not more than one thousand dollars or imprisoned not more than five years or both, and any person violating any other provision of this act shall be fined not more than five hundred dollars or imprisoned not more than three years or both, and any pistol or revolver found in the possession of any person in violation of any provision of this act shall be forfeited.

Repeal.

SEC. 13. Section 2678 of the general statutes, chapter 206 of the public acts of 1919, chapter 127 of the public acts of 1921 and those portions of sections 6369, 6370, 6371 and 6372 of the general statutes which relate to pistols and revolvers are repealed.

Approved June 2, 1923.

SUBSTITUTE FOR SENATE BILL No. 227.

CHAPTER 253

AN ACT PROVIDING FOR THE LICENSING OF INSURANCE AGENTS.

*Be it enacted by the Senate and House of Representatives in General Assembly convened:*

Insurance agent defined.

SECTION 1. An insurance agent is defined as a person authorized in writing, by any insurer authorized to transact business in the state, to solicit, negotiate or effect contracts of insurance, surety or indemnity; or any member of a copartnership or association, or any stockholder, officer or agent of a corporation authorized to solicit, negotiate or effect such contracts, when such copartnership, association or corporation shall hold a direct agency appointment from any insurer.

Agent to have license.

SEC. 2. No person shall engage in business as an insurance agent until he shall have obtained from the insurance commissioner a license therefor under the provisions of this act. Each applicant for such license shall file with the commissioner his written application for a license authorizing him to engage in business as an agent in the general or some specified line or lines of insurance, surety or indemnity coverage, which, under the provisions of the general statutes, may be written in the state, which application shall be accompanied by a statement, signed and sworn to by such applicant, on a blank furnished by the commissioner, setting forth such facts as he may require, and by the affidavit of an official or representative of an insurer authorized to transact business in the state or of a licensed insurance agent of the state, that the applicant is personally known to him; that the applicant has experience, or will be instructed, in the general or some specified

Form of application.

## PERJURY

### CHAPTER 265.

(S. B. No. 232—Stevens.)

#### OATH.

An Act to Amend and Re-enact Section 9367 of the Compiled Laws of North Dakota for the year 1913, Relating to the Prescribing of an Oath.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

Sec. 1. AMENDMENT.) That Section 9367 of the Compiled Laws of North Dakota for the year 1913 be amended and re-enacted to read as follows:

Sec. 9367. OATH DEFINED.) The term oath as used in Section 9366 of the Compiled Laws of 1913, includes an affirmation and every other mode of attesting the truth of that which is stated, which is authorized by law, and the signing of any writing purporting to be made under oath, in the presence of an officer authorized to administer oaths, or the acknowledgment of the signing thereof, to or before any such officer, or the presentation thereof to such officer by the person signing or by his direction to be authenticated as an oath, shall be deemed to be the taking of an oath within the meaning of said section and the certificate of the officer purporting to take such oath shall be prima facie evidence of the taking thereof.

Approved March 1st, 1923.

## PISTOLS AND REVOLVERS

### CHAPTER 266.

(S. B. No. 256—McLachlin.)

#### PISTOLS AND REVOLVERS.

An Act To Control the Possession, sale, and use of pistols and revolvers, to provide penalties, and for other purposes.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

Sec. 1. DEFINITION.) "Pistol or revolver," as used in this Act, shall be construed as meaning any firearm with barrel less than twelve inches in length.

Sec. 2. COMMITTING CRIME WHEN ARMED.) If any person shall commit or attempt to commit a crime when armed with a pistol or revolver, and having no permit to carry the same, he shall be in addition to the punishment provided for the crime, be punished by imprisonment for not less than ten years.

Sec. 3. PUNISHMENT.) The judge shall have the power to sentence any person who may be convicted for a second or third offense under section 2 of this Act, to double and triple the penalty imposed thereby, and for a fourth offense the person so convicted may be sentenced to life imprisonment.

Sec. 4. BEING ARMED PRIMA FACIE EVIDENCE OF INTENTION.) In the trial of a person for the commission of a felony or of an attempt to commit a felony against the person of another, the fact that he was armed with a pistol or revolver and having no permit to carry the same shall be prima facie evidence of his intention to commit said felony.

Sec. 5. ALIENS AND CRIMINALS MUST NOT POSSESS ARMS.) No unnaturalized foreign-born person and no person who has been convicted of a felony against the person or property of another or against the Government of the United States or of any State or subdivision thereof, shall own or have in his possession or under his control, a pistol or revolver. Violations of this section shall be punished by imprisonment for not to exceed five years.

Sec. 6. CARRYING PISTOL CONCEALED.) No person shall carry a pistol or revolver concealed in any vehicle or in any package, satchel, grip, suit case or carry in any way or upon his person, except in his dwelling house or place of business, without a license therefor as hereinafter provided. Violations of this section shall be punished by imprisonment for not less than one year, and upon conviction the pistol or revolver shall be confiscated and destroyed.

Sec. 7. EXCEPTIONS.) The provisions of the preceding section shall not apply to marshals, sheriffs, policemen, or other duly appointed peace officers, nor to the regular and ordinary transportation of pistols or revolvers as merchandise, nor to members of the Army, Navy or Marine Corps of the United States, or the National Guard, when on duty, or organizations by law authorized to purchase or receive such weapons from the United States, or this State, nor to duly authorized military or civil organizations when parading, nor to the members thereof when at or going to or from their customary places of assembly.

Sec. 8. ISSUE OF LICENSES TO CARRY.) The justice of a court of record, the chief of police of a city or town and the sheriff of a county, or persons authorized by any of them

shall upon the application of any persons having a bona fide residence or place of business within the jurisdiction of said licensing authority, or of any person having a bona fide residence or place of business within the United States and a license to carry a fire arm concealed upon his person issued by the authorities of any State or sub-division of the United States, issue a license to such person to carry a pistol or revolver within this State for not more than one year from date of issue, if it appears that the applicant has good reason to fear an injury to his person or property or for any other proper purpose, and that he is a suitable person to be so licensed. The license shall be in triplicate, in form to be prescribed by the Secretary of State, and shall bear the name, address, description, and signature of the licensee and the reason given for desiring a license. The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent by registered mail to the Secretary of State, and the triplicate shall be preserved for six years by the authority issuing said license.

Sec. 9. SELLING TO MINORS.) Any person or persons who shall sell, barter, hire, lend or give to any minor under the age of eighteen years any pistol or revolver shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined not less than \$100, nor more than \$1,000, or be imprisoned not less than three months, nor more than one year, or both.

Sec. 10. SALES REGULATED.) No person shall sell, deliver, or otherwise transfer a pistol or revolver to a person who he has reasonable cause to believe either is an unnaturalized foreign born person or has been convicted of a felony against the person or property of another, or against the Government of the United States or any State or subdivision thereof, nor in any event shall he deliver a pistol or revolver on the day of the application for the purchase thereof, and when delivered, said pistol or revolver shall be securely wrapped and shall be unloaded. Before a delivery be made the purchaser shall sign in triplicate and deliver to the seller a statement containing his full name, address, occupation, and nationality, the date of sale, the caliber, make, model, and manufacturer's number of the weapon. The seller shall, within seven days, sign and forward by registered mail one copy thereof to the Secretary of State, and one copy thereof to the chief of police of the city or town, or the sheriff of the county of which the seller is a resident, and shall retain the other copy for six years. This section shall not apply to sales at wholesale. Where neither party to the transaction holds a dealer's license, no person shall sell or otherwise transfer a pistol or revolver to any person not personally known to him. Violations of this section shall be punished by a fine of not less than \$100 or by

imprisonment for not less than one year, or by both such fine and imprisonment.

Sec. 11. DEALERS TO BE LICENSED.) Whoever, without being licensed as hereinafter provided, sells, or otherwise transfers, advertises, or exposes for sale, or transfers or has in his possession with intent to sell, or otherwise transfer, pistols or revolvers, shall be punished by imprisonment for not less than two years.

Sec. 12. DEALERS' LICENSES: BY WHOM GRANTED, AND CONDITIONS THEREOF.) The duly constituted licensing authorities of any city, town or subdivision of this state, may grant licenses in form prescribed by the Secretary of State, effective for not more than one year from date of issue, permitting the licensee to sell at retail within the said city or town or political subdivision, pistols and revolvers, subject to the following conditions, for breach of any of which the license shall be subject to forfeiture:

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

3. No pistol or revolver shall be delivered—

(a) On the day of the application for the purchase, and when delivered shall be unloaded and securely wrapped; nor

(b) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity; nor

(c) If the seller has reasonable cause to believe that the purchaser either is an unnaturalized foreign born person or has been convicted of a felony against the person or property of another, or against the Government of the United States or any State or subdivision thereof.

4. A true record, in triplicate, shall be made of every pistol or revolver sold, said record to be made in a book kept for the purpose, the form of which may be prescribed by the Secretary of State, and shall be personally signed by the purchaser and by the person affecting the sale, each in the presence of the other, and shall include the date of sale, the caliber, make, model, and manufacturer's number of the weapon, the name, address, occupation, and nationality of the purchaser. One copy of said record shall, within seven days, be forwarded by registered mail to the Secretary of State and one copy thereof to the chief of police of the city or town or the sheriff of the county of which the seller is a resident, and the other copy retained for six years.

5. No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of said premises where it can readily be seen from the outside.

Sec. 13. PENALTY FOR FALSE INFORMATION.) If any person in purchasing or otherwise securing delivery of a pistol or revolver or in applying for a permit to carry the same, shall give false information or offer false evidence of his identity he shall be punished by imprisonment for not less than five nor more than ten years.

Sec. 14. ALTERATION OF IDENTIFYING MARKS PROHIBITED.) No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol or revolver. Possession of any such firearm upon which the same shall have been changed, altered, removed, or obliterated, shall be presumptive evidence that such possessor has changed, altered, removed, or obliterated the same. Violations of this section shall be punished by imprisonment for not less than one year nor more than five years.

Sec. 15. EXISTING LICENSES REVOKED.) All Licenses heretofore issued within this State permitting the carrying of pistols or revolvers concealed upon the person shall expire at midnight of June 30th, 1923.

Sec. 16. EXCEPTIONS.) This Act shall not apply to antique pistols or revolvers incapable of use as such.

Sec. 17. CERTAIN ACTS REPEALED.) All laws or parts of laws inconsistent herewith are hereby repealed.

Approved March 7th, 1923.

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## PLEDGE

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### CHAPTER 267.

(H. B. No. 177—Cole.)

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#### SALE OF PROPERTY PLEDGED.

An Act to Amend and Re-enact Section 6790 of the Compiled Laws of North Dakota for 1913.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

Sec. 1. AMENDMENT.) Section 6790 of the Compiled Laws of the State of North Dakota for 1913 is amended and re-enacted to read as follows:

CHAPTER 118.

AN ACT TO CONTROL THE POSSESSION, SALE, AND USE OF PISTOLS AND REVOLVERS.

SECTION	SECTION
1. Definition of pistol or revolver.	9. Selling, etc., of weapons without license, how punished.
2. Commission of crime by one armed with pistol and unlicensed, how punished.	10. Licenses to sell, how granted; record of sales to be kept.
3. What persons forbidden to carry pistols or revolvers; penalty for violation.	11. Purchasing weapon by false information or evidence, how punished.
4. Carrying concealed weapon without license; penalty for violation.	12. Removing maker's name from weapon, or other mark of identification, how punished.
5. Persons exempt from application of preceding section.	13. Existing licenses to expire July 31, 1923.
6. License to carry loaded weapon, to whom and by whom to be granted.	14. Antique weapons not included in act.
7. Sales, etc., of weapons to minors, how punished; exemption.	15. Repealing clause; takes effect on passage.
8. Sale, etc., to unnaturalized foreign-born persons, etc., or to a felon, prohibited except upon permit.	

*Be it enacted by the Senate and House of Representatives in General Court convened:*

SECTION 1. Pistol or revolver, as used in this act shall be construed as meaning any firearm with a barrel less than twelve inches in length.

SECT. 2. If any person shall commit or attempt to commit a crime when armed with a pistol or revolver, and having no permit to carry the same, he shall in addition to the punishment provided for the crime, be punished by imprisonment for not more than five years.

SECT. 3. No unnaturalized foreign-born person and no person who has been convicted of a felony against the person or property of another shall own or have in his possession or under his control a pistol or revolver, except as hereinafter provided. Violations of this section shall be punished by imprisonment for not more than two years and upon conviction the pistol or revolver shall be confiscated and destroyed.

SECT. 4. No person shall carry a pistol or revolver concealed in any vehicle or upon his person, except in his dwelling house or place of business, without a license therefor as hereinafter provided. Violations of this section shall be punished by a fine of not more than one hundred dollars or by imprisonment not exceeding one year or by both fine and imprisonment.

SECT. 5. The provisions of the preceding sections shall not apply to marshals, sheriffs, policemen, or other duly appointed peace and other law enforcement officers, nor to the regular and ordinary trans-

Definition of pistol or revolver.

Commission of crime by one armed with pistol and unlicensed, how punished.

What persons forbidden to carry pistols or revolvers; penalty for violation.

Carrying concealed weapon without license; penalty for violation.

Persons exempt from application of preceding section.

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portation of pistols or revolvers as merchandise, nor to members of the army, navy, or marine corps of the United States, nor to the national guard when on duty, nor to organizations by law authorized to purchase or receive such weapons, nor to duly authorized military or civil organizations when parading, or the members thereof when at or going to or from their customary places of assembly.

SECT. 6. The selectmen of towns or the mayor or chief of police of cities may, upon application of any person issue a license to such person to carry a loaded pistol or revolver in this state, for not more than one year from date of issue, if it appears that the applicant has good reason to fear an injury to his person or property or for any other proper purpose, and that he is a suitable person to be licensed. The license shall be in duplicate and shall bear the name, address, description, and signature of the licensee. The original thereof shall be delivered to the licensee, the duplicate shall be preserved by the selectmen of towns and the chief of police of the cities wherein issued for a period of one year.

License to carry loaded weapon, to whom and by whom to be granted.

SECT. 7. Any person or persons who shall sell, barter, hire, lend or give to any minor under the age of twenty-one years any pistol or revolver shall be deemed guilty of a misdemeanor and shall upon conviction thereof be fined not more than one hundred dollars or be imprisoned not more than three months, or both. This section shall not apply to fathers, mothers, guardians, administrators, or executors who give to their children, wards, or heirs to an estate, a revolver.

Sales, etc., of weapons to minors, how punished; exemption.

SECT. 8. No person shall sell, deliver, or otherwise transfer a pistol or revolver to a person who is an unnaturalized foreign-born person or has been convicted of a felony against the person or property of another, except upon delivery of a written permit to purchase, signed by the selectmen of the town or the mayor or chief of police of the city. Before a delivery be made the purchaser shall sign in duplicate and deliver to the seller a statement containing his full name, address, and nationality, the date of sale, the caliber, make, model, and manufacturer's number of the weapon. The seller shall, within seven days, sign and forward to the chief of police of the city or selectmen of the town one copy thereof and shall retain the other copy for one year. This section shall not apply to sales at wholesale. Where neither party to the transaction holds a dealer's license, no person shall sell or otherwise transfer a pistol or revolver to any person not personally known to him. Violations of this section shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

Sale, etc., to unnaturalized foreign-born persons, etc., or to a felon, prohibited except upon permit.

SECT. 9. Whoever, without being licensed as hereinafter provided, sells, advertises, or exposes for sale, or has in his possession

Selling, etc., of weapons without license, how punished.

with intent to sell, pistols or revolvers, shall be punished by imprisonment for not more than two years.

Licenses to sell, how granted; record of sales to be kept.

SECT. 10. The selectmen of towns and the chief of police of cities may grant licenses, the form of which shall be prescribed by the secretary of state, effective for not more than one year from date of issue, permitting the licensee to sell at retail pistols and revolvers subject to the following conditions, for breach of any of which the license shall be subject to forfeiture:

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

3. No pistol or revolver shall be delivered (a) to a purchaser not personally known to the seller or who does not present clear evidence of his identity; nor (b) to an unnaturalized foreign-born person or a person who has been convicted of a felony and has no permit as required by section 8 of this act.

A true record, in duplicate, shall be made of every pistol or revolver sold, said record to be made in a book kept for the purpose, the form of which shall be prescribed by the secretary of state and shall be signed by the purchaser and by the person effecting the sale, and shall include the date of sale, the caliber, make, model, and manufacturer's number of the weapon, the name, address, and nationality of the purchaser. One copy of said record shall, within seven days, be forwarded to the selectmen of the town or the chief of police of the city and the other copy retained for one year.

Purchasing weapon by false information or evidence, how punished.

SECT. 11. If any person in purchasing or otherwise securing delivery of a pistol or revolver shall give false information or offer false evidence of his identity he shall be punished by imprisonment for not more than two years.

Removing maker's name from weapon, or other mark of identification, how punished.

SECT. 12. No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol or revolver. Possession of any such firearms upon which the same shall have been changed, altered, removed, or obliterated, shall be presumptive evidence that such possessor has changed, altered, removed or obliterated the same. Violations of this section shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than one year, or both.

Existing licenses to expire July 31, 1923.

SECT. 13. All licenses heretofore issued within the state permitting the carrying of pistols or revolvers upon the person shall expire at midnight of July 31, 1923.

Antique weapons not included in act.

SECT. 14. This act shall not apply to antique pistols or revolvers incapable of use as such.

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SECT. 15. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect upon its passage. Repealing clause; takes effect on passage.

[Approved May 4, 1923.]

CHAPTER 119.

AN ACT TO PROHIBIT THE SALE AND MANUFACTURE OF INFLAMMABLE STOVE POLISHES.

SECTION

1. Manufacture or sale of certain inflammable stove polishes forbidden.

SECTION

2. Penalty for violation.  
3. Repealing clause; takes effect on passage.

*Be it enacted by the Senate and House of Representatives in General Court convened:*

SECTION 1. It shall be unlawful to manufacture for sale, keep for sale, or sell for domestic use, any articles or compounds designed or intended as stove polish, which flash at a temperature below one hundred and twenty degrees Fahrenheit, open cup test. The selling or having for sale of such compounds by retail stores shall be deemed as presumptive evidence of their being intended for domestic use. Manufacture or sale of certain inflammable stove polishes forbidden.

SECT. 2. Any violation of this act shall be punished by a fine not exceeding one hundred dollars (\$100) or by imprisonment not exceeding six months or both. Penalty for violation.

SECT. 3. So much of chapter 101, Laws of 1921, as is inconsistent herewith and all other acts and parts of acts inconsistent herewith are hereby repealed and this act shall take effect upon its passage. Repealing clause; takes effect on passage.

[Approved May 4, 1923.]

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laying out, opening, changing or vacating of any street, alley, or public place in any city are hereby extended and shall apply to all proceedings had under the provisions of section 1 of this act, including the ascertainment, award and payment of damages to, and the fixing, assessment and collection of assessments from, the owners of property beneficially or injuriously affected by such proceeding.

## CHAPTER 207.

AN ACT to regulate and control the possession, sale, and use of pistols and revolvers in the State of Indiana, to provide penalties, and for other purposes.

[S. 55. Approved March 12, 1925.]

**Pistols and Revolvers Defined.**

SECTION 1. *Be it enacted by the general assembly of the State of Indiana,* That the term "pistol or revolver," as used in this act, shall be construed as meaning any firearm with a barrel less than twelve inches in length.

**Crime—Committing When Armed With Pistol or Revolver.**

SEC. 2. If any person shall, within the State of Indiana, commit or attempt to commit a crime, when armed with a pistol or revolver, and having no permit to carry the same, he shall, in addition to the punishment provided for the crime, be guilty of a felony and shall be punished by imprisonment for not less than one year and not more than five years.

**Subsequent Offenses.**

SEC. 3. The judge shall have the power to sentence any person who may be convicted for a second or third, or other subsequent offense under section 2 of this act, to double or triple the penalty imposed thereby.

**Felony—Conviction For—Prohibited From Possessing Pistol.**

SEC. 4. No person who has been convicted of a felony committed against the person or property of another shall own or have in his possession or under his control, within the State of Indiana, a pistol or revolver. A violation

of this section shall constitute a felony and be punishable by imprisonment for not less than one year, and not more than five years.

**Pistol or Revolver—Possession Without Permit.**

SEC. 5. No person shall carry, within the State of Indiana, a pistol or revolver concealed in any vehicle or upon his person, except in his dwelling house or place of business; without a permit therefor as hereinafter provided. Violations of this section shall constitute a misdemeanor and be punished by a fine of one hundred dollars (\$100.00), to which may be added imprisonment for not more than one year, and upon conviction the pistol or revolver shall be confiscated and destroyed by the sheriff on order of the court.

**Persons Exempt From Act.**

SEC. 6. The provisions of the preceding section shall not apply to marshals, sheriffs, deputy sheriffs, policemen or any other duly appointed peace officers, nor the pistols or revolvers of any bank, trust company, or common carriers, or to the officers or employes of any bank, trust company, or common carriers, while such officers or employes are guarding money or valuables within the line of their duties as such employes, nor to the regular and ordinary transportation of pistols or revolvers as merchandise, nor to members of the army, navy, or marine corps or the mail service of the United States, or the national guard, when on duty, or organizations by law authorized to purchase or receive such weapons from the United States, or the State of Indiana, nor to duly authorized military or civil organizations when parading, nor to the members thereof when at or going to or from their customary places of assembly.

**Permits—Clerk of Circuit Court—Application—Form—Fee.**

SEC. 7. The clerk of any circuit court of the State of Indiana, shall, upon application of any citizen having a bona fide residence or place of business within the State of Indiana, or of any person having a bona fide residence or place of business within the United States, and a permit

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to carry a firearm concealed upon his person issued by the authorities of any other state or subdivision of the United States, issue a permit to such citizen to carry a pistol or revolver within the State of Indiana, during the period of one year or until revoked, as herein provided. Such application for permit shall be signed by two resident householders and freeholders of the county in which the applicant lives, and it shall appear from such application that the applicant is a suitable person to be granted a permit under the law. The permit shall be in duplicate, in form to be prescribed by the adjutant general of the State of Indiana, and shall bear the name, address, description and signature of the applicant and reason given for desiring a permit. The original thereof shall be delivered to the applicant, the duplicate shall be preserved for six years by the clerk of the circuit court issuing the same. For each permit so issued, the applicant shall pay the sum of one dollar (\$1.00).

**Minors—Sale of Pistols or Revolvers to Prohibited.**

SEC. 8. Any person or persons who shall, within the State of Indiana, sell, barter, hire, lend, or give to any minor under the age of twenty-one years, any pistol or revolver shall be deemed guilty of a misdemeanor and shall upon conviction thereof be fined not more than one hundred dollars (\$100.00), or be imprisoned for not more than three months, or both, except for uses as hereinbefore provided.

**Sale of Pistols and Revolvers—Record—Penalty.**

SEC. 9. No person shall within the State of Indiana sell, deliver or otherwise transfer a pistol or revolver to a person who he has reasonable cause to believe either is not a citizen or has been convicted of a felony against the person or property of another, nor in any event shall he deliver a pistol or revolver on the day of the application for the purchase thereof, and when delivered said pistol or revolver shall be securely wrapped and shall be unloaded. Before a delivery be made, the purchaser or his duly authorized agent and the seller or his duly authorized agent shall in the presence of each other sign in duplicate a statement containing the purchaser's full name, age, ad-

dress, place of birth, and nationality, the date of sale, the caliber, make, model, and manufacturer's number of the weapon. The seller shall, within seven days, forward by registered mail, to the clerk of the circuit court of the county in which the seller resides, one copy thereof and shall retain the other copy for six years. This section shall not apply to sales at wholesale. Where neither party to the transaction holds a dealer's license, no person shall sell or otherwise transfer a pistol or revolver to any person not personally known to him. Violations of this section shall constitute a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100.00), or by imprisonment for not more than one year, or by both such fine and imprisonment.

**Pistols and Revolvers—Sale Without License.**

SEC. 10. Whoever, within the State of Indiana, without being licensed as hereinafter provided, sells, delivers, transfers, advertises, or exposes for sale, or has in his possession with intent to sell, pistols or revolvers, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment for not less than one year nor more than two years.

**Dealers' Licenses—Conditions on Which Sold—Record—Advertisement.**

SEC. 11. The clerk of the circuit court of any county may grant licenses, to any reputable, established dealer, on forms to be prescribed by the adjutant general, permitting the licensee to sell at retail within the State of Indiana pistols and revolvers, subject to the following conditions, for breach of any of which the license shall be subject to forfeiture:

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

3. No pistol or revolver shall be delivered:

(a) On the day of the application for the purchase, and when delivered shall be unloaded and securely wrapped; nor,

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(b) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity; nor,

(c) If the seller has reasonable cause to believe that the purchaser is an unnaturalized foreign-born person or has been convicted of a felony against the person or property of another.

4. A true record, in duplicate, shall be made of every pistol or revolver sold, said record to be made in a book kept for the purpose, the form of which shall be prescribed by the adjutant general and shall be signed by the purchaser and by the person effecting the sale, and in the presence of each other, and shall include the date of sale, the caliber, make, model, and manufacturer's number of the weapon, the name, address, age, place of birth, nationality of the purchaser. One copy of said record shall, within seven days, be forwarded by registered mail to the clerk of the circuit court of the county in which the seller resides, and the other copy shall be retained by the seller for six years.

5. No pistol or revolver, or placard advertising the sale thereof, or imitation thereof, shall be displayed in any part of said premises where it can readily be seen from the outside.

**False Information.**

SEC. 12. If any person in purchasing or otherwise securing delivery of a pistol or revolver or applying for a permit to carry same within the State of Indiana shall give false information or offer false evidence of his identity he shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment for not less than one year nor more than five years.

**Obliteration of Make, Model, Number—Penalty.**

SEC. 13. No person shall within the State of Indiana, change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol or revolver. Possession of any such firearms upon which the same shall have been changed, altered, removed, or obliterated, shall be prima facie evidence that such possessor has changed, altered, removed,

or obliterated the same. Violations of this section shall be a misdemeanor and shall be punished by imprisonment for not less than six months nor more than one year.

**Felony—Possession of Revolver Prima Facie Evidence.**

SEC. 14. In the trial of a person charged with committing or attempting to commit a felony against the person or property of another while armed with a pistol or revolver, without having a permit to carry such firearm as hereinbefore provided, the fact that such person was so armed shall be prima facie evidence of his intent to commit such felony.

**Weapons Exempt.**

SEC. 15. This act shall not apply to antique pistols or revolvers incapable of use as a deadly weapon.

**Prior Licenses.**

SEC. 16. Any or all licenses heretofore issued to carry or possess revolver or pistol shall be revoked and rendered null and void on and after thirty days from the taking effect of this act.

**Revocation of License.**

SEC. 17. Hereafter in any court of record upon trial of any person for a penal offense, and upon a showing that such person is not a fit person to carry concealed weapons, the court may enter an order revoking such person's license to carry concealed weapons and such fact shall be communicated to the public officer issuing the same.

**Licensed Dealers—Statement—Penalty.**

SEC. 17½. It shall be unlawful from and after the taking effect of this act, for any person, firm or corporation to receive or have in his or its possession within the State of Indiana any pistol or revolver purchased or acquired after the taking effect of this act, except a licensed dealer, who shall not have signed and forwarded to the clerk of the county in which he resides the statements provided for in section 9 of this act, before or at the time of taking possession of such pistol or revolver. Whoever shall violate the provisions of this section of this act shall be

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deemed guilty of a misdemeanor and shall upon conviction thereof be fined not more than \$100, to which may be added imprisonment for not more than sixty days.

**Repeal.**

SEC. 18. All laws and parts of laws in conflict herewith are hereby repealed.

**Unconstitutional Provisions.**

SEC. 19. If any provision or section of this act shall be held void or unconstitutional, all other provisions and all other sections of this act, which are not expressly held to be void or unconstitutional, shall remain in full force and effect.

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**CHAPTER 208.**

AN ACT fixing the terms of the circuit court, in the forty-ninth judicial circuit, composed of the counties of Daviess and Martin, and repealing all laws in conflict therewith, and declaring an emergency.

[S. 173. Approved March 12, 1925.]

**Daviess and Martin Counties—Terms of Court.**

SECTION 1. *Be it enacted by the general assembly of the State of Indiana,* That there shall be four terms each year of the circuit court in each of the counties of Daviess and Martin, comprising the forty-ninth judicial circuit. The terms in the county of Martin shall begin on the first Monday in January, the fourth Monday in March, the first Monday in August, and the fourth Monday in October of each year, and the terms beginning on the first Monday of January, and the fourth Monday of March, shall continue for four weeks each, and the terms beginning on the first Monday of August, and the fourth Monday of October, shall continue for three weeks each.

The terms in the county of Daviess shall begin on the first Monday of February, the fourth Monday of April, the first Monday of September, and the third Monday of November, and the terms beginning on the first Monday of February, and the first Monday of September, shall continue for six weeks, and the terms beginning on the fourth Monday of April and the third Monday of Novem-

## PUBLIC ACTS, 1925—No. 313.

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[No. 313.]

AN ACT to regulate the possession and sale of pistols, revolvers and guns; to provide a method of licensing those carrying such weapons concealed; and to provide penalties for violations of such regulations.

*The People of the State of Michigan enact:*

SECTION 1. A pistol, revolver or gun as used in this act shall be construed to mean any pistol, revolver or gun not exceeding thirty inches in length that can be concealed on or about the person. Pistol, etc., defined.

SEC. 2. Any person who shall commit or attempt to commit a felony when armed with a pistol, revolver or gun, as defined in section one, shall, in addition to the punishment provided for committing the crime, be punished by imprisonment for not less than two nor more than five years within the discretion of the court. Felony, penalty for.

SEC. 3. The court shall have power to sentence any person who may be convicted of a second offense to double the additional penalty imposed under section two hereof for carrying such concealed weapon without a license. Second offense.

SEC. 4. In the trial of a person for the commission of murder, assault with intent to do great bodily harm, robbery, larceny, or of an attempt to commit any of such offenses, the fact that he was armed with a pistol, revolver or gun as herein defined and had no permit to carry the same, shall be prima facie evidence of his intention to commit the crime with which he is charged. If any peace officer shall arrest a person on suspicion and with probable cause and without a warrant, for carrying concealed weapons, as herein provided, without a license therefor, and the arrest was in other respects legal and such person was actually in possession of a concealed weapon without a license to carry the same, it shall be presumed that the officer making the arrest had reasonable cause to believe that the alleged offense was being committed. What deemed prima facie evidence.

SEC. 5. No person shall carry a pistol, revolver or gun concealed on or about his person or in any vehicle owned or operated by him, except in his dwelling house, place of business or on his premises, without a license therefor, as hereinafter provided. The provisions of this section, however, shall not apply to the regular and ordinary transportation of pistols, revolvers or guns as merchandise, or to any member of the army, navy or marine corps of the United States, or to the national guard when on duty, or organizations by law authorized to purchase or receive such weapons from the United States or from this state, nor to duly authorized military organizations when on duty, nor to the members thereof when going to or returning from their customary places of assembly, nor to wholesale or retail dealers therein, nor to peace officers of the state. Pistol, etc., when unlawful to carry.

Permit to carry, who to issue.

SEC. 6. The prosecuting attorney, sheriff and chief of police of any city or incorporated village in which an applicant for a license to carry a concealed weapon, as herein defined, resides, shall constitute a licensing board for applicants living in cities and incorporated villages of each county. The prosecuting attorney and sheriff shall constitute a board to act upon applications for such a license by applicants not residing in a city or incorporated village in such county. The county clerk of each county shall be clerk of such board. The board as herein constituted may issue a permit to carry concealed, a revolver or gun within the state, to such person residing within the jurisdiction of the licensing board, if it appears that the applicant is a suitable person to be granted a license and there is reasonable cause therefor. The license so issued shall state the reason for granting the same and the length of time for which granted. Such license shall be void when the reason for granting it ceases to exist. A license may also be issued, as herein provided, to any person having a bona fide residence or place of business within the United States, and holding a license to carry the weapons herein mentioned concealed upon his person, issued by the authorities of the United States. The license herein mentioned shall be in a form prescribed by the secretary of state and shall be in triplicate. It shall give the name, address and description of the licensee and the reason for granting a license. Each of said copies shall be signed by the licensee. The original shall be delivered to such licensee; one copy shall be mailed by registered letter within thirty days to the secretary of state and the other copy shall be preserved by the person issuing the license.

Form of license.

Delivery to purchaser; statement required.

SEC. 7. No person shall deliver or otherwise transfer a pistol, revolver or gun, as defined in this act, to a person, unless it be securely wrapped and unloaded. Before the same is delivered to the purchaser, he shall sign in triplicate and deliver to the seller a statement containing his full name, address, occupation, nationality, the date of sale, the caliber, make, model and manufacturer's number of the weapon. The seller shall, within thirty days thereafter, sign and mail by registered letter one copy thereof to the secretary of state, one copy to the chief of police of the city or village in which the same was sold or to the sheriff of the county of which the seller is a resident and shall retain the other copy. This section shall not apply to sales at wholesale. Any person convicted of wilfully violating the provisions of this section shall be punished by a fine of not less than one hundred dollars or by imprisonment for not more than one year or by both such fine and imprisonment, in the discretion of the magistrate.

Dealer's license.

SEC. 8. No person, firm or corporation shall hereafter sell or otherwise transfer a pistol, revolver or gun without having obtained a dealer's license therefor. The duly constituted licensing authorities herein mentioned may grant licenses on a form prescribed by the secretary of state, effective for not

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more than one year from the date thereof permitting the licensee to sell at retail the firearms herein mentioned, subject to the following conditions:

Conditions.

1. The business shall be conducted only in the building occupied by the licensed dealer.

2. The license or a copy thereof certified by the issuing authority shall be displayed on the premises where it can be readily seen.

3. A true record in triplicate shall be made of every pistol, revolver or gun, as defined in this act, sold, said record to be made in a book kept for the purpose, the form of which shall be prescribed by the secretary of state as hereinbefore provided. The form shall show the date of sale, the caliber, make, model and manufacturer's number of the weapon and the name, address, occupation and nationality of the purchaser.

Sec. 9. If any person in purchasing or otherwise securing delivery of a pistol, revolver, or gun, as defined in this act, or in applying for a permit to carry the same, shall give any false information or offer false evidence of his identity, he shall be subject to the penalty hereinafter provided.

False information.

Sec. 10. No person shall deliberately change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identity of any pistol, revolver or gun. Possession of any such firearm upon which the name or number shall have been deliberately changed, altered, removed or obliterated shall be presumptive evidence that such possessor has changed, altered, removed or obliterated the same.

Not to change, etc., name of maker, etc.

Sec. 11. On or before the first day of July, nineteen hundred twenty-five, any person within this state who owns or has in his possession, a pistol, revolver or gun, as herein described, and which have not been by that time legally registered, shall register the same in the office of the sheriff of the county or the chief of police of the city or village in which such person resides. A certificate of registration shall be issued in triplicate and on a form to be prescribed by the secretary of state, containing the name, address, description and signature of the person registering the same, together with a full description of such firearm. The original shall be delivered to the person registering the same, one copy thereof shall be mailed to the secretary of state by registered letter within thirty days from the date of said registration, and the other copy thereof shall be retained and filed in the office of said sheriff or chief of police. The provisions of this section shall not apply to wholesale or retail dealers or to persons having in their possession pistols, revolvers or guns used solely for the purposes of display as relics, souvenirs or curios and kept as a collection of such.

Registration.

Certificate, what to contain, etc.

Sec. 12. All licenses heretofore issued within the state, permitting a person to carry a pistol, revolver or gun, as defined in this act, concealed upon his person, shall expire at midnight, December thirty-first, nineteen hundred twenty-six.

When license to expire.

Revocation.      SEC. 13. Any officer issuing a license under the provisions of this act may revoke the same upon receiving a certificate of any magistrate showing that such licensee has been convicted of violating any of the provisions of this act. Such license may also be revoked by the official issuing the same whenever in his judgment the holder thereof has violated any of the provisions of this act or is an unfit person to carry a concealed weapon as mentioned herein. Such official shall not revoke a license as herein mentioned, except after a hearing of which reasonable notice shall be given to the licensee either personally or by registered mail to the last known residence of the licensee. No such license shall be revoked except upon the written complaint of a peace officer or person living within the jurisdiction of the licensing official. Such complaint shall be addressed to the licensing official and shall set forth the reasons for requesting that the license be revoked.

Hearing.

When inapplicable.      SEC. 14. This shall not apply to antique pistols, revolvers or guns.

Penalty for violation.      SEC. 15. Any person convicted of a violation of this act for which a penalty is not provided shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the state prison for a period of not more than three years, or by both such fine and imprisonment, in the discretion of the court.

Saving clause.      SEC. 16. This act is declared to be severable and if any section or part of a section shall be held to be unconstitutional, the validity of the balance of the act shall not be affected thereby.

Approved May 26, 1925.

[No. 314.]

AN ACT to amend section one of act number thirty-two of the public acts of eighteen hundred seventy-three, entitled "An act to extend aid to the university of Michigan and to repeal an act entitled 'An act to extend aid to the university of Michigan.' approved March fifteen, eighteen hundred sixty-seven, being sections three thousand five hundred six and three thousand five hundred seven of the compiled laws of eighteen hundred seventy-one," being section one thousand one hundred eighty-three of the compiled laws of nineteen hundred fifteen, as amended by act number two hundred fifty-two of the public acts of the state of Michigan for the year nineteen hundred twenty-three.

*The People of the State of Michigan enact:*

Section amended.      SECTION 1. Section one of act number thirty-two of the public acts of eighteen hundred seventy-three, entitled "An act to

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CHAPTER 64.

An Act to amend an act entitled "A further supplement to an act entitled 'An act for the punishment of crimes' (Revision of 1898), approved June fourteenth, one thousand eight hundred and ninety-eight," which supplementary act was approved March eleventh, one thousand nine hundred and twenty-four.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The act of which this act is amendatory be and the same hereby is amended so that the same shall read as follows: Act amended.

1. Any person who shall carry any revolver, pistol or other firearm, or other instrument of the kinds known as a blackjack, slungshot, billy, sandclub, sandbag, bludgeon, metal knuckles, dagger, dirk, dangerous knife, stiletto, bomb or other high explosive, other than fixed ammunition, concealed in or about his clothes or person, or in any automobile, carriage, motor cycle, or other vehicle, shall be guilty of a misdemeanor; *provided, however,* that nothing in this act contained shall be construed in any way to apply to the sheriff, or the undersheriffs of any county, nor to the regularly employed members of any uniformed police department in any municipality of this State, nor to any prosecutor or assistant prosecutor of any county, jailer, regular fish and game wardens, constable, railway police, canal police, and steamboat police and prosecutor's detectives; nor to any member of the State Police, nor to any motor vehicle inspector; nor to duly authorized military organizations when under orders, nor to the members thereof when going to or from places of meeting of their respective organizations, carrying the weapons prescribed for such drill, exercise or parade; *and provided, further,* nothing in this act contained shall be construed to apply to any person having a written permit to carry Carrying concealed weapon on person or in vehicle a misdemeanor.

*Proviso: legal carrying.*

*Proviso.*

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any revolver, pistol or other firearm, when such permit has been obtained pursuant to the provisions of this act; nor to public utility corporations in the transportation of explosives; *provided, however,* that nothing herein contained shall prevent any person from keeping or carrying about his or her place of business, dwelling, house or premises, any such revolver, pistol, firearm or other weapon, or from carrying the same from any place of purchase to his or her dwelling, house or place of business, or from his or her dwelling, house or place of business to any place where repairing is done, to have the same repaired and returned, or to carry a gun, rifle or knife in the woods or fields or upon the waters of the State for the purpose of hunting or target practice.

**Proviso.**

**License to carry weapons.** 2. Any person desirous of obtaining a permit to carry a revolver, pistol or other firearm, pursuant to the provisions of this act, shall in the first instance, make application therefor either to the chief police official of the municipality in which the applicant resides or to the sheriff of the county wherein the applicant resides. If such application is approved by the chief police official or by the sheriff, as the case may be, the applicant shall then present such application, so approved as aforesaid, to a Common Pleas judge of the county or to the justice of the Supreme Court or to the judge holding the circuit for the county in which the applicant is resident, who, after investigation, and being satisfied of the sufficiency of the application, and of the need of such person carrying concealed upon his person, a revolver, pistol or other firearm, shall issue a permit therefor. A permit so issued pursuant to the provisions of this act is sufficient authority for the holder thereof to carry concealed upon his person a revolver, pistol or other firearm in all parts of the State of New Jersey. All permits issued pursuant to the provisions of this act shall expire on the thirty-first day of December subsequent to the date of issue, and may thereafter be renewed for a period of five years.

**Application.**

**Approval.**

**Permit.**

**Expiration and renewal.**

**Record of sale kept.** 3. Every person engaged in the retail business of selling, leasing or otherwise transferring a pistol, revolver or other firearm of a size capable of being concealed

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upon the person, whether such seller, lessor or transferor is a retail dealer, pawnbroker or otherwise, shall keep a register in which shall be entered the time of sale, date of sale, the name, age, color, nationality, occupation and residence of the purchaser, the name of the salesman making the sale, the place where sold, the make, model, manufacturer's number, calibre or other marks of identification on such pistol, revolver or other firearm. Such register shall be open at all reasonable hours for the inspection of any police or other peace officer.

The form of such register shall be prepared by the Secretary of State, and by him transmitted to the clerk of every municipality. The clerk of such municipality shall thereupon prepare said register in accordance with said form so transmitted, and furnish the same to each person, firm or corporation within his said municipality engaged in the business of selling, leasing or otherwise transferring pistols, revolvers or other firearms. The purchaser of any pistol, revolver or other firearm capable of being concealed upon the person shall sign, and the dealer shall require him to sign his name and affix his address to said register, in duplicate, and the salesman shall affix his name, in duplicate, as a witness to the signature of the purchaser. Any person signing a fictitious name or address, or giving any false information in connection with the making of any such purchase shall be guilty of a high misdemeanor.

The duplicate sheet of such register shall before twelve o'clock midnight of the day of sale, lease or transfer be delivered to the office of the chief of police of such municipality, or to the office of the captain of the precinct of any such city, within which the dealer resides, and a receipt shall be given to such dealer therefor; *provided, however*, that where a sale, lease or transfer is made in any municipality having no chief of police, it shall then be the duty of the dealer, from the day of sale to mail to the county clerk of the county within which the sale, lease or transfer was made a duplicate copy of such register. Any person violating any of the provisions hereof shall be guilty of a misdemeanor.

Registry.

Furnished  
dealers.Signature of  
buyer and  
seller.False repre-  
sentation.Duplicate  
delivered.

Proviso.

Penalty.

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Form of register.

The register provided for in this act shall be substantially in the following form:

Sold, leased or transferred by ..... Salesman .....  
 ..... City, town or township .....  
 ..... Description of arm (state whether revolver or pistol) ..... Maker .....  
 Number ..... Caliber ..... Name of purchaser ..... Age ..... Years .....  
 Permanent residence (state name of city, town or township, street and number of dwelling) .....  
 Height ..... feet ..... inches .....  
 Occupation ..... Color ..... Skin .....  
 Eyes ..... Hair .....  
 If traveling or in locality temporarily, give local address .....  
 ..... Signature of purchaser .....  
 ..... (Signing a fictitious name or address is a misdemeanor.) (To be signed in duplicate.)  
 Witness ..... Salesman.

(To be signed in duplicate.)

No sale after five P. M.

4. No person engaged in the retail business of selling, leasing or otherwise transferring any pistol, revolver or other firearm of a size capable of being concealed upon the person shall exhibit for purposes of sale, lease or hire any pistol, revolver or other firearm after the hour of five P. M.; and *provided, further*, that no pistol, revolver or other firearm shall be delivered to any purchaser until twenty-four hours shall have elapsed from the time of application therefor.

Proviso.

Permits for banking institutions.

5. The president of any National bank, building and loan association, trust company or other banking institution located in any municipality of this State may make application to the chief of police of such municipality for permits, in blank, to be used by the messengers, clerks or other employees or agents of such institutions for use while engaged in the performance of their respective duties. Upon such issue, as aforesaid, he shall transmit to the chief of police from whom such permits were obtained a record of the persons to whom the same were issued; *provided, however*, that such permits, so as aforesaid issued under this section, shall not exceed twenty in number to any one bank.

Police notified.

Proviso.

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6. Any person who shall alter, change, disfigure or deface the serial number of any pistol or revolver shall be guilty of a misdemeanor; any person engaged in the retail business of selling, leasing or otherwise transferring pistols, revolvers, or other firearms who shall sell or lease any pistol, or revolver having the serial number thereof altered, changed, disfigured or defaced shall be guilty of a misdemeanor.

Not alter serial number.

7. This act shall take effect immediately.  
Approved March 12, 1925.

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CHAPTER 65.

An Act concerning building and loan associations  
(Revision of 1925).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

ARTICLE I. AS TO BUILDING AND LOAN ASSOCIATIONS OF THIS STATE.

I. FORMATION.

1. Purposes.

Upon executing, recording and filing a certificate pursuant to this act, nine or more persons, citizens of this State, may become an incorporated association for the purpose of assisting each other and all who may become associated with them in acquiring real estate, making improvements thereon and for removing incumbrances therefrom by the payment of periodical installments, as its constitution shall provide; and for the further purpose of accumulating a fund, to be repaid to its members, subject to the right of earlier redemption, who do not obtain advances for purposes above mentioned when the funds of such association shall amount to a certain sum per share, to be specified in the certificate of incorporation.

Formation of building and loan associations.

Purposes.

9. County school superintendent, \$1,500. The county school superintendent shall be allowed a deputy or clerk whose salary shall be determined by the county court; all claims of deputy for salary or services must be approved by the county school superintendent \*[and the same shall be audited by the county court and paid as other claims against the county are paid. The county school superintendent] shall be allowed such sum as the county court may deem necessary for traveling expenses incurred in the discharge of his duties, which claims shall be audited and paid by the county court out of the general fund of the county.

Approved by the governor February 26, 1925.

Filed in the office of the secretary of state February 26, 1925.

## CHAPTER 260

### AN ACT

[H. B. 452]

To control the possession, sale and use of pistols and revolvers, to provide penalties.

*Be It Enacted by the People of the State of Oregon:*

Section 1. On and after the date upon which this act takes effect, any person who within the state of Oregon manufactures or causes to be manufactured or who imports into the state of Oregon or who keeps for sale or offers or exposes for sale or who gives, lends or possesses a pistol or revolver otherwise than in accordance with the provisions of this act shall be guilty of a felony, and, upon conviction thereof, shall be punishable by imprisonment in the state penitentiary for not more than five years.

Section 2. On and after the date upon which this act takes effect no unnaturalized foreign-born person and no person who has been convicted of a felony against the person or property of another or against the government of the United States or of the state of Oregon or of any political subdivision thereof shall own or have in his possession or under his custody or control any pistol, revolver or other firearm capable of being concealed upon the person. The terms "pistol," "revolver," and "firearms capable of being concealed upon the person," as used in this act, shall be construed to apply to and include all firearms having a barrel less than twelve inches in length. Any person who shall violate the provisions of this section shall be guilty of a felony, and, upon conviction thereof, be punishable by imprisonment in the state penitentiary for not less than one year nor for more than five years.

\* The phrase inserted in brackets appears in the original and engrossed bills, but was not incorporated in the enrolled act.

Section 3. If any person shall commit or attempt to commit any felony within this state while armed with any of the weapons mentioned in section 1 hereof or while armed with any pistol, revolver or other firearm capable of being concealed upon the person, without having a license or permit to carry such firearm, as hereinafter provided, upon conviction of such felony or of an attempt to commit such felony, he shall, in addition to the punishment prescribed for the crime of which he has been convicted, be punishable by imprisonment in the state penitentiary for not less than five nor for more than ten years. Such additional period of imprisonment shall commence upon the expiration or other termination of the sentence imposed for the crime of which he stands convicted and shall not run concurrently with such sentence. Upon a second conviction under like circumstances such additional period of imprisonment shall be for not less than ten years nor for more than fifteen years, and upon a third conviction under like circumstances such additional period of imprisonment shall be for not less than fifteen nor for more than twenty-five years; such terms of additional imprisonment to run consecutively as before. Upon a fourth or subsequent conviction under like circumstances the person so convicted may be imprisoned for life or for a term of years not less than twenty-five years, within the discretion of the court wherein such fourth or subsequent conviction was had. In the trial of a person charged with committing or attempting to commit a felony against the person of another while armed with any of the weapons mentioned in section 1 hereof, or while armed with any pistol, revolver or other firearm capable of being concealed upon the person, without having a license or permit to carry such firearm, as hereinafter provided, the fact that he was so armed shall be prima facie evidence of his intent to commit such felony.

Section 4. In no case shall any person punishable under the preceding sections of this act be granted probation by the trial court, nor shall the execution of the sentence imposed upon such person be suspended by the court.

Section 5. Except as otherwise provided in this act, it shall be unlawful for any person within this state to carry concealed upon his person or within any vehicle which is under his control or direction any pistol, revolver or other firearm capable of being concealed upon the person without having a license to carry such firearm, as hereinafter provided in section 8 hereof. Any person who violates the provisions of this section shall be guilty of a misdemeanor, and if he has been convicted previously of any felony, or of any crime made punishable by this act, he is guilty of a felony. This section

shall not be construed to prohibit any citizen of the United States, over the age of eighteen years, who resides or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by section 2 hereof, from owning, possessing or keeping within his place of residence or place of business any pistol, revolver or other firearm capable of being concealed upon the person, and no permit or license to purchase, own, possess or keep any such firearm at his place of residence or place of business shall be required of any such citizen. Firearms carried openly in belt holsters shall not be deemed to be concealed within the meaning of this section.

Section 6. Nothing in the preceding section shall be construed to apply to or affect sheriffs, constables, marshals, policemen, whether active or honorably retired, or other duly appointed peace officers, nor to any person summoned by any such officers to assist in making arrests or preserving the peace while said person so summoned is actually engaged in assisting such officer; nor to the possession or transportation by any merchant of unloaded firearms as merchandise; nor to members of the army, navy or marine corps of the United States, or the national guard, when on duty, nor to organizations which are by law authorized to purchase or receive such weapons from the United States, or from this state; nor to duly authorized military or civil organizations while parading, nor to the members thereof when going to and from the places of meeting of their respective organizations; nor to members of any club or organization now existing, or hereafter organized, for the purpose of practicing shooting at targets upon the established target ranges, whether public or private, while such members are using any of the firearms referred to in this act upon such target ranges, or while going to and from such ranges; nor to licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from such hunting or fishing expedition.

Section 7. The unlawful concealed carrying upon the person or within the vehicle of the carrier of any pistol, revolver or other firearm capable of being concealed upon the person, is a nuisance. Any such weapons taken from the person or vehicle of any person unlawfully carrying the same are hereby declared to be nuisances, and shall be surrendered to the magistrate before whom said person shall be taken, except that in any city, county, town or other municipal corporation the same shall be surrendered to the head of the police force or police department thereof. The officers to whom the same may be so surrendered, except upon the certificate of a judge or a court of record, or of the district attorney of the county,

that the preservation thereof is necessary or proper to the ends of justice, shall annually, between the first and tenth days of July, in each year, destroy or cause to be destroyed such weapons to such extent that the same shall become and be wholly and entirely ineffective and useless for the purpose for which it was [they were] manufactured; provided, however, that in the event any such weapon has been stolen and is thereafter recovered from the thief or his transferee the same shall not be destroyed but shall be restored to the lawful owner thereof, so [as] soon as its use as evidence has been served, upon his identification of the weapon and proof of ownership thereof; provided, that upon the certificate of a judge or of the district attorney that the ends of justice will be subserved thereby such weapon shall be preserved until the necessity for its use ceases.

Section 8. It shall be lawful for the sheriff of a county, and the board of police commissioners, chief of police, city marshal, town marshal, or other head of the police department of any city, county, town, or other municipal corporation of this state, upon proof before said board, chief, marshal or other police head, that the person applying therefor is of good moral character, and that good cause exists for the issuance thereof, to issue to such person a license to carry concealed a pistol, revolver or other firearm for a period of one year from the date of such license. All applications for such licenses shall be filed in writing, signed by the applicant, and shall state the name, occupation, residence and business address of the applicant, his age, height, weight, color of eyes and hair, and reason for desiring a license to carry such weapon. Any license issued upon such application shall set forth the foregoing data and shall, in addition, contain a description of the weapon authorized to be carried, giving the name of the manufacturer, the serial number and the caliber thereof. When such licenses are issued by a sheriff a record thereof shall be kept in the office of the county clerk; when issued by police authority such record shall be maintained in the office of the authority by whom issued. Such applications and licenses shall be uniform throughout the state, upon forms to be prescribed by the attorney general.

Section 9. Every person in the business of selling, leasing or otherwise transferring a pistol, revolver or other firearm, of a size capable of being concealed upon the person, whether such seller, lessor or transferor is a retail dealer, pawnbroker or otherwise, except as hereinafter provided, shall keep a register in which shall be entered the time of sale, the date of sale, the name of the salesman making the sale, the place where sold, the make, model, manufacturer's number, caliber

or other marks of identification on such pistol, revolver or other firearm. Such register shall be prepared by and obtained from the state printer and shall be furnished by the state printer to said dealers on application at a cost of \$3 per one hundred leaves, in duplicate, and shall be in the form hereinafter provided. The purchaser of any firearm capable of being concealed upon the person shall sign, and the dealer shall require him to sign, his name and affix his address to said register, in duplicate, and the salesman shall affix his signature, in duplicate, as a witness to the signature of the purchaser. Any person signing a fictitious name or address is guilty of a misdemeanor. The duplicate sheet of such register shall, on the evening of the day of sale, be placed in the mail, postage prepaid, and properly addressed to the board of police commissioners, chief of police, city marshal, town marshal or other head of the police department of the city, county, town or other municipal corporation wherein the sale was made; provided, that where the sale is made in a district where there is no municipal police department, said duplicate sheet shall be mailed to the county clerk of the county wherein the sale is made. A violation of any of the provisions of this section by any person engaged in the business of selling, leasing or otherwise transferring such firearm is a misdemeanor. This section shall not apply to wholesale dealers in their business intercourse with retail dealers, nor to wholesale or retail dealers in the regular or ordinary transportation of unloaded firearms as merchandise by mail, express or other mode of shipment, to points outside of the city, county, town or municipal corporation wherein they are situated. The register provided for in this act shall be substantially in the following form:

FORM OF REGISTER

Series No.....  
 Sheet No. ....

Original

DEALERS' RECORD OF SALE OF REVOLVER OR PISTOL  
 State of Oregon

Notice to Dealers: This original is for your files. If spoiled in making out, do not destroy. Keep in books. Fill out in duplicate.

Carbon duplicate must be mailed on the evening of the day of sale, to head of police commissioners, chief of police, city marshal, town marshal or other head of the police department of the municipal corporations wherein the sale is made, or to the county clerk of your county if the sale is made in a district where there is no municipal police department. Violation of this law is a misdemeanor. Use carbon paper for duplicate. Use indelible pencil.

Sold by .....Salesman.....  
 City, town or township .....  
 Description of arm (state whether revolver or pistol).....  
 Maker ..... Number ..... Caliber .....

Name of purchaser ..... Age ..... years  
 Permanent residence (state name of city, town or township, street and  
 number of dwelling) .....  
 Height ..... feet ..... inches. Occupation.....  
 Color ..... Skin ..... Eyes ..... Hair .....  
 If traveling, or in locality temporarily, give local address .....  
 .....  
 Signature of purchaser .....  
 (Signing a fictitious name or address is a misdemeanor. To be  
 signed in duplicate.)  
 Witness ..... Salesman.  
 (To be signed in duplicate.)

Series No.....  
 Sheet No. ....

DUPLICATE  
 DEALERS' RECORD OF SALE OF REVOLVER OR PISTOL  
 State of Oregon

Notice to Dealers: This carbon duplicate must be mailed on the evening of the day of sale as set forth in the original of this register page. Violation of this law is a misdemeanor.

Sold by ..... Salesman.....  
 City, town or township .....  
 Description of arm (state whether revolver or pistol).....  
 Maker ..... Number ..... Caliber .....  
 Name of purchaser ..... Age ..... years  
 Permanent address (state name of city, town or township, street and  
 number of dwelling) .....  
 Height ..... feet ..... inches. Occupation.....  
 Color ..... Skin ..... Eyes ..... Hair .....  
 If traveling, or in locality temporarily, give local address .....  
 .....  
 Signature of purchaser .....  
 (Signing a fictitious name or address is a misdemeanor. To be  
 signed in duplicate.)  
 Witness ..... Salesman.  
 (To be signed in duplicate.)

Section 10. No person shall sell, deliver or otherwise transfer any pistol, revolver or other firearm capable of being concealed upon the person to any person whom he has cause to believe to be within any of the classes prohibited by section 2 hereof from owning or possessing such firearms, nor to any minor under the age of eighteen years. In no event shall any such firearm be delivered to the purchaser upon the day of the application for the purchase thereof, and when delivered such firearm shall be securely wrapped and shall be unloaded. When neither party to the transaction holds a dealers' license, no person shall sell or otherwise transfer any such firearm to any other person within this state who is not personally known to the vendor. Any violation of the provisions of this section shall be a misdemeanor.

Section 11. The duly constituted licensing authorities of any city, county, town or other municipality within this state may grant licenses in form prescribed by the attorney general, effective for not more than one year from date of issue, permitting the licensee to sell at retail within the said city, county, town or other municipality pistols, revolvers and other firearms capable of being concealed upon the person, subject to the following conditions, for breach of any of which the license shall be subject to forfeiture:

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

3. No pistol or revolver shall be delivered:

(a) On the day of the application for the purchase, and when delivered shall be unloaded and securely wrapped; or

(b) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity.

4. No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of said premises where it can readily be seen.

Section 12. Any person who, without being licensed as above provided, engages in the business of selling or otherwise transferring, or who advertises for sale or offers or exposes for sale or transfer, any pistol, revolver or other firearm capable of being concealed upon the person is guilty of a misdemeanor.

Section 13. No person shall change, alter, remove or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol or revolver. Possession of any such firearm upon which the same shall have been changed, altered, removed or obliterated, shall be presumptive evidence that such possessor has changed, altered, removed or obliterated the same. Violation of this section shall be punished by imprisonment in the state penitentiary for not more than five years.

Section 14. All permits heretofore issued within this state permitting the carrying of pistols or revolvers concealed upon the person shall expire at midnight of June 1, 1925.

Section 15. This act shall not apply to antique pistols or revolvers incapable of use as such.

Section 16. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, subsection,

sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 17. All acts and parts of acts in conflict herewith are hereby repealed.

Approved by the governor February 26, 1925.

Filed in the office of the secretary of state February 26, 1925.

## CHAPTER 261

### AN ACT

[H. B. 460]

Providing for the election of county school superintendents in certain counties, prescribing their powers and duties and providing for payment of salaries and expenses of the office.

*Be It Enacted by the People of the State of Oregon:*

Section 1. In all counties of this state having a population of 25,000 or more children of school age the county superintendent of schools shall have jurisdiction only of the schools of that county as shall be outside of the corporate limits of districts of the first class. He shall be elected at the biennial election in the year 1928, and every four years thereafter, by the legal voters of the county outside of districts of the first class. He shall take his office on the first Monday of January following his election; provided, that the present county school superintendent at no decrease in salary shall be ex officio county school superintendent until the expiration of his term of office. In districts of the first class, in addition to the authority now conferred upon the city superintendent of such districts, said city superintendent shall be and he hereby is vested with the authority now exercised by the county school superintendent in such districts and all reports heretofore rendered by said district to the \*[county school superintendent shall be made to the] state superintendent of public instruction.

Section 2. In all counties coming under the provisions of this act the salaries of the county school superintendent, assistant superintendents, and all expenses for clerical help, traveling expenses or for any other expenses of the office of said county school superintendent shall be paid from a fund known as the county school superintendent's fund, hereinafter provided, by warrants drawn on this fund in the same manner that warrants may be drawn for the salaries for other county officials

Section 3. In all counties coming under the provisions of this act on the first Monday of November of each year the

\* The phrase inclosed in brackets appears in the engrossed bill, but was omitted in the enrolled act.

### CHAPTER 3

(House Bill No. 7—By Mr. Robinson from the Select Committee)

AN ACT to amend and re-enact section seven of chapter one hundred and forty-eight of the code of West Virginia, as amended and re-enacted by chapter fifty-one of the acts of the legislature of West Virginia, one thousand nine hundred and nine, regular session, and as further amended and re-enacted by an act of the legislature of West Virginia, regular session, one thousand nine hundred and twenty-five, relating to offenses against the peace; providing for the granting and revoking of licenses and permits respecting the use, transportation and possession of weapons and fire arms; restricting the manner of the sale and display of weapons and fire arms; imposing liability upon certain persons for the accidental or improper, negligent or illegal discharges of weapons and fire arms; defining the powers and duties of certain officers in the granting and revocation of said licenses and permits, and providing penalties for the violation of this act and any part thereof.

[Passed June 5, 1925; in effect 90 days from passage. Approved by the Governor.]

Sec.

7. (a) Penalty for carrying dangerous or deadly weapon without license; second offense; duties of prosecuting attorneys; application for license; what to show; publication; issuance; fee; bond; term of license; territory covered; deputy sheriffs and railway police licenses co-extensive with state; accounting for fees; forms by tax commissioner; certified copy of license to superintendent of department of public safety; list of all licenses to the same; lawful to carry arms on own premises, or from place of purchase and repair, not applicable to employee; permits to express company employees and railway police; bonds; emergency permits; reports of violations, and penalty

Sec.

for failure so to do; certain officers permitted to carry arms; bond; unlawful to carry or use weapon in a manner likely to cause breach of peace; penalty; revocation of license; notice; reinstatement.

7. (b) Permits for possession of machine gun and high-powered rifle; regulations; exception of rifle club members and licensed hunters; granting of permit; fee; revocation; confiscation of arms; alien prohibited from owning or possessing arms; display of arms for sale or rent prohibited; report of sales by dealers to superintendent of department of public safety; unlawful to arm alien; penalty for violations of this sub-section; inconsistent acts repealed.

*Be it enacted by the Legislature of West Virginia:*

That section seven of chapter one hundred and forty-eight of the code of West Virginia, as amended and re-enacted by chapter fifty-one of the acts of the legislature of West Virginia of one thousand nine hundred and nine, regular session, and as further amended and re-enacted by the legislature of West Virginia, one thousand nine hundred and twenty-five, regular session, in House Bill number four hundred six, be amended and re-enacted so as to read as follows:

Section 7 (a). If any person, without a state license therefor, carry about his person any revolver or other pistol, dirk, bowie-knife, slung shot, razor, billy, metallic or other false knuckles, or any other dangerous or deadly weapon of like kind or character, he shall be guilty of a misdemeanor and upon conviction thereof be confined in the county jail for a period of not less than six nor more than twelve months for the first offense; but upon conviction of the same person for the second offense in this state, he shall be guilty of a felony and be confined in the penitentiary not less than one or more than five years, and in either case fined not less than fifty nor more than two hundred dollars, in the discretion of the court; and it shall be the duty of the prosecuting attorney in all cases to ascertain whether or not the charge made by the grand jury is the first or second offense, and if it shall be the second offense, it shall be so stated in the indictment returned, and the prosecuting attorney shall introduce the record evidence before the trial court of said second offense, and shall not be permitted to use his discretion in charging said second offense nor in introducing evidence to prove the same on the trial; *provided*, that boys or girls under the age of eighteen years, upon the second conviction, may, at the discretion of the court, be sent to the industrial homes for boys and girls, respectively, of the state. Any person desiring to obtain a state license to carry any such weapon within one or more counties in this state shall first publish a notice in some newspaper, published in the county in which he resides, setting forth his name, residence and occupation, and that on a certain day he will apply to the circuit court of his county for such state license; and after the publication of such notice for at least ten days before said application is made and at the time stated in said notice upon application to said court, it may grant such person a license in the following manner, to-wit:

The applicant shall file with said court his application in writing, duly verified, which said application shall show:

*First:* That said applicant is a citizen of the United States of America.

*Second:* That such applicant has been a *bona fide* resident of this state for at least one year next prior to the date of such application, and of the county sixty days next prior thereto.

44 *Third:* That such applicant is over twenty-one years of  
45 age; that he is a person of good moral character, of temper-  
46 ate habits, not addicted to intoxication, and has not been  
47 convicted of a felony nor of any offense involving the use on  
48 his part of such weapon in an unlawful manner.

49 *Fourth:* The purpose or purposes for which the applicant  
50 desires to carry such weapon and the necessity therefor and  
51 the county or counties in which said license is desired to be  
52 effective.

53 Upon the hearing of such application the court shall hear  
54 evidence upon all matters stated in such application and upon  
55 any other matter deemed pertinent by the court, and if such  
56 court be satisfied from the proof that there is good reason and  
57 cause for such person to carry such weapon, and all of the  
58 other conditions of this act be complied with, said circuit  
59 court or the judge thereof in vacation, may grant  
60 said license for such purposes, and no other, as said  
60-a circuit court may set out in the said license (and the word  
60-b "court" as used in this act shall include the circuit judge  
60-c thereof, acting in vacation); but before the said  
61 license shall be effective such person shall pay to the  
62 sheriff, and the court shall so certify in its order granting the  
63 license, the sum of twenty dollars, and shall also file a bond  
64 with the clerk of said court, in the penalty of three thousand  
65 five hundred dollars, with good security, signed by a respon-  
66 sible person or persons, or by some surety company, author-  
67 ized to do business in this state, conditioned that such appli-  
68 cant will not carry such weapon except in accordance with his  
69 said application and as authorized by the court, and that he  
70 will pay all costs and damages accruing to any person by the  
71 accidental discharge or improper, negligent or illegal use of  
72 said weapon or weapons. Any such license granted after this  
73 act becomes effective shall be good for one year, unless sooner  
74 revoked, as hereinafter provided, and be co-extensive with the  
75 county in which granted, and such other county or coun-  
76 ties as the court shall designate in the order granting such  
77 license; except that regularly appointed deputy sheriffs having  
78 license shall be permitted to carry such revolver or other  
79 weapons at any place, within the state, while in the perfor-  
80 mance of their duties as such deputy sheriffs and except that  
81 any such license granted to regularly appointed railway police

82 shall be co-extensive with the state, and all license fees col-  
83 lected hereunder shall be paid by the sheriff and accounted for  
84 to the auditor as other license taxes are collected and paid, and  
85 the state tax commissioner shall prepare all suitable forms for  
86 licenses and bonds and certificates showing that such license  
87 has been granted and to do anything else in the premises to  
88 protect the state and see to the enforcement of this act.

89 The clerk of the court shall immediately after license is  
90 granted as aforesaid, furnish the superintendent of the de-  
91 partment of public safety a certified copy of the order of the  
92 court granting such license, for which service the clerk shall  
93 be paid a fee of two dollars which shall be taxed as cost in  
94 the proceeding; within thirty days after this act becomes  
95 effective it shall be the duty of the clerks of each court in this  
96 state having jurisdiction to issue pistol licenses to certify  
97 to the superintendent of the department of public safety a  
98 list of all such licenses issued in his county.

99 *Provided*, that nothing herein shall prevent any person  
100 from carrying any such weapon, in good faith and not for a  
101 felonious purpose, upon his own premises, nor shall anything  
102 herein prevent a person from carrying any such weapon  
103 (unloaded) from the place of purchase to his home  
104 or place of residence, or to a place of repair and  
105 back to his home or residence; but nothing herein  
106 shall be construed to authorize any employee of any person,  
107 firm or corporation doing business in this state to carry on  
108 or about the premises of such employer any such pistol, or  
109 other weapon mentioned in this act for which a license is  
110 herein required, without having first obtained the license and  
111 given the bond as herein provided; and, *provided, further*,  
112 that nothing herein shall prevent agents, messengers and  
113 other employees of express companies doing business as com-  
114 mon carriers, whose duties require such agents, messengers  
115 and other employees to have the care, custody or protection  
116 of money, valuables and other property for such express com-  
117 panies, from carrying any such weapon while actually en-  
118 gaged in such duties, or in doing anything reasonably inci-  
119 dent to such duties; *provided*, such express company shall  
120 execute a continuing bond in the penalty of thirty thousand  
121 dollars, payable unto the state of West Virginia, and with  
122 security to be approved by the secretary of state of the state

123 of West Virginia, conditioned that said express company will  
124 pay all damages, accruing to anyone by the accidental dis-  
125 charge or improper, negligent or illegal discharge or use of such  
126 weapon or weapons by such agent, messenger or other employee  
127 while actually engaged in such duties for such express com-  
128 pany, in doing anything that is reasonably incident to such du-  
129 ties; but the amount which may be recovered for breach of  
130 such condition shall not exceed the sum of three thousand five  
131 hundred dollars in any one case, and such bond shall be filed  
132 with and held by the said secretary of state, for the purpose  
133 aforesaid, but upon the trial of any cause for the recovery of  
134 damages upon said bond, the burden of proof shall be upon  
135 such express company to establish that such agent, messenger  
136 or other employee was not actually employed in such duties for  
137 such express company nor in doing anything that was rea-  
138 sonably incident to such duties at the time such damages were  
139 sustained; and, *provided further*, that nothing herein shall  
139-a prevent railroad police officers duly appointed and qualified  
139-b under authority of section thirty-one of chapter one hun-  
139-c dred forty-five of Barnes' code or duly qualified under the  
139-d laws of any other state, from carrying any such weapon  
139-e while actually engaged in their duties or in doing anything  
139-f reasonably incident to such duties; *provided*, such railroad  
139-g company shall execute a continuing bond in the penalty of  
139-h ten thousand dollars payable unto the state of West Vir-  
139-i ginia and with security to be approved by the secretary of  
139-j state of the state of West Virginia conditioned that said  
139-k railroad company will pay all damages accruing to anyone  
139-l by the accidental discharge or improper, negligent or illegal  
139-m discharge or use of such weapon or weapons by such rail-  
139-n road special police officer whether appointed in this or some  
139-n-1 other state while actually engaged in such duties for such  
139-o railroad company, in doing anything that is reasonably inci-  
139-p dent to such duties, but the amount which may be recovered  
139-q for breach of such condition shall not exceed the sum of  
139-r three thousand five hundred dollars in any one case, and  
139-s such bond shall be filed with and held by the said secretary  
139-t of state for the purpose aforesaid but upon the trial of any  
139-u cause for the recovery of damages upon said bond, the bur-  
139-v den of proof shall be upon such railroad company to estab-  
139-w lish that such railroad police officer was not actually em-

139-*x* ployed in such duties for such railroad company nor in  
139-*y* doing anything that was reasonably incident to such duties  
139-*z* at the time such damages were sustained; and *provided, fur-*  
140 *ther*, that in case of riot, public danger and emer-  
140-*a* gency, a justice of the peace, or other person  
141 issuing a warrant, may authorize a special constable and his  
142 posse whose names shall be set forth in said warrant,  
142-*a* to carry weapons for the purpose of executing a pro-  
143 cess, and a sheriff in such cases may authorize a deputy or  
144 posse to carry weapons, but the justice shall write in his  
145 docket the cause and reasons for such authority and the name  
146 of the person, or persons, so authorized, and index the same,  
147 and the sheriff or other officer shall write out and file with  
148 the clerk of the county court the reasons and causes for such  
149 authority and the name, or names of the persons so author-  
150 ized, and the same shall always be open to public inspection,  
151 and such authority shall authorize such special constable,  
152 deputies and posses to carry weapons in good faith only for  
153 the specific purposes and times named in such authority, and  
154 upon the trial of every indictment the jury shall inquire into  
155 the good faith of the person attempting to defend such in-  
156 dictment under the authority granted by any such justice,  
157 sheriff or other officer, and any such person or persons so  
158 authorized shall be personally liable for the injury caused to  
159 any person by the negligent or unlawful use of any such  
160 weapon or weapons. It shall be the duty of all ministerial of-  
161 ficers, consisting of the justices of the peace, notaries public and  
162 other conservators of the peace of this state, to report to the  
163 prosecuting attorney of the county the names of all persons  
164 guilty of violating this section, and any person wilfully failing  
165 so to do, shall be guilty of a misdemeanor and shall be fined not  
166 exceeding two hundred dollars, and shall, moreover, be liable  
167 to removal from office for such wilful failure; and it shall  
168 likewise be the duty of every person having knowledge of the  
169 violation of this act, to report the same to the prosecuting  
170 attorney, and to freely and fully give evidence concerning  
171 the same, and any one failing so to do, shall be guilty of a  
172 misdemeanor and upon conviction thereof shall be fined not  
173 exceeding one hundred dollars; *provided, further*, that noth-  
174 ing herein contained shall be so construed as to prohibit sher-  
175 iffs, their regularly appointed deputies, who actually collect

176 taxes in each county, and all constables in their respective  
177 counties and districts, and all regularly appointed police offi-  
178 cers of their respective cities, towns or villages, all jailors and  
179 game protectors who have been duly appointed as such, and  
179-a members of the department of public safety of this  
179-b state, from carrying such weapons as they are now  
180 authorized by law to carry, who shall have given  
181 bond in the penalty of not less than three thousand five hun-  
182 dred dollars, conditioned for the faithful performance of their  
183 respective duties, which said officers shall be liable upon their  
184 said official bond, for the damages done by the unlawful or  
185 careless use of any such weapon or weapons, whether such  
186 bond is so conditioned or not.

187 It shall be unlawful for any person armed with a pistol,  
188 gun, or other dangerous or deadly weapon, whether licensed  
189 to carry same or not, to carry, expose, brandish, or use, such  
190 weapon in a way or manner to cause, or threaten, a breach  
191 of the peace. Any person violating this provision of this act  
192-4 shall be guilty of a misdemeanor, and upon conviction, shall  
195 be fined not less than fifty nor more than three hundred  
196 dollars or imprisoned in the county jail not less than thirty  
197 nor more than ninety days, or be punished by both fine and  
198 imprisonment in the discretion of the court.

199 Any circuit court granting any such license to carry any  
200 of the weapons mentioned in this act, the governor, or the su-  
201 perintendent of the department of public safety, with the con-  
202 sent of the governor, may, for any cause deemed sufficient by  
203 said court, or by the governor or by the superintendent of the  
204 department of public safety with the approval of the governor  
205 aforesaid, as the case may be, revoke any such license to carry  
205-a a pistol or other weapon mentioned in this act for which a  
205-b license is required, and immediate notice of such revocation  
206 shall be given such licensee in person, by registered mail or in  
207 the same manner as provided by law for the service of other  
208 notices, and no person whose license has been so revoked shall  
209 be re-licensed within one year thereafter; *provided*, that the  
210 authority so revoking such license may, after a hearing, sooner  
211 reinstate such licensee.

212 (b) It shall be unlawful for any person to carry, transport,  
213 or to have in his possession any machine gun, sub-machine gun,  
214 and what is commonly known as a high powered rifle, or any

215 gun of similar kind or character, or any ammunition therefor,  
216 except on his own premises or premises leased to him for a  
217 fixed term, until such person shall have first obtained a per-  
218 mit from the superintendent of the department of public  
219 safety of this state, and approved by the governor, or until a  
220 license therefor shall have been obtained from the circuit  
221 court as in the case of pistols and all such licenses together  
222 with the numbers identifying such rifle shall be certified to  
223 the superintendent of the department of public safety. *Pro-*  
224 *vided, further,* that nothing herein shall prevent the use of  
225 rifles by *bona fide* rifle club members who are freeholders or  
226 tenants for a fixed term in this state at their usual or cus-  
227 tomary place of practice, or licensed hunters in the actual  
228 hunting of game animals. No such permit shall be granted  
229 by such superintendent except in cases of riot, public danger,  
230 and emergency, until such applicant shall have filed his writ-  
231 ten application with said superintendent of the department  
232 of public safety, in accordance with such rules and regula-  
233 tions as may from time to time be prescribed by said depart-  
234 ment of public safety relative thereto, which application shall  
235 be accompanied by a fee of two dollars to be used in defraying  
236 the expense of issuing such permit, and said application shall  
237 contain the same provisions as are required to be shown under  
238 the provisions of this act by applicants for pistol license, and  
239 shall be duly verified by such applicant, and at least one  
240 other reputable citizen of this state. Any such permit as  
241 granted under the provisions of this act may be revoked by the  
242 governor at his pleasure and upon the revocation of any such  
243 permit the department of public safety shall immediately seize  
244 and take possession of any such machine gun, sub-machine  
245 gun, high powered rifle, or gun of similar kind and character,  
246 held by reason of said permit, and any and all ammunition  
247 therefor, and the said department of public safety shall also  
248 confiscate any such machine gun, sub-machine gun, and what  
249 is commonly known as a high powered rifle, or any gun of  
250 similar kind and character and any and all ammunition there-  
251 for so owned, carried, transported or possessed contrary to the  
252 provisions of this act, and shall safely store and keep the same,  
253 subject to the order of the governor. No alien shall own, keep  
254 or possess any firearm of any kind or character. It shall be  
255 unlawful for any person, firm or corporation to place or keep

256 on public display to passersby on the streets, for rent or sale,  
 257 any revolver, pistol, dirk, bowie knife, slung shot or other  
 258 dangerous weapon of like kind or character or any machine  
 259 gun, sub-machine gun or high powered rifle or any gun of  
 260 similar kind or character, or any ammunition for the same.

261 All dealers licensed to sell any of the foregoing arms or  
 262 weapons shall take the name, address, age and general appear-  
 263 ance of the purchaser, as well as the maker of the gun, manu-  
 264 facturer's serial number and caliber, and report the same at  
 265 once in writing to the superintendent of the department of  
 266 public safety.

267 It shall be unlawful for any person to sell, rent, give or  
 268 lend any of the above mentioned arms to an unnaturalized  
 269 person.

270 Any person violating the provisions of sub-section (b) of  
 271 this act shall be guilty of a misdemeanor and upon conviction  
 272 thereof shall be fined not less than fifty dollars, nor more than  
 273 three hundred dollars, or confined in the county jail not less  
 274 than thirty days nor more than six months, or both such fine  
 275 and imprisonment, in the discretion of the court.

276 All acts and parts of acts inconsistent herewith are hereby  
 277 repealed.

## CHAPTER 4

(Senate Bill No. 4—By Joint Special Committee)

AN ACT making appropriations of public moneys to pay general charges upon the treasury.

[Passed June 6, 1925; in effect from passage. Approved by the Governor.]

<p>Sec. 1. Appropriations made from the treasury.</p> <p>2. Fiscal years of 1926 and 1927.</p> <p>3. Appropriations under sub-sections "A," "B" and "C" payable out of the general revenue of the state.</p> <p style="padding-left: 40px;"><i>Sub-Section "A"</i></p> <p>4. Construction and equipment of second unit of office building of new capitol; Governor to sell all state property on Capitol and Summers streets in Charleston; proceeds to be paid into the treasury as a special capitol building fund; Governor may continue capitol building commission, by re-appointment; limit of total</p>	<p>Sec. 5. cost of new capitol; authorizing construction and limiting cost of second office building.</p> <p>5. Appropriations for maintenance and repair of roads; in "state fund general revenue" not otherwise appropriated to be used for road maintenance.</p> <p>5-a. Recodification commission; salary and expenses of the commission, assistants and stenographers; expenses of the legislative committee; this an additional appropriation.</p> <p style="padding-left: 40px;"><i>Sub-Section "B"</i></p> <p>6. Appropriations appearing under sub-section "B" payable only on requisition and approval of the state board of control.</p>
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## ACTS, 1936. — CHAP. 302.

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follows: — *Section 33.* Should there be due to the estate of a deceased member of any of the retirement associations established under the preceding sections, except sections one to five, inclusive, and sections twenty to twenty-five, inclusive, any sum of money payable from the funds of the association, the same shall be paid to his legal representatives; provided, that if the sum so due does not exceed three hundred dollars if due from the funds of the teachers' retirement association, or one hundred dollars if due from the funds of any other such association, and there has been no demand therefor by a duly appointed executor or administrator, payment may be made, after the expiration of three months from the date of the death of such member, to the persons appearing, in the judgment of the board, to be entitled thereto, and such payment shall be a bar to recovery by any other person.

Payments to beneficiaries of deceased members of city or town retirement systems.

*Approved May 28, 1936.*

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AN ACT RELATIVE TO THE ISSUANCE OF LICENSES TO CARRY A PISTOL OR REVOLVER FOR THE PURPOSE OF TARGET PRACTICE AND RELATIVE TO THE CONTENTS OF LICENSES TO CARRY SUCH A WEAPON OR TO POSSESS A MACHINE GUN.

*Chap. 302*

*Be it enacted, etc., as follows:*

Chapter one hundred and forty of the General Laws is hereby amended by striking out section one hundred and thirty-one, as appearing in the Tercentenary Edition, and inserting in place thereof the following: — *Section 131.* The justice of a court or a trial justice, the board of police or mayor of a city, the selectmen of a town or the commissioner of public safety, or persons authorized by them, respectively, may, upon the application of any person residing or having a place of business within their respective jurisdictions, except an alien, a person who has been convicted of a felony or of the unlawful use or sale of drugs or a minor other than one fifteen years of age or over in the employ of a bank, public utility corporation or business of a similar nature whose application is endorsed by his employer, issue a license to such applicant to carry a pistol or revolver in the commonwealth or to possess therein a machine gun, if it appears that he is a suitable person to be so licensed and that he has good reason to fear an injury to his person or property or for any other proper purpose, and the carrying of a pistol or revolver for use for target practice only shall be held to be a proper purpose aforesaid. Such license shall be issued for a term not to exceed one year, but may be for a less period, and all such licenses shall be revocable at the will of the person or body issuing the same, who shall forthwith send written notice of such revocation to the commissioner of public safety. Said licenses shall be issued on forms furnished by said commissioner. Said form shall contain blank spaces to be filled in with the following information relat-

G. L. (Ter. Ed.), 140, § 131, amended.

License to carry pistol, etc.

ing to the license and to the licensee: — Name, residence or place of business, commencement and expiration date of license, reason for issuing said license, license number, date of issuance of said license, place of birth, height, weight, complexion, color of hair, color of eyes, date of naturalization if formerly an alien, and signature, of said licensee; and no further information from, or act of, the said licensee shall be required. A copy of every license so issued shall within one week after the granting thereof be sent to the said commissioner. The fee for each license issued under this section shall be fifty cents. Whoever issues a license in violation of this section shall be punished by imprisonment for not less than six months nor more than two years in a jail or house of correction.

Penalty.

*(The foregoing was laid before the governor on the eighteenth day of May, 1936, and after five days it had "the force of a law", as prescribed by the constitution, as it was not returned by him with his objections thereto within that time.)*

**Chap.303** AN ACT RELATIVE TO THE CONSTRUCTION AND LEASING BY THE COMMONWEALTH OF A FISH AND COMMERCIAL PIER IN GLOUCESTER HARBOR.

Emergency preamble.

*Whereas*, The deferred operation of this act would defeat its purpose, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted, etc., as follows:*

SECTION 1. Chapter three hundred and eleven of the acts of nineteen hundred and thirty-one is hereby amended by striking out section one and inserting in place thereof the following: — *Section 1.* For the purpose of improving and developing Gloucester harbor for the promotion of the fish industry and the commercial facilities of the city of Gloucester, the state department of public works, hereinafter called the department, is hereby authorized to construct a fish pier in said harbor on a site to be determined by the department with the approval of the municipal council of said city and the Gloucester Planning Board, to erect thereon such buildings as said purposes may require and properly equip the same, to do all dredging necessary for the proper use of said pier, and to provide necessary water and sewerage facilities therefor. Said construction may extend beyond existing harbor lines. All contracts for work authorized by this section shall be subject to the approval of the governor and council.

SECTION 2. Said chapter three hundred and eleven is hereby further amended by striking out section two and inserting in place thereof the following: — *Section 2.* Said city may take by eminent domain under chapter seventy-nine of the General Laws or acquire by purchase or other-

## ORDINANCES OF.

all the charges and remove the same for the period of twenty-four hours after the service of such notice, the said officer shall proceed to sell the same at public auction, first giving two days notice, by not less than five hand-bills conspicuously posted, of the time and place of said sale, which said notice shall also contain a brief description and the name of the owner or custodian thereof, if known.

SEC. 4. If the owner or custodian shall not be known to said officer he shall immediately advertise the same for sale for at least three days prior to such sale, by three handbills conspicuously posted in said city, which said notice shall contain a description of the swine to be sold, where the same were taken up, the time and place of said sale.

SEC. 5. The officer's fees for proceedings under this ordinance shall be as follows, to-wit: One dollar per head for impounding the necessary expenses for keeping; twenty-five cents for each notice served, and twenty per cent of sales for selling.

SEC. 6. From the proceeds of the sale of each hog or lot of swine belonging to one individual the officer shall pay the fees and expenses as hereinbefore provided for, and the balance if any there be, shall be paid to the city treasurer and be kept by him as a separate fund and shall only be paid out by warrant duly drawn and made payable to the party justly entitled thereto.

SEC. 7. This ordinance shall take effect and be in force from and after its passage and approval.

Approved, April 16, A. D. 1872.

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 ORDINANCE No. 7.

An Ordinance prohibiting the carrying of fire arms and concealed weapons.

SECTION 1. *Be it ordained by the Mayor and Councilmen of the city of Nebraska City,* That it shall be, and it is hereby declared to be unlawful for any person to carry, openly or concealed, any musket, rifle, shot gun, pistol, sabre, sword, bowie knife, dirk, sword cane, billy, slung shot, brass or other metallic knuckles, or any other dangerous or deadly weapons, within the corporate limits of Nebraska City, Neb.; *Provided,* that nothing herein contained shall prevent the carrying of such weapon by a civil or military officer, or by a soldier in the discharge of his duty, nor by any other person for mere purposes of transportation from one place to another.

SECTION 2. Upon complaint before the Police Judge that an offence in violation of this ordinance has been committed, he shall inquire into the circumstances of the case to determine whether the charge is well founded, and exercise his own discretion as to the dismissal thereof. If the complaint shall be made good, and the

## CHAPTER 108.

## CARRYING PISTOLS, BOWIE-KNIVES, ETC.

## SECTION

1. Penalty imposed for carrying pistols, bowie-knives, etc.
2. Duty of the police to arrest all persons carrying such weapons.
3. Penalty imposed on police officer for failing to arrest persons carrying deadly weapons.

## SECTION

4. Police Commissioners instructed to increase number of patrolmen to thirty-four.
5. Provisions against carrying deadly weapons do not extend to police officers.

SECTION 1. That every person found carrying a pistol, bowie-knife, dirk-knife, slung-shot, brass knucks or other deadly weapon, shall be deemed guilty of a misdemeanor, and, upon conviction of such first offense, shall be fined from ten to fifty dollars, at the discretion of the court, but upon conviction of every such subsequent offense, shall be fined fifty dollars; *Provided, however,* That no ordinary pocket-knife and common walking-canes shall be construed to be deadly weapons.

SEC. 2. That it shall be the duty of every police officer who sees any person or persons with, or knows of any person carrying, such deadly weapons, to immediately arrest every such person, that they may be dealt with according to the provisions of this act.

SEC. 3. That every police officer who may refuse or neglect to immediately arrest every such person seen with or known to be carrying such deadly weapons, shall be deemed guilty of dereliction of duty, and, upon conviction thereof, shall be dismissed from service, and any two respectable citizens shall be deemed competent to prefer charges to the proper authorities against such police officer for such dereliction of duty.

SEC. 4. To the end that the provisions of this act may be more fully carried out, the Police Commissioners be, and are hereby, instructed to increase the number of patrolmen to thirty-four, to be uniformed, paid and controlled in accordance with the present police law.

SEC. 5. It is expressly understood that the provisions of this act relating to carrying such deadly weapons as are mentioned in the preceding sections, do not extend to police or other officers, or persons that are entitled by law to carry

## ORDINANCES.

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such deadly weapons, nor does it extend to the act of handling or moving such deadly weapons in any ordinary business way.

SEC. 6. That all laws and parts of laws in conflict with this act are hereby repealed, and this act to take effect from and after its passage, the public welfare requiring it.

Approved December 26, 1873.

## CHAPTER 109.

## SABBATH.

## SECTION

1. No water-craft to unload on Sunday.
2. No vehicle to be laden on Sunday.
3. No grocery or other place of ordinary business to be kept open on the Sabbath; tavern-

## SECTION

- keepers and apothecaries excepted.
4. Vendors of ice, ice-cream, soda water, cigars and tobacco excepted.
5. No games allowed on Sunday.

SECTION 1. That if any owner or owners of any steamboat, keel-boat, barge or other water-craft, should load or unload, or cause to be laden or unladen, any such steamboat, keel-boat, barge or other water-craft, on the Sabbath day, within the limits of the corporation of Nashville, unless by the written permission of the Mayor, every person so offending shall forfeit and pay, on conviction thereof, not less than twenty-five nor more than fifty dollars for every such offense.

SEC. 2. That if any person or persons shall load, or cause to be laden, any wagon, cart or dray on the Sabbath day, with any article or package of merchandise, cotton, tobacco or any produce of the country, or unload, or cause to be unladen, any such wagon, cart or dray, or shall receive into his, her or their house, store or warehouse, any such article or package of merchandise, cotton, tobacco, or produce of the country, every person so offending shall forfeit and pay the sum of one dollar for each and every offense.

SEC. 3. That no person or persons shall be allowed to keep his, her or their grocery, dram-shop, confectionery or other place of ordinary business open on the Sabbath day, nor to sell any spirituous liquors on said day, or to deal out the same

## OF THE CITY OF LOS ANGELES.

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the city limits for the purpose of seeing that said ordinance is not violated. That before entering, said Marshal or policeman shall first inform the owner, or person having control of said back yard, the purpose of such entry, and any such owner or person having charge or control of the same, who shall refuse or resist such entry shall thereupon be arrested, and upon conviction thereof, shall be fined in a sum not more than twenty-five dollars, nor less than five, or imprisonment not more than ten days. Approved Nov. 22, 1869.

34 Every owner or occupant of every store, hotel, bar-room, or public house of any kind, as also each and every person occupying a house having two rooms or more facing the street, shall hang a light outside of the door of his or their building, the first two and a half hours of every dark night, under a penalty of two dollars for the first offence and five dollars for each and every subsequent offence.

35 Every person who shall draw any species of fire-arms, or any sword or sword-cane, or knife, or dirk, or other deadly weapon upon the person of another within the limits of this city, unless in lawful defence of person or property, shall be fined not to exceed one hundred dollars, and imprisonment at the discretion of the Mayor, not to exceed ten days.

36 In future, no persons, except peace officers, and persons actually traveling, and immediately passing through Los Angeles city, shall wear or carry any dirk, pistol, sword in a cane, slung-shot, or other dangerous or deadly weapon, concealed or otherwise, within the corporate limits of said city, under a penalty of not more than one hundred dollars fine, and imprisonment at the discretion of the Mayor, not to exceed ten days.

It is hereby made the duty of each police officer of this city, when any stranger shall come within said corporate limits wearing or carrying weapons, to, as soon as possible, give them information and warning of this ordinance; and in case they refuse or decline to obey such warning by depositing their weapons in a place of safety, to complain of them immediately.

37 No person shall ride any mule, horse or other animals within the fire limits of this city, at a furious rate, or at a greater speed than eight miles per hour. Nor shall any person drive any wagon, carriage, or other vehicle, at a greater speed than as above stated. Nor shall any person leave any horse or mule, saddled or harnessed, loose in the aforesaid limits.

ORDINANCES OF THE CITY OF SALINA.

ORDINANCE No. 268.

An Ordinance relating to the carrying of deadly weapons.

*Be it ordained by the Mayor and Councilmen of the city of Salina :*

SECTION 1. That it shall be unlawful for any person to carry on or about his person any pistol, bowie knife, dirk, or other deadly or dangerous weapon, anywhere within the limits of the city of Salina, save and except as hereinafter provided.

SEC. 2. This ordinance shall not apply to cases when any person carrying any weapon above mentioned is engaged in the pursuit of any lawful business, calling or employment and the circumstances in which such person is placed at the time aforesaid, are such as to justify a prudent man in carrying such weapon, for the defense of his person, property or family, nor to cases where any person shall carry such weapon openly in his hands, for the purpose of sale, barter, or for repairing the same, or for use in any lawful occupation requiring the use of the same.

SEC. 3. Any person violating any of the provisions of this ordinance shall, upon conviction thereof before the police court, be fined in any sum not less than twenty-five nor more than one hundred dollars.

SEC. 4. This ordinance shall take effect and be in force from and after its publication in pamphlet form.

Approved June 24th, 1879

WM. BERG, Mayor.

Attest: E. E BOWEN, City Clerk.

I hereby certify the above and foregoing to be a true copy of an ordinance passed by the mayor and councilmen of the city of Salina on the 24th day of June, 1879. See page 97 of the Journal B for the record of the final vote on its passage.

[CITY SEAL.]

E. E. BOWEN, City Clerk.

## THE CITY OF SYRACUSE.

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three months, or to both such fine and imprisonment.

§ 5. Any person who shall immoderately ride or drive any horse or other animal whether attached to a private or public ambulance or other vehicle in any avenue, street, alley or lane in the city, shall be subject to a fine of not less than five nor more than fifty dollars, or to imprisonment in the penitentiary of the county for not less than ten nor more than thirty days.

Immoderate driving and riding.

Penalty.

§ 6. Any person who shall solicit alms in the city for any purpose whatever, without permission from the mayor, shall be subject to a fine of two dollars or to imprisonment in the penitentiary of the county for ten days for each offense.

Soliciting alms.

Penalty.

§ 7. Any person who shall carry about his or her person any dirk, bowie knife, sword or spear cane, pistol, revolver, slung shot, jimmy, brass knuckles, or other deadly or unlawful weapon, or shall use any deadly or unlawful weapon, with intent to do bodily harm to any person, shall be subject to a fine of not less than twenty-five nor more than one hundred dollars, or to imprisonment in the penitentiary of the county for not less than thirty days nor longer than three months, or to both such fine and imprisonment.

Carrying of deadly weapons.

Penalty.

§ 8. Any person who shall ring any gong or bell or cry any auction in any street, lane or alley, or upon any sidewalk, or upon any piazza, step or

Ringling of gongs and bells.

UNLAWFUL CARRYING OF ARMS.

AN ORDINANCE Prohibiting and Punishing the Unlawful Carrying of Arms.

SECTION 1. Be it ordained by the City Council of the City of Dallas, that if any person in the City of Dallas shall carry on or about his person, saddle, or in his saddle-bags, any pistol, dirk, dagger, slungshot, sword-cane, spear, or knuckles made of any metal or hard substance, bowie knife, or any other kind of knife manufactured or sold for purposes of offense or defense, he shall be punished by fine of not less than twenty-five nor more than two hundred dollars and shall be confined in the city prison not less than twenty nor more than sixty days.

SEC. 2. That the preceding section shall not apply to a person in actual service as a militiaman, nor to a peace officer, or policeman or person summoned to his aid, nor to a revenue or other civil officer engaged in the discharge of official duty, nor to the carrying of arms on one's own premises or place of business, nor to persons traveling, nor to one who has reasonable ground for fearing an unlawful attack upon his person, and the danger is so imminent and threatening as not to admit of the arrest of the party about to make such attack upon legal process.

SEC. 3. That all Ordinances or parts of Ordinances in conflict with this Ordinance be and the same are hereby repealed.

SEC. 4. That this Ordinance take effect from and after its passage.

Approved July 18, 1887.

ORDINANCE NO. 11.

An ordinance relating to the public peace.

Be it ordained by the town council of the incorporated town of Checotah:

Section 1. That it shall be a misdemeanor to do or cause to be done any of the following acts, and any person convicted thereof shall be fined not more than Twenty Five dollars.

Section 2. To be connected with or participate in any masked ball not authorized by the mavor of the town.

Section 3. To wear or carry any pistol of any kind whatever, or any dirk, butcher knife or bowie knife, or a sword, or a spear in a cane, brass or metal knuckles or a razor, slung shot, sand bag, or a knife with a blade over three inches long, with a spring handle, as a weapon.

Section 4. To be drunk or in a state of intoxication in any public or private place within the town limits.

Section 5. To use rude, boisterous, offensive, obscene or blasphemous language in any public place, or to make, aid, countenance, or assist in making any improper noise, disturbance, breach of the peace or diversion, or conduct one's self in a disorderly manner in any public place, or in any other place within the town limits.

Section 6. To keep a disorderly house or place of public resort in the open air, or by making or causing to be made therein, loud or improper noises, or by collecting therein or permit the collection therein, or allow to remain therein, drunken, disorderly and noisy persons to the annoyance of others and the disturbance of the neighborhood, or to give admission, or cause to be given admission therein, to women of known ill repute or prostitutes, or fail to remove or expel such persons after being notified of their character.

Section 7. To employ any device, noise or performance tending to the collection of persons on the streets or other places to the obstruction of the same, or to exhibit any tricks or legerdeman or other devices of like kind, or perform with bells, or

City for any such purpose, shall forfeit and pay a penalty of not less than ten, nor more than fifty dollars for every such offense.

SEC. 192. Every person who shall carry in said City, any steel or brass knuckles, pistol, or any slung shot, stiletto or weapon of similar character, or shall carry any weapon concealed on his person without permission of the Mayor or Superintendent of Police in writing, shall, on conviction, pay a penalty of not less than five, nor more than fifty dollars for every such offense.

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JURORS OF THE CITY COURT.

Section.

193. Penalty for neglecting to serve as juror when summoned.

*Be it ordained by the Court of Common Council of the City of New Haven:*

SEC. 193. If any person chosen, drawn and summoned to serve on a jury at any session of the City Court of said City, in accordance with the provisions of the Charter of said City, shall make default of appearance, according to the direction of the summons, which shall have been duly served upon him, and returned to Court, he shall forfeit and pay a penalty of five dollars, unless on cause shown, said City Court shall excuse him therefrom.

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LAMPS.

Section.

194. Court of Common Council may order lamps to be set up.

Section.

195. Unauthorized interference with lamps prohibited, etc.; penalty.

*Be it ordained by the Court of Common Council of the City of New Haven:*

SEC. 194. The Court of Common Council is hereby authorized to cause to be set up such lamps in the streets and public places in said City, for the purpose of



more than one hundred dollars for each and every offense.

SEC. 4. If any person shall expose for sale in any market, house, shop or elsewhere in this city, any emaciated, tainted or putrid meat or provision, which from these or other causes may be deemed unwholesome, every such person, on conviction, shall forfeit and pay a penalty of five dollars for each offense.

SEC. 5. No person shall steam, or boil, or in any way render any offal, tainted or damaged lard or tallow, or steam, boil or render any animal substance in such a manner as to occasion any offensive smell, or which by steaming, boiling or otherwise rendering will so taint the air so as to render it unwholesome to the smell within the limits of the city. Any person who shall violate the provisions of this section, shall, on conviction, be fined in a sum not less than ten dollars nor more than one hundred dollars.

ARTICLE VII.

CARRYING FIRE ARMS AND LETHAL WEAPONS.

SECTION 1. It shall be unlawful for any person in said city to keep or bear upon the person any pistol, revolver, knife, slungshot, bludgeon or other lethal weapon, except the officers of the United States, of the State of Wyoming, of Carbon County and of the City of Rawlins.

SEC. 2. Any person convicted of a violation of the preceding section shall be fined not exceeding one hundred dollars, or imprisoned in the city jail not exceeding thirty days.

SEC. 3. Persons not residing in said city shall





be notified of this Ordinance by the police or any citizen, and after thirty minutes from the time of notification, shall be held liable to the penalties of this article, in case of its violation.

SEC. 4. The city marshal and policemen of the city shall arrest, without warrant, all persons found violating the provisions of this article, and are hereby authorized to take any such weapon from the person of the offender and to imprison the offender for trial, as in case of violations of other Ordinances of said city.

SEC. 5. This ordinance shall be in force and take effect from and after its passage.

Revised, passed and adopted March 3, 1893.

CHAS. E. BLYDENBURGH,  
President of Board.

Approved,  
JOHN C. DAVIS,  
Mayor.



## OF THE CITY OF WICHITA.

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## SECTION.

80. Selling Wearing Apparel by Club Drawing.
81. Stealing Parts of a House.
82. Moving Houses with Unpaid Tax.
83. Time for Hauling Slops Along Street.
84. Dead Animals, Disposition of.
85. Traction and Threshing Engine on Paved Streets.
86. Manure not to be Thrown in Streets or Alleys; Limits; Provisions to Make Pen for.
87. Privy Vaults to be Cleaned and not to be Transferred.
88. Stables and Water Closets to be on Line of Alley.
89. Secondhand and Junk Dealers; Buying from Minors; Description book; Night Purchases.
90. Leaving Holes for Stagnant Water.
91. Advertisement on Street Poles.
92. Bicycle Riding Regulated; Sidewalks, Speed, Dismounting, by Threes, Alarm Bell.
93. Obstructing Streets or Walks; How Used by Merchants and Builders; Gutters not to be Obstructed; Debris to be Cleared.
94. Red Night Lights on Building Material on Street.

## SECTION.

95. Hitching to Fire Hydrant or Pole with Alarm Box.
96. Ball Playing in Streets.
97. Running Water into Streets.
98. Throwing Rubbish into the Street.
99. Projections Over the Sidewalks.
100. Stringing Banners Across Streets.
101. Crowds Upon Sidewalks, Streets and Crossings.
102. Obstructing Crossings with Engines or Cars.
103. Digging and Leaving Holes in the Street.
104. Breaking Horses Upon Streets.
105. Leaving Horse, Mule or Ox on Street After Midnight.
106. Auction Sales not on Certain Streets.
107. Height of Telegraph, Telephone and Light-Wires, (20 ft.)
108. Building Lines Located by Engineer; Cellar-way Excavation; Power of Mayor and Council to Permit or Remove; Nuisance Declared and Abated; Penalty; Proviso for Parking Fence.
109. Injuring Shade or Ornamental Trees.
110. Public Vehicles; Limits Prohibited.
111. Take Effect.

**ORDINANCE NO. 1641.**

AN ORDINANCE relating to certain public offenses and fixing the penalty therefor.

*Be it ordained by the Mayor and Councilmen of the City of Wichita:*

***Drawing Deadly Weapons Upon Another.*** SECTION 1. That any person, not an officer of the law in the execution of his duty, who shall in the city of Wichita, draw a pistol, revolver, knife or any other deadly weapon upon another person shall upon conviction, be fined not less than twenty-five dollars nor more than one hundred dollars.

***Carrying Unconcealed Deadly Weapons.*** SEC. 2. Any person who shall in the city of Wichita carry unconcealed, any fire-arms, slungshot, sheath or dirk knife, or any other weapon, which when used is likely to produce

death or great bodily harm, shall upon conviction, be fined not less than one dollar nor more than twenty-five dollars.

***Using or Carrying Bean Snapper.*** SEC. 3. Any person who shall, in the city of Wichita, use or carry concealed or unconcealed, any bean snapper or like articles shall upon conviction be fined in any sum not less than one dollar nor more than twenty-five dollars.

***Carrying Concealed Deadly Weapons.*** SEC. 4. Any person who shall in the city of Wichita, carry concealed about his person any fire-arm, slungshot, sheath or dirk knife, brass knuckles, or any weapon, which when used is likely to produce death or great bodily harm, shall upon conviction, be fined in any sum not exceeding one hundred dollars.

***Disturbing the Peace.*** SEC. 5. Any person who shall in the city of Wichita, disturb the peace of the city, or any lawful assembly of persons, or of any neighborhood, family, person, or persons, shall upon conviction, be fined in any sum not exceeding one hundred dollars.

***Cursing and Using Violent Language.*** SEC. 6. Any person who shall in the city of Wichita, curse, swear, quarrel or use violent or threatening language, or make any great noise, so as to disturb the peace of any person or neighborhood shall, upon conviction be fined in any sum not exceeding twenty-five dollars.

***Assault and Battery.*** SEC. 7. Any person who shall, in the city of Wichita, assault and beat or wound another, shall be deemed guilty of an assault and battery and shall, upon conviction, be fined in any sum not exceeding one hundred dollars, or imprisonment in the city jail not exceeding three months.

***Provoking Another to Breach of Peace.*** SEC. 8. Any person who shall, in the city of Wichita, by signs, words or gestures, provoke or attempt to provoke another to commit assault and battery or other breach of the peace, shall, upon conviction, be fined in any sum not less than three dollars, nor more than twenty-five dollars.

***Aiding Resistance or Escape from Officer.*** SEC. 9. Any person who shall, in the city of Wichita, in any