

No. 17-2202

**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.

DANIEL C. O'LEARY, in his Official Capacity as 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
in Case No. 1:16-cv-10181-FDS, Judge F. Dennis Saylor, IV

**UNOPPOSED MOTION OF EVERYTOWN FOR GUN SAFETY FOR
LEAVE TO FILE *AMICUS CURIAE* BRIEF SUPPORTING APPELLEES**

E. ROSS COHEN
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
(202) 663-6000
Ross.Cohen@wilmerhale.com

MARK C. FLEMING
TASHA J. BAHAL
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
Mark.Fleming@wilmerhale.com
Tasha.Bahal@wilmerhale.com

June 13, 2018

Pursuant to Federal Rule of Appellate Procedure 29, Everytown for Gun Safety (“Everytown”) respectfully moves, without opposition, for leave to file an *amicus curiae* brief supporting Appellees.

Appellants have consented to the filing of the proposed *amicus curiae* brief. Appellees Daniel C. O’Leary and the Massachusetts Attorney General have also consented to the filing of the proposed brief. Appellee William B. Evans has not consented to the filing of the proposed brief, but has indicated that he does not oppose this motion seeking leave to file.

INTEREST OF *AMICUS CURIAE*

Everytown is the largest gun violence prevention organization in the country. Everytown has millions of supporters across all fifty states, including tens of thousands of Massachusetts residents. Everytown was launched in 2014 by two predecessor organizations: Mayors Against Illegal Guns, which was founded by fifteen mayors concerned about gun violence; and Moms Demand Action for Gun Sense in America, which was founded in response to the shooting at Sandy Hook Elementary School in Newtown, Connecticut. Everytown also includes a large network of gun violence survivors who share their stories and advocate for responsible gun laws.

Everytown has an abiding interest in the “reasonable cause” regulations on the open carrying of firearms at issue in this case, as well as the ability of other

jurisdictions to enact common-sense reforms to reduce gun violence. As part of its efforts, Everytown devotes substantial resources to research the history of firearms regulation. Everytown has filed *amicus curiae* briefs in several recent cases, including in the district court in this case, to provide these resources to courts facing Second Amendment issues. *See, e.g., Gould v. O’Leary*, No. 16-cv-10181-FDS, 2017 WL 7689270 (D. Mass. Oct. 13, 2017).; *Wrenn v. District of Columbia*, No. 16-7025, 2016 WL 3928913 (D.C. Cir. July 20, 2016); *Peruta v. County of San Diego*, Nos. 10-56971, 11-16255, 2015 WL 2064206 (9th Cir. Apr. 30, 2015); *Silvester v. Harris*, No. 14-16840, 2015 WL 1606313 (9th Cir. Apr. 1, 2015).

ARGUMENT

Everytown respectfully submits that its brief will assist the Court by presenting an accurate picture of the history of firearms regulation that bears heavily on the issues in this case. It also specifically rebuts the misleading arguments advanced by Appellants and its *amicus* the National Rifle Association of America, Inc. (“NRA”). Indeed, most the NRA’s brief consists, by its own admission, of attempts to respond to the points made in Everytown’s *amicus* brief in the district court. *See* NRA Br. 6-16. But the NRA’s brief contains an inaccurate and misleading presentation of history, takes many historical quotations out of context, and relies on partial quotations from its cited sources. Everytown’s

proposed *amicus* brief is submitted to ensure that this Court may consider the historical points fully, not simply as presented by the NRA.

As Everytown’s brief explains at greater length, the Second Amendment guarantees the “right of the people to keep and bear Arms,” but the scope of this right is “not unlimited.” *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). The Second Amendment did not create a new right, but rather codified a preexisting right subject to the limitations and regulations that existed at the time. *See id.* at 592. Courts therefore look to pre-Founding English and early American history to interpret the scope of the Second Amendment. *See, e.g., Peruta v. County of San Diego*, 824 F.3d 919, 929 (9th Cir. 2016) (en banc).

Everytown’s brief explains that the Massachusetts “reasonable cause” regime is part of a longstanding tradition of regulating the carrying of firearms in public. Centuries of precedent and practice in pre-Founding England and America, confirmed by post-Second-Amendment practice, support such restrictions. England’s 1328 Statute of Northampton, for example, is the legal forerunner of modern firearm regulations and contained a general restriction on carrying weapons in public. *See* 2 Edw. 3, 258, ch. 3 (1328). In the early days of America, several colonies and later states—including Massachusetts—adopted provisions mirroring the Statute of Northampton. *See, e.g.,* 1694 Mass. Laws 12, no. 6. In addition, Massachusetts adopted a “reasonable cause” regime like the regulations

at issue. *See* 1836 Mass. Laws 748, 750 ch. 134, § 16. Such “longstanding” laws are “presumptively lawful” and do not implicate or interfere with the Second Amendment’s guarantees. *Heller*, 554 U.S. at 626-27 & n.26; *see also United States v. Rene E.*, 583 F.3d 8, 12 (1st Cir. 2009) (holding that restrictions on possessing and carrying weapons that are “rooted in history[] were left intact by the Second Amendment and by *Heller*”).

CONCLUSION

The unopposed motion for leave to file Everytown’s *amicus curiae* brief supporting Appellees should be granted.

E. ROSS COHEN
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
(202) 663-6000
Ross.Cohen@wilmerhale.com

June 13, 2018

Respectfully submitted,

/s/ Mark C. Fleming
MARK C. FLEMING
TASHA J. BAHAL
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
Mark.Fleming@wilmerhale.com
Tasha.Bahal@wilmerhale.com

CERTIFICATE OF SERVICE

In accordance with Federal Rule of Appellate Procedure 25 and First Circuit Local Rule 25, I hereby certify that I electronically filed the foregoing motion, along with the proposed amicus brief, with the Clerk of the Court for the United States Court of Appeals using the CM/ECF system on June 13, 2018. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished using the CM/ECF system.

Dated: June 13, 2018

Respectfully submitted,

/s/ Mark C. Fleming

MARK C. FLEMING

Counsel for Amicus Curiae

No. 17-2202

**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.

DANIEL C. O'LEARY, in his Official Capacity as 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
in Case No. 1:16-cv-10181-FDS, Judge F. Dennis Saylor, IV

**BRIEF FOR *AMICUS CURIAE* EVERYTOWN FOR GUN SAFETY IN
SUPPORT OF APPELLEES AND AFFIRMANCE**

E. ROSS COHEN
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
(202) 663-6000
Ross.Cohen@wilmerhale.com

MARK C. FLEMING
TASHA J. BAHAL
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
Mark.Fleming@wilmerhale.com
Tasha.Bahal@wilmerhale.com

June 13, 2018

CORPORATE DISCLOSURE STATEMENT

Everytown for Gun Safety has no parent corporations. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

	Page
CORPORATE DISCLOSURE STATEMENT	i
TABLE OF AUTHORITIES	iv
INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	3
MASSACHUSETTS’S GOOD CAUSE REQUIREMENTS ARE CONSISTENT WITH LONGSTANDING ENGLISH AND AMERICAN PRECEDENT AND PRACTICE REGULATING THE PUBLIC CARRYING OF FIREARMS	3
A. Pre-Founding English Law Long Prohibited Or Sharply Restricted The Public Carrying Of Firearms	4
1. Pre-Founding English law plainly prohibited the public carrying of weapons without more	4
2. Pre-Founding English commentators recognized the broad prohibition on the public carrying of weapons.....	6
3. Pre-Founding English law did not permit the carrying of firearms in public for general self- defense.....	10
B. Early American Laws Prohibited The Public Carrying Of Firearms	14
1. Founding-Era America adopted England’s tradition of regulating the public carrying of firearms without more.....	14

- 2. Massachusetts and other states adopted “reasonable cause” laws like the ones at issue as criminal prohibitions against carrying firearms in public.....17
- 3. Appellants’ and the NRA’s other citations do not support their desired broad right to carry firearms publicly.....20

CONCLUSION27

ADDENDUM

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

CASES

	Page(s)
<i>Andrews v. State</i> , 50 Tenn. 165 (1871).....	25
<i>Bliss v. Commonwealth</i> , 12 Ky. 90 (1822).....	25
<i>Commonwealth v. Murphy</i> , 166 Mass. 171 (1896)	25
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	3, 24
<i>Gould v. O’Leary</i> , 291 F. Supp. 3d 155 (D. Mass. 2017).....	21-22
<i>Gould v. O’Leary</i> , No. 16-cv-10181-FDS, 2017 WL 7689270 (D. Mass. Oct. 13, 2017).....	2
<i>King v. Hutchinson</i> , 168 Eng. Rep. 273 (Old Bailey 1784)	9
<i>McIntyre v. Ohio Elections Commission</i> , 514 U.S. 334 (1995).....	23
<i>Nunn v. State</i> , 1 Ga. 243 (1846)	24, 26
<i>Peruta v. County of San Diego</i> , 824 F.3d 919 (9th Cir. 2016) (en banc)	4
<i>Presser v. Illinois</i> , 116 U.S. 252 (1886).....	23, 24
<i>Rex v. Knight</i> , 87 Eng. Rep. 75 (K.B. 1686)	12, 13
<i>Rex v. Knight</i> , 90 Eng. Rep. 330 (K.B. 1686)	12

Semayne’s Case,
 77 Eng. Rep. 194 (K.B. 1604)11

State v. Barnett,
 34 W. Va. 74 (1890)25

State v. Duke,
 42 Tex. 455 (1874).....25

State v. Huntly,
 25 N.C. 418 (1843)17

State v. Reid,
 1 Ala. 612 (1840)24, 25

United States v. Rene E.,
 583 F.3d 8 (1st Cir. 2009).....3

STATUTES

1686 N.J. Laws 289, ch. 9.....14

1692 Mass. Laws 12, no. 615

1699 N.H. Laws 115

1786 Va. Laws 33, ch. 2115

1792 N.C. Laws 60, ch. 3.....15

1795 Mass. Laws 436, ch. 2.....16

1801 Tenn. Laws 259, ch. 22, § 6.....15

1821 Me. Laws 285, ch. 76, § 115

1836 Mass. Laws 750, ch. 134, § 16.....18

1838 Wis. Laws 378, § 1618

1841 Me. Laws 707, ch. 169, § 16.....18

1846 Mich. Laws 690, ch. 162, § 16.....18

1847 Va. Laws 127, ch. 14, § 1618

1851 Minn. Laws 526, ch. 112, § 1818
 1852 Del. Laws 330, ch. 97, § 1315
 1853 Or. Laws 218, ch. 16, § 1718
 1861 Pa. Laws 248, § 618
 1870 W. Va. Laws 702, ch. 153, § 8.....18

ENGLISH STATUTES

1 W. & M. sess. 2, 143, ch. 2 (1688)10
 Statute of Northampton, 2 Edw. 3, 258, ch. 3 (1328).....4, 23

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. II.....*passim*
 Ala. Const. art. I, § 23 (1819)25
 Ky. Const., art. X, § 23 (1799).....25
 Ky. Const. art. XIII, § 25 (1850).....26

OTHER AUTHORITIES

Adams, John, *First Day’s Speech in Defence of the British Soldiers
 Accused of Murdering Attucks, Gray and Others, in the Boston Riot of
 1770*, in 6 *Masterpieces of Eloquence* 2569 (Hazeltine et al. eds.,
 1905)22, 23
 1 Blackstone, Sir William, *Commentaries on the Laws of England* (1768).....11
 4 Blackstone, Sir William, *Commentaries on the Laws of England* (1770).....8
 Blizzard, William, *Desultory Reflections on Police* (1785)12
 Charles, Patrick J., *Armed in America: A History of Gun Rights from
 Colonial Militias to Concealed Carry* (2018)13, 23
 Charles, Patrick J., *The Faces of the Second Amendment Outside the
 Home: History Versus Ahistorical Standards of Review*, 60 *Clev.
 St. L. Rev.* 1 (2012).....6, 15, 16

Charles, Patrick J., *The Second Amendment in Historiographical Crisis: Why the Supreme Court Must Reevaluate the Embarrassing “Standard Model” Moving Forward*, 39 *Fordham Urb. L.J.* 1727 (2012).....4, 5

City Intelligence, Boston Courier (Boston, Mass.), Mar. 7, 185319

City Items, Richmond Whig (Richmond, Va.), Sept. 25, 186020

Cornell, Saul, *The Right to Carry Firearms Outside of the Home: Separating Historical Myths from Historical Realities*, 39 *Fordham Urb. L.J.* 1695 (2012).....19

Cornell, Saul, *The Right to Keep and Carry Arms in Anglo-American Law: Preserving Liberty and Keeping the Peace*, 80 *L. & Contemp. Probs.* 11 (2017).....*passim*

Crimes of a Year, Daily Gazette (Kalamazoo, Mich.), Jan. 18, 188920

Dunlap, John A., *The New York Justice* (1815).....15

1 Hawkins, William A, *A Treatise of the Pleas of the Crown* (John Curwood ed. 1824)9

1 Hawkins, William A, *A Treatise of the Pleas of the Crown* (1716)..... 7, 9-10, 11, 17

Humphreys, Charles, *A Compendium of the Common Law in Force in Kentucky* (1822).....26

Jefferson, Thomas, *Jefferson’s Third Draft of the Virginia Constitution 1776*, in 1 *The Papers of Thomas Jefferson* (J.P. Boyd ed. 1950)21

Keble, Joseph, *An Assistance to the Justices of the Peace, for the Easier Performance of Their Duty* (1683).....6

Letter from Mayor A.M. Keily, The Daily State Journal (Richmond, Va.), Sept. 16, 187219

Local Intelligence, Evening Star (Washington, D.C.), Nov. 26, 185619

Local Matters, Daily Dispatch (Richmond, Va.) June 1, 186119

Municipal Court, Massachusetts Spy (Worcester, Mass.), Jan. 14, 187020

1 Potter, John, *The Antiquities of Greece* (4th ed. 1722).....8

Recorders Court, Oregonian (Portland, Or.), Aug. 6, 186720

Ruben, Eric M. & Saul Cornell, *Firearm Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context*, 125 Yale L.J. Forum 121 (2015).....8, 26

Unger, Harlow Giles, *Lion of Liberty: Patrick Henry and the Call to a New Nation* (2010).....22

3 Wilson, James, *The Works of the Honourable James Wilson* (1804).....17

1 *The Works of Thomas Jefferson* (letter of Aug. 19, 1785) (H. A. Washington ed., 1884)21

INTEREST OF *AMICUS CURIAE*¹

Everytown for Gun Safety (“Everytown”) is the nation’s largest gun violence prevention organization, with millions of supporters spread across all fifty states, including tens of thousands of Massachusetts residents. It was founded in 2014 as the combined effort of Mayors Against Illegal Guns, a national, bipartisan coalition of mayors combating illegal guns and gun trafficking; and Moms Demand Action for Gun Sense in America, an organization formed after the murder of twenty children and six adults in an elementary school in Newtown, Connecticut. Currently, the mayors of twenty-four Massachusetts cities are members of Mayors Against Illegal Guns. Everytown also includes a large network of gun violence survivors who are empowered to share their stories and advocate for responsible gun laws.

Everytown’s mission includes defending gun laws through the filing of *amicus* briefs that provide historical context and doctrinal analysis, which might otherwise be overlooked. Everytown has filed such briefs in several recent cases. *See, e.g., Wrenn v. District of Columbia*, No. 16-7025, 2016 WL 3928913

¹ All but one of the parties to this appeal have consented to the filing of this brief. *See* Fed. R. App. P. 29(a). The remaining party indicated that he would not oppose a motion for leave to file it. An unopposed motion for leave to file is accordingly being filed concurrently. No party or party’s counsel authored this brief in whole or in part, and no party, party’s counsel, or any other person other than *amicus* or its counsel contributed money intended to fund the preparation or submission of this brief.

(D.C. Cir. July 20, 2016); *Peruta v. County of San Diego*, Nos. 10-56971, 11-16255, 2015 WL 2064206 (9th Cir. Apr. 30, 2015); *Silvester v. Harris*, No. 14-16840, 2015 WL 1606313 (9th Cir. Apr. 1, 2015).

Everytown seeks to assist this Court by ensuring that it receives an accurate picture of the relevant historical materials and, in particular, to correct the inaccurate and misleading presentation of history by Appellants and their *amicus* the National Rifle Association of America, Inc. (“NRA”).

INTRODUCTION AND SUMMARY OF ARGUMENT

Massachusetts’s “good cause” requirement for carrying handguns in public spaces is part of a longstanding tradition of regulating the carrying of firearms in public. Indeed, centuries of precedent and practice in pre-Founding England and America, confirmed by post-Second-Amendment practice, support restrictions on the public carrying of firearms, by either prohibiting public carrying of firearms outright or allowing it with some limitations, as the Massachusetts provisions at issue here do.²

Appellants and the NRA mischaracterize the past to argue that carrying firearms in public has historically gone unregulated. The presentation of history in Appellants’ and the NRA’s briefs is misleading, incomplete, or simply wrong, and

² Everytown presented this history in detail to the district court. *Gould v. O’Leary*, No. 16-cv-10181-FDS, 2017 WL 7689270 (D. Mass. Oct. 13, 2017).

this Court should treat that presentation with great skepticism. Massachusetts, Boston, and Brookline are well within their historical prerogative—which the Second Amendment did not alter—to restrict the situations in which people may go armed in the public concourse. The district court’s decision should be affirmed.

ARGUMENT

MASSACHUSETTS’S GOOD CAUSE REQUIREMENTS ARE CONSISTENT WITH LONGSTANDING ENGLISH AND AMERICAN PRECEDENT AND PRACTICE REGULATING THE PUBLIC CARRYING OF FIREARMS

The Second Amendment guarantees the “right of the people to keep and bear Arms,” but the scope of this right is “not unlimited.” *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). The Second Amendment did not create a new right, but rather codified a preexisting right subject to the limitations and regulations that existed at the time. *See id.* at 592 (“[T]he Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right.” (emphasis in original)). “From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* at 626. Such “longstanding” laws are “presumptively lawful” and do not implicate or interfere with the Second Amendment’s guarantees. *Id.* at 626-627 & n.26; *see also United States v. Rene E.*, 583 F.3d 8, 12 (1st Cir. 2009) (holding that

restrictions on possessing and carrying weapons that are “rooted in history[] were left intact by the Second Amendment and by *Heller*”).

Massachusetts’s law as implemented by Brookline and Boston is consistent with a centuries-long tradition of regulating the carrying of firearms in public. This tradition is not called into doubt by the erroneous historical arguments presented by Appellants and the NRA.

A. Pre-Founding English Law Long Prohibited Or Sharply Restricted The Public Carrying Of Firearms

1. Pre-Founding English law plainly prohibited the public carrying of weapons without more

Courts look to English history “[i]n analyzing the meaning of the Second Amendment.” *Peruta v. County of San Diego*, 824 F.3d 919, 929 (9th Cir. 2016) (en banc). The 1328 Statute of Northampton is therefore the most logical place to begin this analysis, as it is the legal forerunner of modern regulations on carrying weapons in public. With a limited exception for agents of the Crown, the law provided that “no Man great nor small” could “go nor ride armed by night nor by day, in Fairs, Markets, ... nor in no part elsewhere.” 2 Edw. 3, 258, ch. 3 (1328).³

England applied this prohibition on the public carrying of arms according to its plain language: “the Statute of Northampton was strictly enforced as a prohibition on going armed in public.” Charles, *The Second Amendment in*

³ Historical sources cited herein are included as an addendum to this brief.

Historiographical Crisis: Why the Supreme Court Must Reevaluate the Embarrassing “Standard Model” Moving Forward, 39 Fordham Urb. L.J. 1727, 1804 (2012) [hereinafter, Charles, *Second Amendment*] (citing Statute of Northampton’s enforcement history). Violations of this law were treated as “a misdemeanor resulting in forfeiture of arms and ... imprisonment.” *Id.*

Appellants and the NRA agree that the Statute of Northampton serves as the proper historical foundation for regulating the public carrying of firearms, Appellants Br. 25; NRA Br. 7-8, but they fail to accept its unambiguous textual admonition that no one shall “go nor ride armed by night nor by day” in public. Instead, they assert, without citation, that “the Statute only outlawed the use of force and arms *to terrorize the people*” and that “[t]he right to carry arms peaceably was always recognized.” NRA Br. 7.⁴ That ipse dixit fails: there was simply “no requirement that the accused have a specific intent to terrify the public or cause harm.” Charles, *Second Amendment*, 39 Fordham Urb. L.J. at 1804-1805.

Going “armed” was prohibited, without more, because it had a *naturally* terrifying effect. In 1579, Queen Elizabeth I called for strict enforcement of laws banning the carrying of “offensive weapons” in public, including “Daggers, *Pistols*, and such like, not only in Cities and Towns, [but] in all parts of the Realm

⁴ Emphasis is added except where otherwise noted.

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, *The Faces of the Second Amendment Outside the Home: History Versus Ahistorical Standards of Review*, 60 Clev. St. L. Rev. 1, 21 (2012) [hereinafter Charles, *Faces*] (spelling modernized and emphasis added). Over the following decades, Elizabeth I issued repeated orders prohibiting the carrying of offensive weapons (like daggers and pistols) in public due to the “terror of all people professing to travel and live peaceably,” regardless of whether the weapons were carried openly *or in secret*. *See id.* at 22. No exception was made for what the NRA calls “carry[ing] arms peaceably.” NRA Br. 7. On the contrary, constables and justices of the peace were instructed to “[a]rrest all such persons as they shall find to carry Dag[ger]s or Pistols,” without regard to intent or purpose. Keble, *An Assistance to the Justices of the Peace, for the Easier Performance of Their Duty* 224 (1683); *see also id.* (“[I]f any person whatsoever ... shall be so bold as to go or ride Armed ... against [the Statute of Northampton], then any Constable ... may take such Armour from him for the King's use, and may also commit him to the G[ao].”).

2. Pre-Founding English commentators recognized the broad prohibition on the public carrying of weapons

Prominent English commentators read the Statute of Northampton to prohibit the open carry of firearms. William Hawkins, whose 1716 treatise Appellants and the NRA invoke, Appellants Br. 21, 25; NRA Br. 8, made the point

plainly. Hawkins cited the Statute of Northampton when describing the “strict[] prohibit[ion]” on an individual “arm[ing] himself with dangerous and unusual Weapons, in such a Manner as will *naturally* cause a Terror to the People, which is said to have been always an Offense at Common Law.” 1 Hawkins, *A Treatise of the Pleas of the Crown* ch. 63, § 4 at 135 (1716) [hereinafter Hawkins, *Treatise* (1716)]. Hawkins also stated that “any Justice of Peace, ... if he *find any Person in Arms* contrary to the Form of the Statute, he may seize the Arms, and commit the Offender to Prison.” *Id.* § 5 at 135. Similarly, Hawkins described the offense as merely “*wearing such Armour in Publick,*” noting that a defendant “cannot excuse” public wearing of arms “by alledging that such a one threatened him, and that he wears it for the Safety of his Person from his Assault.” *Id.* § 8 at 136. The Hawkins treatise thus makes clear that the mere public “wearing” of arms was forbidden, and expressly rejects the NRA’s claim that arms could be publicly worn “peaceably” or for self-defense. NRA Br. 7-8.

Like Hawkins, Blackstone wrote that “*riding or going armed*” by itself was a “crime against the public peace,” without regard to intent or behavior:

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, 2 Edw. III. c. 3, upon pain of forfeiture of the arms and imprisonment during the king’s pleasure: in like manner as, by the laws of Solon, every Athenian was finable who walked about the city in armour.

4 Blackstone, *Commentaries on the Laws of England* 148-149 (1770) (emphasis in original). As Blackstone wrote, the effect of “terrifying the good people of the land” is the *basis* for outlawing riding or going armed, not an extra element of the crime. See Ruben & Cornell, *Firearm Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context*, 125 *Yale L.J. Forum* 121, 129-130 (2015) (noting Blackstone’s implication that “terrorizing the public was the consequence of going armed”).

Blackstone’s comparison of the Statute of Northampton to Solon’s prohibition against “walk[ing] about the city in armour” (4 Blackstone, *Commentaries* 149) reinforces the understanding that carrying weapons in public, alone, was proscribed. Blackstone’s source for Solon’s prohibition is John Potter’s *Antiquities of Greece* (“Pott. Antiq. b. I c. 26” (*id.* at 149 n.(n))), which describes a criminal prohibition that functioned much like the Massachusetts law challenged here, prohibiting carrying weapons in public without good cause. See 1 Potter, *The Antiquities of Greece*, ch. 26, at 182 (4th ed. 1722) (“He shall be fin[e]d, who is seen to walk the City-Streets with a Sword by his Side, or having about him other Armour, unless in case of Exigency.”).

Appellants and the NRA place great emphasis on references to “common weapons,” as distinguished from “dangerous or unusual weapons.” Appellants Br. 25; NRA Br. 8. However, firearms were considered “dangerous or unusual” or

“offensive,” and thus subject to prohibition. See Cornell, *The Right to Keep and Carry Arms in Anglo-American Law: Preserving Liberty and Keeping the Peace*, 80 L. & Contemp. Probs. 11, 20-21 (2017) [hereinafter Cornell, *Preserving Liberty*] (explaining that the various formulations—*e.g.*, “offensive weapons,” “dangerous or unusual weapons,” “dangerous and unusual weapons”—all “describe[d] the same principle” and “aimed to achieve the same goal: limit armed travel in public, particularly in populous areas”); see also *id.* at 20 (noting that “firearms [were] quintessential offensive weapons in the eyes of the law”).

In discussing the crime of smuggling, a later edition of Hawkins’s treatise explained that “guns, pistols, daggers, and instruments of war” were “considered as offensive weapons.” 1 Hawkins, *A Treatise of the Pleas of the Crown* ch. 30, § 9 at 665 (John Curwood ed. 1824); see also *King v. Hutchinson*, 168 Eng. Rep. 273, 274 & n.(a) (Old Bailey 1784) (treating firearms as “offensive weapons,” equating the term with “such weapons as the law calls dangerous weapons”). There is accordingly no reason to believe that Hawkins’s statement that “Persons of Quality” could lawfully wear “common Weapons ... in such Places, and upon such Occasions, in which it is the common Fashion to make use of them, without causing the least Suspicion of an Intention to commit any Act of Violence or Disturbance of the Peace” referred broadly to *firearms*, which were considered “offensive” and thus generally prohibited in public. 1 Hawkins, *Treatise* ch. 63,

§ 9 at 136 (1716). Indeed, had Hawkins recognized a broad right to carry arms in public, no exception for “common weapons” would have been needed. *Id.*

3. **Pre-Founding English law did not permit the carrying of firearms in public for general self-defense**

Appellants and the NRA cite the English Bill of Rights and Blackstone in support of a broad right to carry arms in public for self-defense. Their citations, however, are inapposite: they refer not to wearing arms *publicly*, but to *having* (*i.e.*, keeping or owning) arms for self-defense *within the home*, which is not at issue here, and even in that context, was subject to regulation.

The English Bill of Rights said nothing about carrying guns in public, and instead only protected subjects’ right to “*have* arms for their defence suitable to their conditions, and *as allowed by law.*” 1 W. & M. sess. 2, ch. 2 (1688); *see also* Cornell, *Preserving Liberty*, 80 L. & Contemp. Probs. at 12-13 (“The English Declaration of Rights affirmed the right of Protestants to have arms suitable to their condition, as the law allowed, but it did not sanction the use of deadly force in most circumstances and did not even imply a right to own a gun in most situations. ... The scope of the right to carry arms in public ... remained narrowly defined and limited to a range of specific situations defined by common law and statute.”). Thus, the NRA’s description of the English Bill of Rights as creating a right to “go[] armed for self-defense,” NRA Br. 8, has no basis in the actual text.

The NRA also incorrectly contends that Blackstone described English law as protecting a right to carry arms in public—a point it can only assert by artificially cobbling together quotations from different volumes of Blackstone’s Commentaries. NRA Br. 8-9. Contrary to the NRA’s misreading, Blackstone described the right as “*having arms* for their defence, suitable to their condition and degree, and such as *are allowed by law.*” 1 Blackstone, *Commentaries* 143-144; *see also id.* at 144 (describing the right as 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”).

Hawkins’s discussion of self-defense likewise supports the understanding that any allowance for having arms was limited to protection within the home. 1 Hawkins, *Treatise* ch. 63, § 8 at 136 (1716) (“[N]o one shall incur the penalty of the [Statute of Northampton] for assembling his Neighbours and Friends *in his own House*, against those who threaten to do him any Violence therein, because a Man’s House is as his castle.”). Such a limited exception is consistent with the longstanding tradition of permitting certain conduct within the home that would not be allowed in public. *See, e.g., Semayne’s Case*, 77 Eng. Rep. 194, 195 (K.B. 1604) (“[T]he house of every one is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose [I]f thieves come to a

man's house to rob him, or murder, and the owner o[r] his servants kill any of the thieves in defence of himself and his house, it is not felony, and he shall lose nothing").

Appellants' and the NRA's other sources are not to the contrary. By the NRA's own description, the Recorder of London discussed "**having** arms," not carrying them publicly. NRA Br. 9. The discussion of "private orderly societies" that practiced with arms (*i.e.*, militias) did not identify any freestanding individual right. See Blizzard, *Desultory Reflections on Police* 62-63 (1785). Even for those societies, the right was not "*at all time and in all cases, without qualification or restriction.*" *Id.* at 62 (emphasis in original). Rather, it was for narrow exceptions, such as "**immediate** self-defense" (as opposed to general self-defense, as Appellants urge), and civic obligations to carry arms, such as suppressing crime, supporting civil magistrates, and defending the kingdom. *Id.* at 63. Such allowances did not negate the general prohibition on public carrying of firearms. In fact, the need for such carefully-crafted exceptions shows that there was no broad public right to carry firearms openly for general self-defense.

Appellants and the NRA cherry-pick a single case—*Rex v. Knight*—to support their view that England recognized a right to carry arms in public. The cursory reports of the trial proceedings in *Knight*, 87 Eng. Rep. 75 (K.B. 1686); 90 Eng. Rep. 330 (K.B. 1686), fall far short of supporting their assertions. *Knight*

was prosecuted for “walk[ing] about the streets armed with guns, and [going] into the church of St. Michael, in Bristol, in the time of divine service, with a gun, to terrify the King’s subjects.” 87 Eng. Rep. at 76. Although Knight was acquitted, “[t]he historical record does not specify on what legal grounds, if any, the jury acquitted Knight.” See Charles, *Armed in America: A History of Gun Rights from Colonial Militias to Concealed Carry* 118 (2018) [hereinafter Charles, *Armed in America*].

The most that can be gleaned from *Knight* is that carrying firearms in public was prohibited and subjected Knight to prosecution. See Cornell, *Preserving Liberty*, 80 L. & Contemp. Probs. at 26 (“[*Knight*] revealed that even aristocrats, the one group expressly exempted from the Statute of Northampton, were not completely immune from prosecution for traveling with arms.”). Tellingly, Knight “never pleaded his innocence on the grounds that he went armed peaceably or under the auspices that he had a right to preparatory armed self-defense.” Charles, *Armed in America*, at 119. Indeed, when Blackstone later commented on the offense of “riding or going armed,” he did not cite the *Knight* case as articulating any relevant principle of law, and certainly not as establishing a general right to carry firearms publicly. See *supra* pp. 7-8.

Thus, contrary to Appellants’ assertions, England had a long-established tradition of regulating and prohibiting the public carrying of weapons—particularly

offensive weapons, such as firearms. These prohibitions did not depend on the circumstances: the very act of carrying a firearm in public was prohibited (with limited exceptions not applicable here) precisely because it *naturally* terrified the public, as it would today.

B. Early American Laws Prohibited The Public Carrying Of Firearms

1. Founding-Era America adopted England’s tradition of regulating the public carrying of firearms without more

As in England (and contrary to the NRA’s claim, Br. 10), the American colonies widely adopted laws mirroring the Statute of Northampton and banning the carrying of offensive weapons in public, without more. In 1686, New Jersey enacted a law in reaction to the “great complaint by the inhabitants of this Province” regarding “persons wearing swords, daggers, pistols, ... or any other unusual or unlawful weapons,” due to the “great fear” and “great abuse” they caused. 1686 N.J. Laws 289, 289-290, ch. 9. The law provided that no person “shall presume privately to wear any pocket pistol” or “other unusual or unlawful weapons,” and “no planter [*i.e.*, commoner] shall ride or go armed with sword, pistol, or dagger,” except for civil and military officers, and “strangers[] travelling” through. *Id.* Thus, the New Jersey law “did not legally require circumstances where carrying of arms was unusual and therefore terrifying. Instead, the act of riding or going armed among the people was deemed terrifying itself and

considered a breach against the public peace.” Charles, *Faces*, 60 Clev. St. L. Rev. at 33 (internal quotation marks omitted).

Massachusetts enacted its own statute shortly thereafter, providing that justices of the peace were to arrest those who “ride or go armed Offensively before any of Their Majesties Justices, or other [of] Their Officers or Ministers doing their Office, *or elsewhere*.”⁵ 1692 Mass. Laws 12, no. 6. The statute described such persons as “Affrayers, Rioters, Disturbers, or Breakers of the Peace.” *Id.* Several other colonies (and later states) similarly adopted the Statute of Northampton’s broad prohibition on the public carrying of firearms. *See* 1699 N.H. Laws 1; 1786 Va. Laws 33, ch. 21; 1792 N.C. Laws 60, 61, ch. 3; 1801 Tenn. Laws 259, 260-261, ch. 22, § 6; 1821 Me. Laws 285, ch. 76, § 1; 1852 Del. Laws 330, 333, ch. 97, § 13. Even in states that did not enact similar statutes, the common law prohibited the carrying of firearms. *See, e.g.,* Dunlap, *The New York Justice* 8 (1815) (“It is ... said to be an affray, at common law, for a man to arm himself with dangerous and unusual weapons, in such a manner as will *naturally* cause terror to the people.”).

⁵ The phrase “armed Offensively” tracks the language found in English authorities: “offensive” weapons (“guns, pistols, daggers, and instruments of war”) were presumed to cause terror and affray. *See supra* pp. 5-6, 9; Charles, *Faces*, 60 Clev. St. L. Rev. at 34-35 (explaining the Massachusetts law would be read as “a prohibition on offensive weapons”).

The NRA again attempts to argue (Br. 11) that these American laws only criminalized carrying weapons to “terrorize” the public. Not so. These laws (and particularly the 1795 Massachusetts statute the NRA cites) were, like their English predecessors, considered general prohibitions on carrying firearms in public, without requiring proof of any additional terrifying conduct. *See* 1795 Mass. Laws 436, ch. 2; Charles, *Faces*, 60 Clev. St. L. Rev. at 33 n.176 (“[I]t [was] well known to be an offence against law to ride or go armed with ... firelocks, or other dangerous weapons.”) (quoting The Salem Gazette, June 2, 1818, at 4)); Cornell, *Preserving Liberty*, 80 L. & Contemp. Probs. at 39 (“[I]t was not simply breaches of the peace, but even an ‘inchoate breach’ such as traveling ‘offensively armed’ or with ‘an unusual number of attendants’ that ran afoul of the [1795 Massachusetts] law.”).

Other states prohibited the carrying of “dangerous and unusual weapons,” echoing English authorities like Hawkins and Blackstone. Firearms fell within this proscribed category. The North Carolina Supreme Court made this point explicit, stating:

It has been remarked, that a double-barrelled gun, or any other gun, cannot in this country come under the description of “unusual weapons,” for there is scarcely a man in the community who does not own and occasionally use a gun of some sort. But we do not feel the force of this criticism. *A gun is an “unusual weapon,” wherewith to be armed and clad. No man amongst us carries it about with him, as one of his every day accoutrements—as part of his dress—and never we trust will the day come when any deadly weapon will be*

worn or wielded in our peace loving and law-abiding State, as an appendage of manly equipment.

State v. Huntly, 25 N.C. 418, 422 (1843). Appellants and the NRA fasten on the dictum that the “carrying of a gun *per se* constitutes no offence,” but that does not change the fact that carrying a gun, an “unusual weapon,” could be regulated when carried “in such manner as *naturally* will terrify and alarm, a peaceful people.” *Id.* at 422-23. Appellants also mischaracterize a quotation from legal scholar and Supreme Court Justice James Wilson—“that it was unlawful only to carry ‘dangerous and unusual weapons, in such a manner, as will naturally diffuse a terror among the people.’” Appellants Br. 26 (citing 3 James Wilson, *The Works of the Honourable James Wilson* 79 (1804)). But Appellants ignore the full passage, which, in fact, is taken directly from Hawkins’s treatise and provides strong evidence for the opposite of what Appellants contend: that carrying firearms in public *naturally* causes terror. 1 Hawkins, *Treatise* ch. 63, § 4 at 135; *see supra* pp. 6-7.

2. Massachusetts and other states adopted “reasonable cause” laws like the ones at issue as criminal prohibitions against carrying firearms in public

In addition to broad prohibitions against the open carrying of guns, early American criminal laws serve as historical precedents for the firearms licensing policies of Boston and Brookline, under which an applicant cannot carry a firearm publicly without restriction absent “good reason to fear injury.” In the nineteenth

century, many states, starting with Massachusetts, enacted “reasonable cause” laws providing that anyone who publicly carried a pistol “or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury,” could be arrested and required to obtain “sureties for keeping the peace.” *E.g.*, 1836 Mass. Laws 748, 750 ch. 134, § 16; *see* 1838 Wis. Laws 378, 381, § 16; 1841 Me. Laws 707, 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; 1870 W. Va. Laws 702, 703, ch. 153, § 8.

These reasonable cause laws further rebut Appellants’ and the NRA’s assertion that no bans on public carrying of guns existed. The NRA’s primary response—offered without citation—is that violation of a reasonable cause law required threatening behavior, and that even a person exhibiting threatening behavior could continue carrying firearms as long as he obtained sureties answerable if he breached the peace or injured others. NRA Br. 14. Not a single source supports the NRA’s view of these laws.

Plainly, the title of the Massachusetts law—“Persons who go armed may be required to find sureties for peace”—does not include the NRA’s qualification. Peter Oxenbridge Thacher, a state judge, described Massachusetts’s law in a grand jury charge, explaining 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: Separating Historical Myths from Historical Realities*, 39 Fordham Urb. L.J. 1695, 1720 (2012); *see also id.* at 1720-1721 (Judge Thacher’s account “unambiguously interprets this law as a broad ban on the use of arms in public” and “drew praise in the contemporary press”).

Moreover, the historical record indicates that reasonable cause laws were enforced as general prohibitions against the public carrying of firearms. For example, a Richmond, Virginia newspaper stated that justices of the peace “may issue a warrant for the arrest of any party going armed with a deadly or dangerous weapon.” *Letter from Mayor A.M. Keiley*, *The Daily State Journal* (Richmond, Va.), Sept. 16, 1872; *see also Local Matters*, *Daily Dispatch* (Richmond, Va.), June 1, 1861, at 2 (Virginia man “held to bail” for “habitually going armed”).

Other nineteenth-century newspaper articles similarly report criminal prosecutions under reasonable cause laws even when the person was carrying a *concealed* weapon, which would not involve threatening behavior. *See, e.g., City Intelligence*, *Boston Courier* (Boston, Mass.), Mar. 7, 1853, at 4 (reporting arrest and charge for “carrying” a concealed and loaded pistol); *Local Intelligence*, *Evening Star* (Washington, D.C.), Nov. 26, 1856, at 3 (describing multiple arrests

for “[c]arrying [c]oncealed [w]eapons”); *City Items*, Richmond Whig (Richmond, Va.), Sept. 25, 1860, at 3 (reporting that person was “arraigned” for “carrying a concealed weapon” and “required [to] give security”); *Recorders Court*, Oregonian (Portland, Or.), Aug. 6, 1867, at 4 (reporting conviction for “carrying a concealed weapon,” resulting in two-day imprisonment); *Municipal Court*, Massachusetts Spy (Worcester, Mass.), Jan. 14, 1870, at 2 (Thomas J. Hilton prosecuted for carrying concealed weapons, for which he was put under \$100 to keep the peace); *Crimes of a Year*, Daily Gazette (Kalamazoo, Mich.), Jan. 18, 1889, at 2 (conviction for “[c]arrying concealed weapon,” resulting in 30-day prison sentence).

The reasonable cause laws accordingly confirm the long tradition of restricting the public carrying of firearms, while establishing a limited exception for persons with a particular need for self-defense. That limited exception would have been unnecessary, and the reasonable cause laws entirely superfluous, if—as Appellants and the NRA insist—the Second Amendment protected a broad right to carry firearms publicly.

3. Appellants’ and the NRA’s other citations do not support their desired broad right to carry firearms publicly

Appellants and the NRA cite a variety of other sources in their attempt to rewrite American history to support broad rights to carry firearms publicly without restrictions. Each attempt fails.

Appellants first rely on anecdotes and statements from Thomas Jefferson, George Washington, Patrick Henry, and John Adams. Appellants Br. 23-24.

Appellants take their quotations out of context, with the most blatant example being their selective quotation of Jefferson’s advice to his nephew, which reads:

Give about two [hours], every day, to exercise; for health must not be sacrificed to learning. A strong body makes the mind strong. As to the species of exercise, I advise the gun. . . . Let your gun therefore be the constant companion of your walks. Never think of taking a book with you. The object of walking is to relax the mind. You should therefore not permit yourself even to think while you walk; but divert yourself by the objects surrounding you.

1 *The Works of Thomas Jefferson* 397-398 (letter of Aug. 19, 1785) (H. A. Washington ed., 1884). Jefferson’s preferences regarding “exercise” and “walks” certainly do not support a right to carry firearms publicly in populated areas like Boston or Brookline—just as the famous bibliophile’s admonition to “[n]ever think of taking a book with you” should not be interpreted as advice for day-to-day life.⁶ Plainly Jefferson was only encouraging the use of firearms for sport; both Brookline and Boston provide “sporting” licenses, which allow individuals to carry firearms for “recreational” purposes, as Jefferson envisioned. *See Gould v.*

⁶ Notably, during the drafting of the 1776 Virginia Constitution, Jefferson proposed a provision protecting Virginians’ right to bear arms but only “within [their] own lands or tenements.” *See Jefferson, Third Draft of the Virginia Constitution 1776, in 1 The Papers of Thomas Jefferson* 363 (J.P. Boyd ed. 1950).

O’Leary, 291 F. Supp. 3d 155, 160-163 (D. Mass. 2017). Indeed, plaintiff-appellant Michael Gould received exactly such a license. *Id.*

Similarly, Washington’s carrying of a firearm “*on an expedition*” with the military in the largely unsettled Ohio Country (Appellants Br. 23) does not demonstrate any belief in a general right to carry firearms in public; neither does Patrick Henry’s use of a “musket slung over his shoulder to pick off small game for [his wife’s] table” while traveling through the rural countryside to the Hanover County courthouse. *See Unger, Lion of Liberty: Patrick Henry and the Call to a New Nation* 30 (2010). Again, both Boston and Brookline offer restricted licenses permitting the carrying of firearms for hunting, which individual plaintiff-appellants received. *See Gould*, 291 F. Supp. 3d at 160-163.

The quotation from Adams’s defense of British soldiers following the Boston Massacre likewise does no work here; at most, Adams mentioned a right to self-defense in the event of a dangerous riot, made clear by his reference to the “inhabitants[’] ... right to arm themselves *at that time* for their defence.” Adams, *First Day’s Speech in Defence of the British Soldiers Accused of Murdering Attucks, Gray and Others, in the Boston Riot of 1770*, in 6 *Masterpieces of Eloquence* 2569, 2578 (Hazeltine et al. eds., 1905); *see also id.* at 2577-2578 (citing Hawkins’s discussion on defending against “dangerous rioters”). He certainly said nothing about a general right to carry firearms in all circumstances,

without cause. Moreover, it is far from clear that Adams was referring to firearms at all. In fact, the Bostonians carried “snowballs, cakes of ice, oyster shells, cinders, and clubs,” not guns. *Id.* at 2576.⁷

Appellants and the NRA also point to laws compelling ownership and bearing of firearms as part of people’s civic duties, such as serving in the militia. Appellants Br. 22-23; NRA Br. 12. Of course, Appellants do not seek to carry firearms in military service or in response to a government mandate—a settled exception that dates back to the original Statute of Northampton. *See* 2 Edw. 3, 258, ch. 3 (exception for “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”). Indeed, the Supreme Court has clearly rejected the notion that private citizens may demand the same right to carry arms afforded to those in government service. *See Presser v. Illinois*, 116 U.S. 252, 267 (1886) (“Military organization and military drill and parade under arms are subjects

⁷ Quite apart from Appellants’ misleading presentation of these statements, they are in themselves weak evidence of the meaning of the Second Amendment when compared to the contemporaneous laws that expressly prohibited carrying firearms in public. *See McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 360 (1995) (Thomas, J. concurring) (“[T]he simple fact that the Framers engaged in certain conduct does not necessarily prove they forbade its prohibition by the government.”); *see also* Charles, *Armed in America*, at 113 (“Just because eighteenth century persons owned and used firearms, and carried those firearms at times, does not mean it was perceived by those same persons as a constitutionally protected right to do so, particularly in densely populated places.”).

especially under the control of the government of every country. They cannot be claimed as a right independent of law. ... The constitution and laws of the United States will be searched in vain for any support to the view that these rights are privileges and immunities of citizens of the United States independent of some specific legislation on the subject.”); *see also Heller*, 554 U.S. at 620-621 (citing *Presser*, 116 U.S. 252, 264-265).

Appellants also cite a handful of nineteenth-century cases for their proposition that the Second Amendment forbids outright bans on the public carrying of firearms. Appellants Br. 24-25. These cases are of scant persuasive value.

First, the decisions cited address only ***outright bans*** on the public carrying of firearms, without exception—not regulatory schemes like Boston’s or Brookline’s. *See, e.g., State v. Reid*, 1 Ala. 612, 616-617 (1840) (“A statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence, would be clearly unconstitutional.”); *Nunn v. State*, 1 Ga. 243, 251 (1846) (invalidating portion of statute that “entirely forbids” wearing of pistols). Massachusetts’s “good cause” requirement does not “entirely forbid[]” the public carrying of firearms, but merely subjects it to reasonable regulation. Every nineteenth-century case to address a policy like Massachusetts’s upheld or

condoned laws limiting the carrying of arms to circumstances when presented with *specific threats*. See, e.g., *Andrews v. State*, 50 Tenn. 165, 191 (1871) (invalidating total ban on carrying arms in public because there was no exception for instances where “they were worn *bona fide* to ward off or meet imminent and threatened danger to life or limb, or great bodily harm”); *State v. Barnett*, 34 W. Va. 74, 77-78 (1890) (affirming conviction for carrying a revolver without “sufficient ground ... to fear death or harm”); *State v. Duke*, 42 Tex. 455, 456 (1874) (upholding law prohibiting public carrying of firearms unless one “has reasonable grounds for fearing an unlawful attack on his person, and that such ground of attack shall be immediate and pressing”).

Second, two of Appellants’ cited cases arose under differently worded *state* constitutions, not the Second Amendment. See *Bliss v. Commonwealth*, 12 Ky. 90 (1822) (discussing Ky. Const., art. X, § 23 (1799)); *Reid*, 1 Ala. at 614-615 (citing Ala. Const. art. I, § 23 (1819)). And *Bliss* was viewed with skepticism by other states. See, e.g., *Commonwealth v. Murphy*, 166 Mass. 171, 172-173 (1896) (“Legislature may regulate and limit the mode of carrying arms. The early decision to the contrary of *Bliss v. Commonwealth* has not been generally approved.” (citations omitted)). Similarly, Appellants cite the writings of Charles Humphreys as apparent support for a broad constitutional right to carry firearms in public. Appellants Br. 26. But as its title shows, the Humphreys text clearly

focused on the (“not ... generally approved”) Kentucky constitutional tradition, and therefore cannot be treated as generalizable authority on American firearms regulation or the Second Amendment. *See* Humphreys, *A Compendium of the Common Law in Force in Kentucky* 482 (1822); Cornell, *Preserving Liberty*, 80 L. & Contemp. Probs. at 35 (“Humphreys specifically took up the question of how the state’s constitutional provisions on the right to bear arms, as interpreted by the courts, had modified common law restrictions on ‘riding or going armed with dangerous or unusual weapons.’ ... [H]e noted that in Kentucky [the] legal bar had been raised”).⁸

Moreover, “[t]he judges deciding the Southern right-to-carry cases were ... immersed in a social and legal atmosphere unique to the South. The distinctive nature of Southern society, including its embrace of slavery and honor, contributed to an aggressive gun culture.” Ruben & Cornell, 125 *Yale L.J. Forum* at 128. “At minimum, the historical origins of [*Nunn v. State*, 1 Ga. 243 (1846)] and similar cases ought to give modern judges serious pause as they consider public carry cases ... in the post-*Heller* era.” *Id.*

⁸ Kentucky later revised its constitution to clarify that the “the General Assembly may pass laws to prevent persons from carrying concealed arms.” *See* Cornell, *Preserving Liberty*, 80 L. & Contemp. Probs. at 35 (quoting Ky. Const. art. XIII, § 25 (1850) (miscited as “art. III” in original source)).

Appellants and the NRA have shown no basis to conclude that American authorities, any more than English authorities, recognized an unfettered right to carry firearms publicly. On the contrary, the lengthy English tradition of regulating the public carrying of firearms was recognized and implemented in this country. The Second Amendment, like the settled practice in England and America, does not prevent reasonable regulations on the public carrying of firearms like the ones that Boston and Brookline have chosen.

CONCLUSION

The district court's judgment should be affirmed.

Respectfully submitted,

E. ROSS COHEN
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
(202) 663-6000
Ross.Cohen@wilmerhale.com

/s/ Mark C. Fleming
MARK C. FLEMING
TASHA J. BAHAL
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
Mark.Fleming@wilmerhale.com
Tasha.Bahal@wilmerhale.com

*Attorneys for Amicus Curiae
Everytown for Gun Safety*

June 13, 2018

ADDENDUM

TABLE OF CONTENTS

	Page
STATUTES	
1686 N.J. Laws 289, ch. 9.....	Add. 1
1692 Mass. Laws 12, no. 6.....	Add. 5
1699 N.H. Laws 1.....	Add. 10
1786 Va. Laws 33, ch. 21.....	Add. 17
1792 N.C. Laws 60, ch. 3.....	Add. 18
1795 Mass. Laws 436, ch. 2.....	Add. 21
1801 Tenn. Laws 259, ch. 22, § 6.....	Add. 23
1821 Me. Laws 285, ch. 76, § 1.....	Add. 27
1836 Mass. Laws 748, ch. 134.....	Add. 34
1838 Wis. Laws 378, § 16.....	Add. 39
1841 Me. Laws 707, ch. 169, § 16.....	Add. 44
1846 Mich. Laws 690, ch. 162, § 16.....	Add. 48
1847 Va. Laws 127, ch. 14, § 16.....	Add. 52
1851 Minn. Laws 526, ch. 112, § 18.....	Add. 56
1852 Del. Laws 330, ch. 97, § 13.....	Add. 61
1853 Or. Laws 218, ch. 16, § 17.....	Add. 70
1861 Pa. Laws 248, § 6.....	Add. 74
1870 W. Va. Laws 702, ch. 153, § 8.....	Add. 93
ENGLISH STATUTES	
1 W. & M. sess. 2, 143, ch. 2 (1688).....	Add. 97

Statute of Northampton, 2 Edw. 3, 258, ch. 3 (1328) Add. 101
 34 Edw. 3, 364, ch. 1 (1360)..... Add. 106

TREATISES AND WRITINGS

Adams, John, *First Day’s Speech in Defence of the British Soldiers Accused of Murdering Attucks, Gray and Others, in the Boston Riot of 1770*, in 6 *Masterpieces of Eloquence*, 2569, 2575-2579 (Hazeltine et al. eds., 1905)..... Add. 112

1 Blackstone, William, Sir, *Commentaries on the Laws of England*, ch. 1, 142-145 (1768)..... Add. 119

4 Blackstone, William, Sir, *Commentaries on the Laws of England*, ch. 11, 147-150 (1770)..... Add. 124

Blizzard, William, *Desultory Reflections on Police*, 61-64 (1785)..... Add. 129

Dunlap, John A., *The New York Justice*, 8-9 (1815)..... Add. 135

1 Hawkins, William A, *A Treatise of the Pleas of the Crown* ch. 30, 664-666 (John Curwood ed. 1824)..... Add. 138

1 Hawkins, William A, *A Treatise of the Pleas of the Crown* ch. 63, 134-137 (1716)..... Add. 142

Humphreys, Charles, *A Compendium of the Common Law in Force in Kentucky*, 481-483 (1822) Add. 147

Jefferson, Thomas, *Jefferson’s Third Draft of the Virginia Constitution 1776*, in 1 *The Papers of Thomas Jefferson* (J.P. Boyd ed. 1950)..... Add. 151

Keble, Joseph, *An Assistance to the Justices of the Peace, for the Easier Performance of Their Duty*, 224-225 (1683) Add. 162

1 Potter, John, *The Antiquities of Greece*, ch. 26, 181-182 (4th ed. 1722)..... Add. 166

3 Wilson, James, *The Works of the Honourable James Wilson*, 78-80 (1804)..... Add. 169

1 *The Works of Thomas Jefferson*, 395-399 (letter of Aug. 19, 1785)
(H. A. Washington ed., 1884) Add. 173

NEWSPAPER ITEMS FROM THE 19TH CENTURY

City Intelligence, Boston Courier (Boston, Mass.), Mar. 7, 1853 Add. 179

City Items, Richmond Whig (Richmond, Va.), Sept. 25, 1860..... Add. 180

Crimes of a Year, Daily Gazette (Kalamazoo, Mich.), Jan. 18, 1889 Add. 181

Letter from Mayor A.M. Keily, The Daily State Journal (Richmond, Va.),
Sept. 16, 1872..... Add. 182

Local Intelligence, Evening Star (Washington, D.C.), Nov. 26, 1856..... Add. 183

Local Matters, Daily Dispatch (Richmond, Va.) June 1, 1861..... Add. 184

Municipal Court, Massachusetts Spy (Worcester, Mass.), Jan. 14, 1870... Add. 185

Recorders Court, Oregonian (Portland, Or.), Aug. 6, 1867 Add. 186

THE
GRANTS, CONCESSIONS,
AND
ORIGINAL CONSTITUTIONS
OF THE PROVINCE OF
NEW JERSEY
THE
A C T S

Passed during the Proprietary Governments, and other
material Transactions before the Surrender
thereof to Queen Anne.

The Instrument of Surrender, and her formal Accept-
ance thereof

Lord CORNBURY'S COMMISSION and Instructions Conse-
quent thereon,

Collected by some Gentlemen employed by the General Assembly.
And afterwards

Published by virtue of an Act of the Legislature of the said Province
With proper Tables alphabetically Digested, containing the prin-
cipal Matters in the Book.

By AARON LEAMING and JACOB SPICER.

PHILADELPHIA:

Printed by W. BRADFORD, Printer to the King's Most Excellent
Majesty for the Province of New Jersey.



L A W S

P A S S E D

UNDER THE

G O V E R N M E N T

OF THE

Twenty Four

P R O P R I E T O R S ,

BETWEEN

1682, and 1702.



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 aforesaid Col. Lewis Morris, John Bound, and Joseph Parker, were by the said acts.

Chap. IX.

An Act against wearing Swords, &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,

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.



A C T S and L A W S Passed by the Great and General Court or Assembly of the Province of the *Massachusetts-Bay* in *New-England*; Begun and Held at *Boston* the Eighth of *June*, 1692; And Continued by Adjournment unto the Twelfth Day of *October* following.



An Act for Building with Stone or Brick in the Town of Boston, and Preventing Fire.

§ 1.
Confirmed
22 Aug. 1695.



HEREAS great Desolations and Ruins have sundry times happened, by Fire breaking out in the Town of *Boston*, principally occasioned by reason of the Joining and Nearness of the Buildings, being mostly of Timber, and covered with Shingle: For the better preventing of such Accidents for the future, and Damage and Loss thereby, Be it Ordained and Enacted by the Governor, Council, and Representatives, convened in General Court or Assembly; and it is Enacted by the Authority of the same, That henceforth no Dwelling-house, Shop, Ware-house, Barn, Stable, or any other Housing, of more than Eight Feet in Length, or Breadth, and Seven Feet in Height, shall be erected and set up in *Boston*, but of Stone or Brick, and covered with Slate or Tyle, unless in particular Cases, where Necessity requires; being so judged and signified in Writing under the Hands of the Justices and Select-men of the said Town, or major part of both, the Governor, with the Advice and Consent of the Council, shall see Cause to grant Licence unto any Person to build with Timber, or cover with Shingle: And if any Person shall presume to erect, or cause to be erected, any Frame or Building contrary hereto, upon Conviction thereof before Two Justices of Peace (*Quorum Litem*) such Building shall be deemed a Common Nuisance, and the Owner of such Frame or Building shall enter into a Recognizance to demolish the same: and in Default of entering into such Recognizance, shall be committed to Prison until he do cause the same to be demolished; or else such Building shall be demolished by Order of the Quarter-Sessions of the Peace within the said County, and the Charges thereof to be levied by Distress and Sale of such Offenders Goods, by Warrant from the Court of Quarter-Sessions.

Buildings in *Boston* to be of Brick or Stone, and covered with Slate.

Governor and Council to grant Licence to build with Timber in Case.

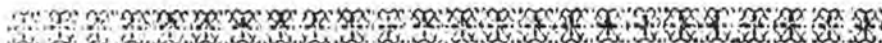
Penalty for transgressing this Act.

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 Penny 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.

An Act for the Punishing of Criminal Offenders.

Continued to Act 1591.

Curse and 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.

Procurator.

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.

11

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 whosoever shall steal or purloin any Money, Goods, or Chattels, being thereof convicted by Confession, or sufficient Witnesses upon Oath, every such Offender shall forfeit treble the Value of the Money, Goods, or Chattels so stolen 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 empowered 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 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 Incurable; 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 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 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 staid and arrested all Aftayers, 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

Theft.

Burglary and Robbery.

Fornication.

Reputed Father of a Bastard.

Power of the Justice of Peace.

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 apprizd 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.

False 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

Anno Regni Quarto Gulielmi 8^o Mariae.

13

reason of any of the Offences aforesaid, may take his or their Suit against any such Offender or Offenders in any Court of Record, where no Essoign, Injunction, or Protection shall be allowed the Party Defendant.

PROVIDED always, and it is Enacted by the Authority aforesaid, That this Act, or any thing therein contained, shall not extend to charge any Judge of Probate, or Register, with any the Offences aforesaid, for putting their Seal of Office to any Will to be exhibited unto them, not knowing the same to be false or forged, for writing of the said Will or Probate of the same; nor to any other Person or Persons that shall shew forth or give in Evidence any false or forged Writing for true or good, being not party or privy to the forging of the same, nor knowing the same to be false or forged; any thing in this Act to the contrary notwithstanding.

AND it is further Enacted and Ordained by the Authority aforesaid, If any Person or Persons, either by the Subornation, unlawful Procurement, Reward, sinister Persuasion, or Means of any other, or by their own Act, Consent, or Agreement, shall wilfully and corruptly commit any manner of wilful Perjury by his or their Deposition in any Court of Record, or being examined *Ad perpetuam rei memoriam*, that then every Person and Persons so offending, and being thereof duly convicted, or attainted by Law, shall, for his or their Offence, lose and forfeit Twenty Pounds; the one Moiety thereof unto Their Majesties, and the other Moiety to such Person or Persons as shall be grieved, hindered, or molested by reason of any such Offence, that shall sue for the same by Action of Debt, Bill, Plaint, Information, or otherwise, in any Court of Record, in the which no Wager of Law, Essoign, Protection, or Injunction to be allowed; and also to have Imprisonment by the Space of Six Months without Bail or Mainprize; and the Oath of such Person or Persons so offending, not to be received in any Court of Record, until such time as the Judgment given against the said Person or Persons shall be reversed by Attaint, or otherwise; and upon every such Reversal, the Parties agrieved to recover his or their Damages against all and every such Person and Persons as did procure the said Judgment, so reversed, to be given against them, or any of them, by Action or Actions upon his or their Case or Cases, according to the Course of the Common Law; And if it happen the said Offender or Offenders, so offending, not to have any Goods or Chattels to the Value of Twenty Pounds, that then he or they be set on the Pillory, by the Space of One whole Hour, in some Market-Town where the Offence was committed, or next adjoining to the Place where the Offence was committed, and to have both his Ears nailed; and from thenceforth to be discredited and disabled for ever to be sworn in any Court of Record, until such time as the Judgment shall be reversed. And all and every Person and Persons, who shall unlawfully and corruptly procure any Witness or Witnesses, by Letters, Rewards, Promises, or by any other sinister and unlawful Labour or Means whatsoever, to commit any wilful and corrupt Perjury in any Matter or Cause whatsoever depending, or that shall depend in Suit and Variance by any Writ, Action, Bill, Complaint, or Information in any Court of Record; or to testify *In perpetuam rei memoriam*; every such Offender, being thereof duly convicted, or attainted by Law, shall, for his or their Offence, be proceeded against, and suffer the like Pains, Penalties, Forfeitures, and Disability, in all Respects, as above mentioned.

AND it is further Enacted by the Authority aforesaid, That all the aforesaid Forfeitures and Sums of Money, arising for any Offence mentioned in this Act, and every Branch thereof, and not otherwise disposed of, shall be unto Their Majesties, for and towards the Support of the Government of this Province, and the incident Charges thereof.

ACTS AND LAWS

OF

HIS MAJESTY'S PROVINCE

OF

NEW HAMPSHIRE,

IN

NEW ENGLAND.

WITH SUNDRY ACTS OF PARLIAMENT.

By Order of the GOVERNOR, COUNCIL and ASSEMBLY,
Pass'd October 16th, 1759.

PORTSMOUTH:
PRINTED BY DANIEL FOWLE,
1761.

LAWS OF NEW HAMPSHIRE.

AN ACT FOR ESTABLISHING AND REGULATING COURTS OF PUBLIC JUSTICE WITHIN THIS PROVINCE. — PASS'D 11TH OF WM. 3. WITH ADDITIONAL PARAGRAPHS OF OTHER ACTS RELATIVE THERETO. 11th of W. 3.

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 empower'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.

Proviso.

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.
2. 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.

3

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.

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.

Time and conditions of granting said appeal.

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, part 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.

5

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.

Security to be given.

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, entitled "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.

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.

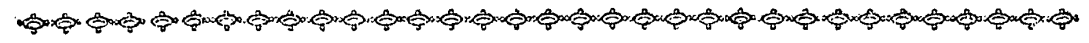
terposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them :

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.

A
COLLECTION
 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 LEITOR'S PRESS.

1792.

(60)

C H A P. VIII.

Nothing shall be taken for Beaupleader.

ITEM, 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.

C H A P. XIV.

None shall commit Maintenance.

ITEM, 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.

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.

C H A P. I.

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

[Unnecessary to be inserted.]

C H A P. III.

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

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

(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.

C H A P. V.

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

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 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.

C H A P. VI.

Justices shall have Power to punish Breakers of the Peace.

ITEM, 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.

In the Year of our LORD, 1795.

Common Field in *Norfolk.*

435



Acts and Laws

Passed by the GENERAL COURT of
Massachusetts :

Begun and held at BOSTON, in the County of
SUFFOLK, on Wednesday the Twenty-eighth
Day of MAY, ANNO DOMINI, 1794 ; and from
thence continued by adjournment, to Wednes-
day, the Fourteenth Day of January, 1795.

C H A P. I.

An Act for incorporating certain Land in *Dedham*
and *Sharon*, in the County of *Norfolk*, into a
Common Field.

WHEREAS the proprietors of a certain tract of meadow land, ly-
ing partly in *Dedham*, and partly in *Sharon*, in the county of Preamble.
Norfolk, are desirous to have the same incorporated into a Common Field :

BE it enacted by the Senate and House of Representatives, in General
Court assembled, and by the authority of the same, That all that tract of
land, known by the name of *Pigeon-swamp Meadow*, lying partly in
Dedham, and partly in *Sharon*, in the county of *Norfolk*, and included
in the bounds following, viz:—Beginning at *Trap-hole Brook*, so called,
in the land of *Nathaniel Sumner*, Esq. where the fence now stands which Boundaries.
divides said *Sumner's* upland from his meadow, and running southerly
on

In the Year of our LORD, 1795.

436

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 *Sharon*; 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.

An repealed.

BE 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.

A C T S

PASSED AT THE FIRST SESSION OF THE FOURTH GENERAL
ASSEMBLY OF THE STATE OF TENNESSEE,

BEGUN AND HELD AT KNOXVILLE, ON MONDAY, THE
TWENTY FIRST DAY OF SEPTEMBER, ONE THOUSAND
EIGHT HUNDRED AND ONE.

CHAPTER I.

AN ACT to amend an act, entitled, "An act for the better establishment
and regulation of the militia in this state." (PASSED NOV. 14, 1801.

Section 1. **B**E it enacted by the General Assembly of the State of Tennessee,
That each regiment of militia in this state shall be di-
vided into two battalions, by the regimental court martial at their next
meeting after the passing of this act, having due respect to the convenien-
cy of the different companies, without regard to bounds or number;
and the officers of each battalion shall have the privilege of choosing
their muster ground, except where the regiment has been previously di-
vided by law, and in that case the division shall continue as heretofore,
or be discontinued at the discretion of the court martial. The first bat-
talion in each regiment shall hold a battalion muster on the first Thurs-
day in April; the second battalion on the third Thursday in April an-
nually; and a court martial shall be held in each battalion on the day
succeeding the battalion muster; such musters and courts martial to be
conducted under the same rules, regulations and restrictions as regimen-
tal musters and courts martial, reserving to any person who may think
himself aggrieved by any sentence of such court martial, the right of
appeal to the next court martial of the regiment. And it shall be the
duty of the adjutants to attend the battalion musters in their respective
regiments, and of the judge advocates to attend the battalion courts
martial, and they shall perform the same duties which they are requir-
ed to perform at regimental musters and courts martial, and be allow-
ed the same compensation. And the major appointed to the command
of each battalion shall attend the battalion musters, and may preside in
the courts martial, or may direct the senior officer present to preside;
and if he should be absent, the officer next in rank shall perform the
duties of the major at such muster or court martial.

Sec. 2. *Be it enacted,* That each regiment of infantry shall hold only
one regimental muster in each year, at their respective court houses, on
the Thursday immediately preceding the first day of holding the courts
in the several counties, in either of the months of September, October,
and November annually, except the second regiment of Davidson coun-
ty, who shall hold their regimental muster at the place heretofore pro-
vided for by law, on the Thursday succeeding the court of said county,
in the month of October in each and every year. And the brigadier
general shall attend the several regimental musters in his brigade, at least
once in two years, or oftener if he shall think necessary, and in such ro-
tations as he shall think proper, not inconsistent with this act, for the pur-
pose of reviewing such regiment, & making such regulations as may ap-
pear to him necessary not otherwise inconsistent with this law. *Provided,*

(259)

grants, deeds, or mesne conveyances not being proved and registered within this state, it shall and may be lawful for such person or persons to prove and register his, her, or their grants, deeds or mesne conveyances.

Sec. 2. *Be it enacted*, That this act shall be in force until the end of the next stated session of the general assembly.

C H A P. XXI.

AN ACT to amend an act, entitled, "An act to ascertain the boundaries of land, and for perpetuating testimony.—PASSED NOVEMBER 6, 1801;
BE it enacted by the General Assembly of the State of Tennessee, That all the privileges, benefits, and advantages arising under or accruing to others, by virtue of an act, entitled, "An act to ascertain the boundaries of land, and for perpetuating testimony, passed at Knoxville in the year 1799, shall extend to the citizens resident south of French Broad and Holston, and between the rivers Big Pigeon and Tennessee, holding or claiming, or that may hold or claim land by right of occupancy, so far as may respect their rights to, or the conditional or boundary lines of their respective claims or rights of occupancy and pre-emption in that tract of country, any thing in the proviso to the fourth section of said recited act to the contrary notwithstanding.

C H A P. XXII.

AN ACT for the restraint of idle and disorderly persons.—PASSED NOVEMBER 13, 1801.

WHEREAS it becomes necessary for the welfare of the community, to suppress wandering, disorderly and idle persons:

Section 1. *BE it enacted by the General Assembly of the State of Tennessee*, That any person or persons who have no apparent means of subsistence, or neglect applying themselves to some honest calling for the support of themselves and families, every person so offending, who shall be found fauntering about neglecting his business, and endeavoring to maintain himself by gaming or other undue means, it shall and may be lawful for any justice of the peace of the county wherein such person may be found, on due proof made, to issue his warrant for such offending person, and cause him to be brought before said justice, who is hereby empowered, on conviction, to demand security for his good behaviour, and in case of refusal or neglect, to commit him to the goal of the county, for any term not exceeding five days, at the expiration of which time he shall be set at liberty if nothing criminal appears against him, the said offender paying all charges arising from such imprisonment; and if such person shall be guilty of the like offence from and after the space of thirty days, he, so offending, shall be deemed a vagrant, and be subject to one month's imprisonment, with all costs accruing thereon, which if he neglects or refuses to pay, he may be continued in prison until the next court of the county, who may proceed to try the said offender, and if found guilty by a verdict of a jury of good and lawful men, said court may proceed to hire the offender for any space of time not exceeding six months, to make satisfaction for all costs, but if such person or persons so offending, be of ill fame, so that he or they cannot be hired for the costs, nor give sufficient security for the same and his future good behaviour, in that case it shall and may be lawful for the said court to cause the offender to receive not exceeding thirty nine lashes, on his bare back, after which he shall be set at liberty, and the costs arising thereon shall become a county charge; which punishment may

(260 -)

be inflicted as often as the person may be guilty, allowing thirty days between the punishment and the offence.

Sec. 2. *Be it enacted.* That it shall not be lawful for any person or persons of ill fame or suspicious character, to remove him or themselves from one county to another in this state, without first obtaining a certificate from some justice of the peace of said county or captain of his company, setting forth his intention in removing, whether to settle in said county, or if travelling, to set forth his business and destination, and if such traveller should be desirous to stay in any county longer than ten days, he shall first apply to some justice of said county for leave, and obtain a certificate for that purpose, setting forth the time of his permission, and if such person shall be found loitering in said county after the expiration of his permit, or fail to obtain the same agreeable to the true intent and meaning of this act, such person or persons so offending, may be apprehended by any person or persons, and carried before some justice of the peace, who may enquire into his character and business; and fine him at his discretion, not exceeding ten dollars: but if said traveller shall be found on examination, to be a person of ill fame, and there is reason to suspect he is loitering in said county for evil purpose, attempting to acquire a living by gambling, or other bad practices, such justice shall have power to commit any person of like character, until he shall find good and sufficient security for his good behaviour, for any time not exceeding ten days, and said justice of the peace or court of the county shall proceed against such offender, in the same manner as is heretofore prescribed for vagrants.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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

(261)

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 goal 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.

Sec 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.

Sec 8. *Be it enacted*, That all fines inflicted by this act, shall be one half to him that will sue for the same, and the other half to the use of the county.

Sec. 9. *Be it enacted*, That all laws and parts of laws, which come within the meaning and purview of this act, are hereby repealed.

C H A P. XXIII.

AN ACT to authorize the several county courts of pleas and quarter sessions to remit and mitigate fines and forfeitures on recognizances as therein mentioned — (PASSED OCTOBER 12, 1821.)

Section 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the several courts of pleas and quarter sessions in this state, shall have power to remit or mitigate all fines by them inflicted, and all forfeitures on recognizances, previous to entering final judgment thereon: *Provided*, a majority or any number not less than nine of the justices of said county be present when such remittance or mitigation shall be made.

Sec 2. *Be it enacted*, That so much of any other act as comes within the purview and meaning of this act is hereby repealed.

C H A P. XXIV.

AN ACT concerning administrations granted on the estates of persons dying intestate, therein mentioned — (PASSED NOVEMBER 10, 1821.)

WHEREAS heretofore the courts of pleas and quarter sessions, during the being of the temporary government called Franklin, granted administrations on the estates of persons who died intestate, and have issued letters of administration accordingly, in virtue and by authority of which, the persons so administering, have proceeded to administer upon the goods and chattels, rights and credits of their intestates respectively: And whereas it will contribute to the peace and quiet of families, that administrations on such estates, so as aforesaid granted, be deemed and declared valid,

Sec 1. *BE it enacted by the General Assembly of the State of Tennessee*, That all administrations granted by any of the said courts of pleas and quarter sessions, and letters of administration by any of the aforesaid courts issued, on the estate or estates of any person who died intestate, and all proceedings in virtue of such letters of administration had and done, of, and concerning any such estate, agreeably to, and in conformi-

L A W S

OF THE

STATE OF MAINE;

TO WHICH ARE PREFIXED

THE

CONSTITUTION OF THE UNITED STATES

AND OF SAID STATE,

WITH AN APPENDIX.



HALLOWELL:

PRINTED AND PUBLISHED BY GLAZIER, MASTERS & Co.

No. 1, Kennebec-Row.

.....

1830.

POWER OF JUSTICES.

285

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 terrour 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 by-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 by-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.

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.

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 person extend to 20
 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 sommons 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
 give judgment against him for such damages as he shall find before 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 prevail.
 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, Execution.
 he 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, *damnum* does
 provided the *ad damnum*, or damage is not laid or stated to not exceed 20
 exceed 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-
 thereform 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
 cute his appeal with effect; and shall be held to produce a copies at C. C.
 copy of the whole case, at the Court appealed to, and both C. 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 appeal.
 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.

POWER OF JUSTICES.

289

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

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

RECOVERY OF DEBTS.

actions, 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.]



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. **B**E 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.

Execution may issue thereon within 3 years.

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 Conusee ; 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 : -

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

THE
REVISED STATUTES

OF THE

Commonwealth of Massachusetts,

PASSED NOVEMBER 4, 1835;

TO WHICH ARE SUBJOINED,

AN ACT IN AMENDMENT THEREOF, AND AN ACT EXPRESSLY TO
REPEAL THE ACTS WHICH ARE CONSOLIDATED THEREIN,

BOTH PASSED IN FEBRUARY 1836;

AND TO WHICH ARE PREFIXED,

THE CONSTITUTIONS

OF THE

United States and of the Commonwealth of Massachusetts.

PRINTED AND PUBLISHED, BY VIRTUE OF A RESOLVE OF NOV. 3, 1835;

UNDER THE SUPERVISION AND DIRECTION OF

THERON METCALF AND HORACE MANN.



Boston:

PUBLISHED BY DUTTON & WENTWORTH, STATE PRINTERS
37 Congress Street.

1836.

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.	

Officers' authorized to keep the peace.

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

TITLE II.] CHAP. 134. SECT. 2—9.

749

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 recognizing, 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

TITLE II.] CHAP. 135. SECT. 1—2.

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	SECTION
1. Officers, empowered to act under this chapter.	15. Testimony may be reduced to writing.
2. Complaints, warrants, and summonses for witnesses.	16. Prisoner, when to be discharged.
3. In what counties warrants may be executed.	17. " when to be bailed, or committed.
4. Prisoners, when to be brought before magistrate, on arrest, &c.	18. Witnesses to recognize.
5. Magistrate, if he take bail, to return the recognizance to court, &c.	19. Witnesses, when to recognize with sureties.
6. Officer, how to proceed if prisoner is not bailed	20. Recognizances of married women and minors.
7, 8. Prisoner when to be carried to the county whence the warrant issued.	21. Witnesses, refusing to recognize, to be committed.
9. Magistrate may adjourn the examination, &c.	22. Prisoners, by whom let to bail.
10. In case of default, magistrate to certify recognizance to C. C. Pleas.	23. Examining magistrate may have associates.
11. Proceedings, when the party fails to recognize.	24. Examinations and recognizances to be returned.
12, 13, 14. Manner of conducting the examination.	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.

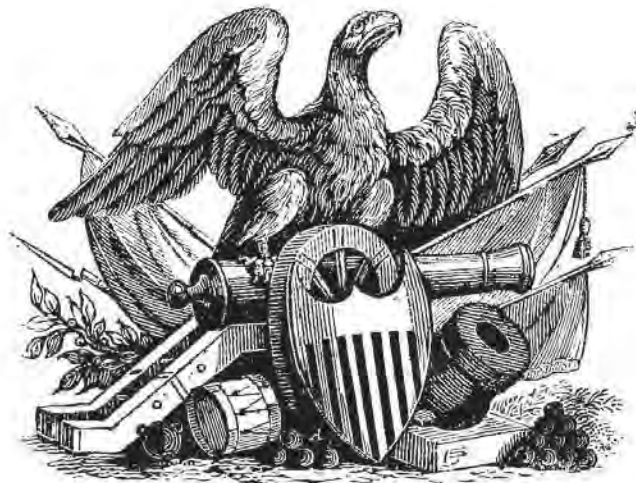
Officers, empowered to act under this chapter.

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.

STATUTES
OF THE
TERRITORY OF WISCONSIN,

PASSED BY THE LEGISLATIVE ASSEMBLY THEREOF, AT A
SESSION COMMENCING IN NOVEMBER 1838, AND AT
AN ADJOURNED SESSION COMMENCING
IN JANUARY, 1839.



PUBLISHED BY AUTHORITY OF THE LEGISLATIVE ASSEMBLY.

75189

ALBANY, N. Y.

PRINTED BY PACKARD, VAN BENTHUYSEN & CO.

1839.

ted to prison to await the decision of the supreme court; and in that case, the clerk of the court, in which the conviction was had, shall file a certified copy of the record and proceedings in the case in the supreme court, and the court shall have cognizance thereof and consider and decide the questions of law, and shall render such judgment, and award such sentence, or make such order thereon as law and justice shall require; and if a new trial is ordered, the cause shall be remanded to said district court for such new trial, but the proceedings here prescribed shall not deprive any party of his writ of error for any error or defect appearing of record.

AN ACT respecting judgments in criminal cases, and the execution thereof.

Sentence in certain cases.

§ 1. That in any case of legal conviction where no punishment is provided by statute, the court shall award such sentence as is according to the degree and aggravation of the offence, not cruel or unusual, nor repugnant to the constitutional rights of the party.

Sureties to keep the peace when required.

§ 2. Every court before whom any person shall be convicted upon an indictment for any offence not punishable with death, or by imprisonment in the state prison or county jail, may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties, in a reasonable sum, to keep the peace or to be of good behavior, or both, for any term not exceeding two years, and to stand committed until he shall so recognize.

Forfeiture of recognizance.

§ 3. In case of the breach of the condition of any such recognizance, the same proceedings shall be had that are by law prescribed in relation to recognizances to keep the peace.

Sheriff to execute sentences.

§ 4. Whenever any person convicted of an offence shall be sentenced to pay a fine or costs, or to be imprisoned in the county jail or state prison, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be a sufficient authority for such sheriff to execute such sentence, and he shall execute the same accordingly.

Solitary imprisonment to precede hard labor.

§ 5. In every case in which the punishment of imprisonment in the state prison is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor; and he shall also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at one time; and in the execution of such punishment the solitary imprisonment shall precede the punishment by hard labor unless the court shall otherwise order.

Sentence of punishment when executed.

§ 6. Whenever it shall appear to the court, at the time of passing sentence upon any convict that is punished by confinement in the state prison or county jail, that there is no jail in the county in which the offence was committed, suitable for the confinement of such convict, the court may order the sentence to be executed in any county in this territory in which there may be a jail suited to that purpose; and the expenses of supporting such convict shall be borne (if such convict was sentenced to imprisonment in the county jail,) by the county in which the offence was committed.

STATUTES OF WISCONSIN.

379

§ 7. When any person shall be convicted of any crime for which sentence of death shall be awarded against him, the clerk of the court, as soon as may be, shall make out and deliver to the sheriff of the county a certified copy of the whole record of the conviction and sentence, and the sheriff shall forthwith transmit the same to the governor; and the sentence of death shall not be executed upon such convict until a warrant shall be issued by the governor, under the seal of the territory, with a copy of the record thereto annexed, commanding the sheriff to cause execution to be done, and the sheriff shall thereupon cause to be executed the judgment and sentence of the law upon such convict.

Proceedings on conviction for capital offence.

§ 8. If it shall appear to the satisfaction of the governor that any convict who is under sentence of death has become insane, the warrant for his execution may be delayed, or if such warrant has been issued, the execution thereof may be respited from time to time, so long as the governor shall think proper; and if any female convict who is under sentence of death shall be quick with child, the governor shall forbear to issue a warrant for her execution, or if such warrant has been issued, the execution thereof shall be respited until it shall appear to the satisfaction of the governor that such female is no longer quick with child.

Ib. when convict insane or quick with child.

§ 9. The punishment of death shall in all cases be inflicted by hanging the convict by the neck until he be dead; and the sentence shall, at the time directed by the warrant, be executed at such place within said county as the sheriff shall select.

Sentence of death how executed.

§ 10. Whenever the punishment of death shall be inflicted upon any convict, in obedience to a warrant from the governor, the sheriff of the county shall be present at the execution, unless he shall be prevented by sickness or other casualty, and he may have such military guard as he may think proper; he shall return the warrant with a statement under his hand of his doings therein, as soon as may be after the said execution, to the governor, and shall also file in the clerk's office of the court where the conviction was had, an attested copy of the warrant and statement aforesaid; and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence.

Sheriff present at execution.

To return warrant.

AN ACT to prevent the commission of crimes.

§ 1. That the justices of the supreme court and district courts 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 statute.

Officers authorized to keep the peace.

§ 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 complaint [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.

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

Arrest.

- 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.
- Trial and recognizance.** § 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, 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 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 also charged with some offence for which he ought to be held to answer at said court.
- When discharged.** § 5. Upon complying with the order of the magistrate the party complained of shall be discharged.
- Refusing to recognize, 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 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.
- Complainant when to pay costs.** § 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.
- Payment 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 magistrate may further order 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 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 district court next to be holden in the same county, or that county to which said county is attached for judicial purposes.
- Witness to recognize on appeal.** § 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.** § 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 he may deem just and reasonable.
- Recognizance, when to remain in force.** § 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

STATUTES OF WISCONSIN.

381

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.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE,

.....
1841.

shall place the same on file with the indictment, and subjoin to the record of the sentence a brief abstract of the sheriff's return on the warrant. CHAP. 168.

CHAPTER 169.

OF PROCEEDINGS FOR PREVENTION OF CRIMES.

- | | |
|---|--|
| <p>SECT. 1. Of the commencement of criminal proceedings.</p> <p>2. Magistrates may require sureties for the peace and good behavior.</p> <p>3. Of the examination of the complainant.</p> <p>4. When a warrant may issue.</p> <p>5. In certain cases sureties required, for keeping the peace, &c. without binding to appear at any court.</p> <p>6. Party to be discharged, on complying.</p> <p>7. On refusal, to be committed to the county jail; but still entitled to a hearing on his appeal.</p> <p>8. Proceedings, if the complaint be not sustained. Costs, if malicious or frivolous.</p> | <p>SECT. 9. When party, complained of, shall pay costs.</p> <p>10. Appeal to the next district court.</p> <p>11. Proceedings upon the appeal.</p> <p>12. Consequences, if the appellant fail to prosecute.</p> <p>13. Recognizance may be taken, after commitment.</p> <p>14. Return of such recognizance.</p> <p>15. When magistrate may require sureties, without a formal complaint.</p> <p>16. Persons going armed, without reasonable cause.</p> <p>17. Power of court, to remit the penalty of a recognizance.</p> <p>18. Sureties on recognizances may surrender their principals, as in case of bail in civil actions.</p> |
|---|--|

SECTION 1. No person shall be held to answer in any court for an alleged crime or offence, other than contempt of court, unless upon an indictment by a grand jury, except in the following cases: Of the commencement of criminal proceedings.

First. When a prosecution by information is expressly authorized by statute.

Second. In proceedings before a municipal or police court, or a justice of the peace.

Third. In proceedings before courts martial.

SECT. 2. The justices of the supreme judicial court, of the district court, justices of municipal courts and police courts in vacation, as well as in open court, and justices of the peace, in their respective counties, 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 be of the good behavior, or both, in the manner provided in this chapter. Magistrates may require sureties for the peace and good behavior.

SECT. 3. Any such magistrate, on complaint made to him, that any person has threatened to commit an offence against the person or property of another, shall examine the complainant on oath, and also any witnesses who are produced, and reduce the complaint to writing, and cause the complainant to subscribe the same. Of the examination of the complainant.

SECT. 4. If there should appear to such magistrate, on an examination of the facts, that there is just cause to apprehend and fear the commission of such offence, he shall issue a warrant under his hand and seal, containing a recital of the substance of the com- When a warrant may issue. 1821, 76, § 1.

CHAP. 169.

plaint, and commanding the officer to whom the same may be directed, forthwith to arrest the person complained of, and bring him before such magistrate or court, having jurisdiction of the case.

In certain cases, sureties required, for keeping the peace, &c. without binding to appear at any court. 1821, 76, § 1. 1 Fairf. 325.

SECT. 5. When the person, complained of, is brought before the magistrate, he may be required, after his defence has been heard, to enter into a recognizance with sufficient sureties, in such sum as shall be ordered, to keep the peace towards all the people of the state, and especially towards the person requiring the security, for such term as the magistrate may order, not exceeding one year, but shall not be bound over to any court, unless he is also charged with some specific and other offence, for which he ought to be held to answer at such court.

Party to be discharged, on complying 1821, 76, § 1.

SECT. 6. If the person complained of shall comply with the order of such magistrate, he shall be discharged.

On refusal, to be committed to the county jail, but still entitled to a hearing on his appeal. 1821, 76, § 1.

SECT. 7. If the person shall refuse or neglect so to recognize, the magistrate shall commit him to the county jail during the period for which he was required to find sureties, or till he shall so recognize; and the magistrate shall state in the warrant the cause of commitment, and also the time and the sum for which security was required. The magistrate shall also return a copy of the warrant to the district court, next to be holden in the same county, and such court shall have cognizance of the case in the same manner, as if the party accused had appealed to said court.

Proceedings, if the complaint be not sustained. Costs, if malicious or frivolous.

SECT. 8. When the magistrate, on examination of the facts, shall not be satisfied, that there is just cause to fear the commission of any such offence, he shall immediately discharge the party complained of; and, if the magistrate shall judge the complaint unfounded, malicious or frivolous, he may order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and officer for their fees, as for his own debt.

When party, complained of, shall pay costs.

SECT. 9. When the person complained of 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 discharged.

Appeal, to the next district court.

SECT. 10. Any person, aggrieved by the order of such judge of a municipal or police court, or justice of the peace, in requiring him to recognize as aforesaid, may, on giving the security required, appeal to the next district court in the same county.

Proceedings upon the appeal.

SECT. 11. When an appeal is taken from an order of such justice or court, the magistrate shall require such witnesses, as he may think necessary, to recognize for their appearance at the court appealed to; and such court may affirm the order of the judge or justice, or discharge the appellant, or require him to recognize anew with sufficient sureties, as the court may deem proper; and make such order as to the costs, as may be deemed reasonable.

Consequences, if the appellant fail to prosecute.

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

Recognizance

SECT. 13. Any person committed for not finding sureties or

TITLE XII.]

PREVENTION OF CRIMES.

709

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.

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.

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.

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.

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.

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.

CHAP. 169.

may be taken after commitment.

Return of such recognizance.

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

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

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

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.

- | | |
|---|--|
| <p>SECT. 1. Justices may require aid, on view, without a warrant.</p> <p>2. Their jurisdiction.</p> <p>3. When a justice shall issue his warrant.</p> <p>4. Examination, on trial, of the party accused.</p> <p>5. Of commitment or binding over to a higher court.</p> | <p>SECT. 6. Duty of justices, as to arrests, and examinations into treasons, felonies, &c.</p> <p>7. Trial and sentence within their jurisdiction.</p> <p>8. Respondent may appeal; but required to recognize.</p> <p>9. To carry up copies of the case.</p> |
|---|--|

THE
REVISED STATUTES
OF THE
STATE OF MICHIGAN,

PASSED AND APPROVED MAY 18, 1846.

Printed and published in pursuance of an Act of the Legislature, approved May 18, 1846, under
the superintendence of

SANFORD M. GREEN.



DETROIT:
BAGG & HARMON, PRINTERS TO THE STATE.

1846.

690

PREVENTION OF CRIME.

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.

691

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.

692

ARREST &c. OF OFFENDERS.

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

ACTS

OF THE

GENERAL ASSEMBLY

OF

VIRGINIA,

PASSED AT THE SESSION COMMENCING DECEMBER 6, 1847, AND
ENDING APRIL 5, 1848,

IN THE

SEVENTY-SECOND YEAR OF THE COMMONWEALTH.

RICHMOND:

SAMUEL SHEPHERD—PRINTER TO COMMONWEALTH.

1848.

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.

Prevention of Crimes.

<p>Trial.</p> <p>Recognizance to keep peace.</p>	<p>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.</p>
<p>Party when discharged.</p>	<p>5. Upon complying with the order of the magistrate, the party complained of shall be discharged.</p>
<p>Refusing to recognize, to be committed.</p>	<p>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.</p>
<p>Defendant when discharged.</p> <p>Complainant when to pay costs.</p>	<p>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.</p>
<p>Payment of costs in other cases.</p>	<p>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.</p>
<p>Appeal against order to recognize allowed.</p>	<p>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.</p>
<p>On appeal, witnesses to recognize.</p>	<p>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.</p>
<p>Proceedings on appeal.</p>	<p>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.</p>
<p>Costs.</p>	<p>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.</p>
<p>Recognizance to be void unless appeal prosecuted.</p>	<p>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.</p>
<p>Persons committed for not recognizing, how discharged.</p>	<p>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.</p>
<p>Recognizances returned to court.</p>	

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.

- SECTION
1. Officers empowered to act.
 2. Complaints, warrants and summonses.
 3. Offence committed in another county.
 4. In what county warrant may be executed.
 5. Prisoner, when to be brought before magistrate on arrest.
 6. Magistrate, if he take bail, to return recognizance, &c.
 7. Officer, how to proceed if prisoner not bailed.
 8. Prisoner, when to be carried to county whence warrant issued.
 9. Same subject.
 10. Magistrate may adjourn examination.
 11. In case of default, recognizance to be certified.
 12. Proceedings when party fails to recognize.
 13. } Manner of conducting examination.
 14. }
 15. }
 16. Testimony to be reduced to writing.

- SECTION
17. When prisoner to be discharged.
 18. When to be bailed or committed.
 19. If party entitled to examination, &c.
 20. If not so entitled, and triable on indictment, &c.
 21. If party charged be free negro, &c.
 22. Duty of magistrate, &c.
 23. Witnesses to recognize.
 24. Witnesses, when to recognize with sureties.
 25. Recognizances of minors, &c.
 26. Witnesses refusing to recognize.
 27. Magistrate may associate others.
 28. Prisoner by whom let to bail.
 29. Recognizances, &c. to be returned.
 30. Commitments, &c. when to be discharged.
 31. Orders therefor, how to be filed &c.
 32. } Proceedings on forfeited recognizances.
 33. }
 34. }
 35. }
 36. Right of surety to surrender principal.
 37. To whom to be surrendered.
 38. When to the court.

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.

THE
REVISED STATUTES,
OF THE
TERRITORY OF MINNESOTA,

PASSED AT THE SECOND SESSION OF THE
LEGISLATIVE ASSEMBLY,

COMMENCING JANUARY 1, 1851.

PRINTED AND PUBLISHED PURSUANT TO LAW, UNDER THE SUPERVISION OF M. S. WILKINSON.

~~~~~  
SAINT PAUL:

JAMES M. GOODHUE, TERRITORIAL PRINTER.

.....  
1851



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.

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.

May be delivered on warrant of executive, &c.

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.

---

CHAPTER 112.

OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

---

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,

Arrest how and by whom made.

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

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.

# REVISED STATUTES

OF

## THE STATE OF DELAWARE

TO THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED  
AND FIFTY-TWO, INCLUSIVE:

TO WHICH ARE ADDED, THE

CONSTITUTIONS OF THE UNITED STATES AND OF THIS STATE:

THE DECLARATION OF INDEPENDENCE:

AND

AN APPENDIX;

&c. &c.

---

PUBLISHED BY AUTHORITY OF THE GENERAL ASSEMBLY.

---

DOVER, DEL.  
PRINTED BY SAMUEL KIMMEY.  
1852.

LAWS OF THE

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.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <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. To commit or bind to appear. Form of commitment.</p> <p>8. Power to punish assaults and batteries. Form of binding to ANSWER CHARGE. 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. 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. 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. 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. Complaint must be in writing. Warrant; how directed. 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. Order on master to pay restitution, &amp;c. 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. Originals may be required by the court.</p> <p>35. Duty to attend elections; penalty.</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

*Number.*

2003  
Number.

New Cas-  
tle.

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 con-



STATE OF DELAWARE.

331

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  
Adjournments.

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 contempts.

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 arrest without warrant.

A commitment may be in this form:—

2011  
Commitment.

— 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 ore 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*



at ———, for the county aforesaid, there to answer such matters as shall be objected against him by G. H., and shall in the mean time keep the peace and be of good behavior towards all the people of this State, and especially towards the said G. H., and shall not depart the court without leave thereof, then this recognizance to be void, otherwise to be in full force and virtue.

Taken, signed and acknowledged before E. F., a justice of the peace for said county, the ——— day of ———, A. D., 18—.

2013  
Power to  
punish as-  
saults and  
batteries.

SEC. 8. Every justice of the peace may punish by fine, not exceeding ten dollars, all assaults and batteries, and other breaches of the peace punishable by any law of the State, when the offence is not of a high or aggravated nature: *provided*, that the defendant shall, in writing, submit to his decision: *and provided also*, that after hearing, he shall consider that the case ought not to be submitted to a higher jurisdiction; otherwise he shall commit, or bind, the defendant for his appearance at the proper court to answer the charge, and shall also bind the witnesses for their appearance and may require surety of them, if necessary. He may also punish, by such fine, any offence against an authorized ordinance of a city, or town.

2014  
Binding to  
ANSWER  
CHARGE.

Binding for appearance to answer may be thus:—

——— county, ss. *The 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 at ———, for the county aforesaid, there to answer such matters and things as shall be objected against him, and particularly touching a charge (here state the offence charged) said to have been committed by the said C. D., at ——— hundred, in said county, on the ——— day of ———, and shall not depart the court without leave thereof; then this recognizance to be void, otherwise to be in full force and virtue.

Taken, signed and acknowledged before E. F., a justice of the peace for said county, the ——— day of ———, A. D., 18—.

2015  
Binding a  
witness to  
appear.

Binding a witness for appearance may be in the same form, substituting for the words "there to answer such matters," &c., down to "and shall not depart the court," the words "*as a witness for the State.*" A recognizance, when taken by a justice of the peace, or a judge out of court, shall be signed by the parties bound.

2016  
Parties may  
settle as-  
saults and  
batteries.

SEC. 9. In every case of assault and battery the justice may permit the parties to settle the matter; and either discontinue the proceedings or annul any recognizance, on payment of costs.

2017  
Not to re-  
ceive fines.

SEC. 10. He shall, in no case, receive a fine, or costs, imposed by him; but upon imposing any fine, he shall charge a constable present with the defendant, and enter the constable's name on his docket,



STATE OF DELAWARE.

333

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. <sup>2018</sup> To certify fines to auditor. <sup>Penalty.</sup>

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. <sup>2019</sup> 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. <sup>2020</sup> 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. <sup>2021</sup> 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. <sup>2022</sup> 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. <sup>2023</sup> Proceedings in criminal cases: complaint.

A warrant of arrest may be in this form: <sup>2024</sup> 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*



LAWS OF THE

*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.  
2026  
Proceeding  
on arrest.

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

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  
Committ-  
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.

Fco.

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.

335

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. <sup>2035</sup> 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. <sup>2036</sup> 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. <sup>2037</sup> 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. <sup>2038</sup> 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. <sup>2039</sup> 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. <sup>2040</sup> 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. <sup>2041</sup> 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.

[1577.]



## STATE OF DELAWARE.

337

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. <sup>2049</sup> 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. <sup>2050</sup> To be verified.

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. <sup>2051</sup> [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 docket 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. <sup>2052</sup> Duty of executors 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. <sup>2053</sup> Duty of justice 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. <sup>2054</sup> On appeals. On certiorari.

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. <sup>2055</sup> Penalties.

The Superior Court may, in a proper case, supported by affidavit, require the production of the original record. <sup>2056</sup> Originals may be required.

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. <sup>2057</sup> Duty to attend elections.

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. <sup>2058</sup> Penalty.

THE  
S T A T U T E S

OF

OREGON,

ENACTED AND CONTINUED IN FORCE BY THE

LEGISLATIVE ASSEMBLY,

AT THE SESSION COMMENCING

**5th December, 1853.**



OREGÓN:

ASAHEL BUSH, PUBLIC PRINTER.

—  
1854.

CHAP. 16.

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 Wen. 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.

CHAP. 16.

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.

---

---

## 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.

# A DIGEST

OF THE

## LAWS OF PENNSYLVANIA,

FROM THE

YEAR ONE THOUSAND SEVEN HUNDRED

TO THE

TWENTY-FIRST DAY OF MAY, ONE THOUSAND EIGHT HUNDRED AND SIXTY-ONE.

---

ORIGINALLY COMPILED BY  
JOHN PURDON, ESQ.

---

NINTH EDITION.

Revised, with Marginal References; Foot Notes to the Judicial Decisions; Analytical Contents;  
a Digested Syllabus of each Title; and a New, Full and Exhaustive Index.

BY

FREDERICK C. BRIGHTLY, ESQ.,

AUTHOR OF "EQUITY JURISPRUDENCE;" "UNITED STATES DIGEST," ETC.

---

PHILADELPHIA:

KAY & BROTHER, 19 SOUTH SIXTH STREET,  
LAW BOOKSELLERS, PUBLISHERS & IMPORTERS.

1862.



**Crimes.—Criminal Procedure.**

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.
4. Magistrates backing such warrants to be indemnified.
5. Disposition of property supposed to be stolen, found in the possession of one accused.
6. Surety of the peace.
7. Bail.
8. Surrender of bail.
9. Settlement of criminal cases.

**B. INDICTMENTS AND PLEADINGS.**

10. Grand jurors authorized to administer oaths.
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.
26. Prisoners standing mute.
27. Prosecutor's name to be indorsed on the indictment.
28. Distinct acts of embezzlement may be charged in the same indictment.
29. Nolle prosequi.
30. Pleas of autrefois convict or autrefois acquit.

**C. COURTS OF CRIMINAL JURISDICTION.**

31. Courts of oyer and terminer.
32. Quarter sessions. When causes to be certified to the oyer and terminer. Powers of the courts.
33. Writs of error and certiorari.

**D. OF THE TRIAL.**

34. Persons under bail not to be placed in the criminal bar.
35. Persons indicted for treason to have a copy of the indictment.
36. Peremptory challenges.

**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

Subpœnas.

192. Act 31 March 1860, § 183. P. L. 428.

193. *Ibid.* § 184.

L. 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 1829, 10 Sm. 430. Report on the Penal Code 48.

(a) This section is taken from the 13th section of the act of 21st March 1866, 4 Sm. 332. Report on the Penal Code 38. See

6 S. & R. 289. 11 S. & R. 345. Bright, R. 69. 13 S. & R. 426. 1 R. 457. 5 R. 64. 1 Ash. 40. 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.



**Criminal Procedure.**

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 misdemour; 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 10th April 1827, 9 Sm. 424. Report on the Penal Code 39.



## Criminal Procedure.

- supposed to be stolen, found in the possession of one accused.
- 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)
- Inventory.
- Notice.
- Restitution.
- When to be delivered to county commissioners.
- Disposition of proceeds.
- Surety of the peace.
- Ball.
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

G. Act 31 March 1800, § 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 A. 40. 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. &amp; 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 arson is *coram non iudice*, and void. Com. v. Phillips, 2 U. S. Law Mag. 316.



## Criminal Procedure.

251

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 1795, 1 Sm. 59; and the first section of the act of 30th April 1832, P. L. 343. 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 49.

(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 6th 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 subtleties 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. 409, a mistake in spelling the name of "Burrill," which in the indictment was spelled "Burrill," 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 or one hundred persons are the owners of property in regard to



## Criminal Procedure.

Variances between written instruments as produced and laid in indictment amendable.

Immaterial variances between indictment and proof amendable.

Manner of laying 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, § 14. 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 forgery, 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, requires 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 40-3



**Criminal Procedure.**

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, 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)

Indictment 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 provision, 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 2d section of the act of 31st March 1830, 4 Sm. 354. Report on the Penal Code 43.



**Criminal Procedure.**

**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 to any indictment 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, § 74. P. L. 438.  
25. *Ibid.* § 23.

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. Gallows*, 1 Mood. Cro. Cas. 234, and of *Rex v. Madden*, 1 Mood. Cro. Cas. 257, 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 present 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 6th 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. 55. 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.

(f) 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.

(g) This section is taken from the proviso to the 1st section of the act of 31 May 1860, P. L. 654. Report on the Penal Code 44. See tit. "District Attorneys," 10, note a.

(h) 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.



**Criminal Procedure.**

255

**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, of all crimes committed, or triable in such county.

I. 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 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

Bl. Act 31 March 1860, L. 31. P. L. 437.

32. 1842, § 39.

(b) 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 unrecipitated, 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.

(c) see 8 Pittsburgh Leg. J. 200.



**Criminal Procedure.**

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 termner 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(a) by the supreme court, or one of the justices thereof, upon sufficient cause to it or him shown,(b) 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.(c)

**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.(d)

Persons indicted for treason to have copy of indictment.

35. Every person indicted for treason shall have a copy of the indictment(e) 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.(g)

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.(h)

Challenges by the commonwealth.

37. The commonwealth shall have the right, in all cases, to challenge, peremptorily, four persons,(i) 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.(k)

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; (l) and in all cases of joint trials, the accused shall have the right to the same

33. Act of March 1860, § 23. 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. 39. 6 R. 403. 4 B. 424. 1 Wh. 625. 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. 808.

(c) This section is taken from the 7th section of the act of 18th April 1791, 3 Sm. 30; and the 9th section of the act of 16th June 1836, P. L. 757. 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.

(f) 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.

(g) 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. 308. 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, which members 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.

(h) 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 W. 45.

(i) 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. 292. 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 to acquit any one the judge desired to have convicted; and that he was "a Tom Paine man, and would as lief swear on a spelling book as on the Bible." 11 H. 12.

(j) See 14 C. 295.



## Criminal Procedure.

257

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)

Or 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. (f)

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 1850, § 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. 91.

(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 unrevoked, as they apply equally to civil as well as criminal proceedings. Report on the Penal Code 46.

(e) This section is taken from the 140th section of the act of 14th April 1834, P. L. 368; which has also been left unrevoked 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.

(h) The principle of this section, which prescribes the same punishment against accessories before the fact in felony, under the various synonyms of aiders, abettors, counsellors, confederates, &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 21st section of the act of 8th March 1780, 1 Sm. 403; in the 2d, 3d and 5th sections of the act of 5th April 1794, 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 access-

ories 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 if 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.



**Criminal Procedure.**

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, § 30, 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.



## Criminal Procedure.

259

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)

Party indicted for felony or misdemeanor may be found guilty of attempt to commit the same.

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.

Persons tried for misdemeanor not to be acquitted if the offence turned out to be felony.

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)

Witnesses entitled to restitution to be competent.

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

Cure of defects in jury process by verdict.

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, when 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 cutpurse, 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." Bleigh'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.) 820. 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 be entered by the court, it is within the act. 5 Wh. 67. See 2 Ash. 90.



## Criminal Procedure.

or appertaining to the said precept, venire, drawing, summoning and returning of jurors. (u)

Of the trial of prisoners committed.

54. If any person shall be committed for treason or felony, or other indictable offences, 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, (b) 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; (c) and if such prisoner shall not be indicted and tried the second term, session or court (d) 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: (e) *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. (g)

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," (h) 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. (i)

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. (k)

Bills of exception and writs of error allowed.

57. Upon the trial of any indictment for murder or voluntary manslaughter, (l) 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, (m) which exception shall be noted by the court, and filed of record as in civil cases, (n) and a writ of error to the supreme court may be taken by the defendant or defendants, after conviction and sentence. (o)

54. Act 31 March 1823, § 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 unreppeled, 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. 306. Not where the trial is delayed by the prisoner. 3 Y. 265. 16 S. & R. 304. 2 Wh. 501. 7 W. 306. 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 libes 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 consideration" of the original act. The original section has also been left unreppeled, 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 23d April 1856, P. L. 504. 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 1850, 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



## Criminal Procedure.

261

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. (a)

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.

Whence 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 (b) by the petit jury on indictments for the offences aforesaid, the jury trying the same shall determine, by their verdict, whether the county, (c) or the prosecutor, or the defendant shall pay the costs, (d) 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; (e) 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. (g)

Power of grand and petit juries 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 (h) 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. (i)

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 92, 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 unreprieved. 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. 60.

(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.

(f) 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, 4 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 1820, 7 Sm. 242. Report on the Penal Code 53.



**Criminal Procedure.**

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.

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)

Jury to find the fact of insanity.

Defendant to be detained in custody.

Where defendant is found insane upon arraignment.

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.

Where prisoner brought up to be discharged appears to be insane.

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.

Insane defendant to be delivered to friends &c.

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.

How expenses to be paid in such cases.

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.

Civil actions against felons.

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)

Executions upon sentences of restitution.

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. 641. 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. 645.

(c) This does not include costs of an attachment against a

witness, for contempt. 2 S. & R. 202.

(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 16th 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.

(f) This section is taken from the act of 28th March 1805, 4 Sm. 235. Report on the Penal Code 54.

(g) 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. 622. 10 C. 184.

(i) This section is new; its object is sufficiently manifest without further explanation. Report on the Penal Code 54.



**Criminal Procedure.**

26

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, 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 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, 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, 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 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, 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 made on three several days 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, 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 and place of abode, 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 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 21 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 R. 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.



**Criminal Procedure.**

**Verdict.** 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.

**Effect of outlawry.** When any person outlawed as aforesaid, shall be taken either by *copias utlagatum*, 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.

**How execution to be awarded.** 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)

**When outlawry may be reversed.** 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)

**Costs.** 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

74. Act 31 March 1860, § 74. P. L. 410. 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 skillfully 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. 1 Parker 374.



## Criminal Procedure.

265

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 Limitation of 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)

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. 234. Report on the Penal Code 55.

(b) The finding of an informal prisonment 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, 409.

(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. 39, 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 state 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. 694; 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 this code. Report on the Penal Code 56.



T H E  
C O D E O F W E S T V I R G I N I A .

C O M P R I S I N G

L E G I S L A T I O N T O T H E Y E A R

1 8 7 0 .

W I T H A N A P P E N D I X , C O N T A I N I N G

L E G I S L A T I O N O F T H A T Y E A R .

---

P U B L I S H E D P U R S U A N T T O L A W .

---



W H E E L I N G :

J O H N F R E W , P U B L I C P R I N T E R .

1 8 6 8 .

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.

- |                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>SEC.</p> <ol style="list-style-type: none"> <li>1. Conservators of the peace; power to bind to good behavior.</li> <li>2. } Duty of, on complaint that a crime is in-</li> <li>3. } tended.</li> <li>4. Proceedings when accused appears.</li> <li>5. Right of accused to appeal.</li> <li>6. } Power of court upon such appeal, and when</li> <li>7. } the accused is committed.</li> </ol> | <p>SEC.</p> <ol style="list-style-type: none"> <li>8. Person going armed with deadly weapon, when required to give recognizance, etc.</li> <li>9. Affray, etc., in the presence of constable.</li> <li>10. In presence of justice; duty of justice where person brought before him, etc.</li> <li>11. Proceedings where person suspected of unlawful retailing of spirituous liquors.</li> </ol> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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. 458.

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.

Code Va., p. 818,  
§ 4.

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.

Id. § 6.

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.

Id. § 6.

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.

Id. § 7.

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.

Id. § 8.

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.

Id. § 9.  
Acts of 1863, p.  
234-5, § 1.

10. If any offense enumerated in the preceding section be com-

Id. p. 235, § 2.



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.

Penalty.

Treasury or from the Lord Treasurer or other Superior Officers for the time being contrary to the true intent of this Act That then such Officer or Officers soe diverting or misapplying the said Money shall Forfeite the like Summe soe diverted or misapplied Which said Forfeiture shall be Recovered by Action of Debt Bill Plaint or Information in any of Their Majestyes Courts of Records at Westminster wherein noe Esoigne Protection or Wager of Law shall be allowed the one Moyety of which Forfeiture soe to be Recovered shall be to the Informer or him who shall Sue for the same the other Moyety thereof to be distributed to the Poore of the Parish where such Offence shall be committed.

LII. The like Offence by any Officer of the Exchequer or Navy; Penalty.

AND bee it further Enacted That if any [Officer'] or Officers mentioned in this Act or in any wise belonging to the Exchequer or Navy shall willingly and wilfully offend against this Law or any Clause thereof by diverting or misapplying any part of the said Summe of Foure hundred thousand Pounds appropriated as aforesaid contrary to the true intent of this Act that for any and every such Offence such Officer and Officers soe Offending shall forfeite his Office and Place and is and are hereby disabled and made uncapeable to Hold or Execute the said Office or any other Office whatsoever for the future.

LIII. No Stay of Prosecution admitted in any Suit for Recovery of Penalties.

PROVIDED alsoe and bee it Enacted That noe Stay of Prosecution upon any Command Warrant Motion or Order or Direction by Non vult ulterius Prosequi shall be Had Made Admitted Received or Allowed by any Court whatsoever in any Suite or Proceeding by Action of Debt Bill Plaint or Information or otherwise for the Recovery of all or any the Paines Penalties or Forfeitures upon any person or persons by this Act inflicted or therein mentioned or for or in Order to the Conviction or Disability of any person Offending against this Act.

LIV. Commissioners appointed to execute Act, to examine upon Oath and receive the Assessments made in pursuance of Act Sess. 1. c. 10. and if they find any Person assessed at a lower Rate than directed by the said Act, to cause such Deficiency to be raised.

PROVIDED alwayes and bee it Enacted That the Commissioners appointed to putt this Act in Execution shall and are hereby impowered and required within their respective Counties Divisions Cityes and Places to Examine upon Oath and [Receive'] the severall Assessments of each Parish and Place made in pursuance of the late Act Entituled An Act for a Grant to Their Majestyes of Twelve pence in the Pound for One Year for the necessary Defence of Their Realms And where they shall finde any Person or Place Assessed at a lower Rate or lesser Summe then was directed by the said Act to cause the Summe so omitted to be raised and paid to Their Majestyes in such manner and by such wayes and Meanes and under such Paines and Penalties as are herein before Provided and Directed for the Assessing and Levying the Summes chargeable by this present Act.

LV. An Account to be rendered to the Commons of Monies raised under this Act.

AND it is hereby further Enacted by the Authoritie aforesaid That an Account shall be given and made unto the Commons in Parlyament Assembled of and for all and every Summe and Summes of Money whatsoever that shall be Collected Levved and Paid to the Use of Their Majestyes by Vertue of this present Act of Parlyament.

CHAPTER II.

Rot. Parl. pt. 3. nu. 1.

AN ACT declaring the Rights and Liberties of the Subject and Setleing the Succession of the Crowne.

WHEREAS the Lords Spirituall and Temporall and Comons assembled at Westminster lawfully fully and freely representing all the Estates of the People of this Realme did upon the thirteenth day of February in the yeare of our Lord one thousand six hundred eighty eight present unto their Majesties then called and known by the Names and Stile of William and Mary Prince and Princesse of Orange being present in their proper Persons a certaine Declaration in Writeing made by the said Lords and Comons in the Words following viz

The Heads of Declaration of Lords and Commons, recited.

WHEREAS the late King James the Second by the Assistance of diverse evil Councillors Judges and Ministers employed by him did endeavour to subvert and extirpate the Protestant Religion and the Lawes and Liberties of this Kingdome

Dispensing and Suspending Power.

By Assuming and Exercising a Power of Dispensing with and Suspending of Lawes and the Execution of Lawes without Consent of Parlyament.

Committing Prelates.

By Committing and Prosecuting diverse Worthy Prelates for humbly Petitioning to be excused from Concurring to the said Assumed Power.

Ecclesiastical Commission.

By issuing and causing to be executed a Commission under the Great Seale for Erecting a Court called The Court of Commissioners for Ecclesiasticall Causes.

Levying Money.

By Levying Money for and to the Use of the Crowne by ptence of Prerogative for other time and in other manner then the same was granted by Parlyament.

Standing Army.

By raising and keeping a Standing Army within this Kingdome in time of Peace without Consent of Parlyament and Quartering Soldiers contrary to Law.

Disarming Protestants, &c.

By causing severall good Subjects being Protestants to be disarmed at the same time when Papists were both Armed and Employed contrary to Law.

Violating Elections.

By Violating the Freedom of Election of Members to serve in Parlyament.

Illegal Prosecutions.

By Prosecutions in the Court of Kings Bench for Matters and Causes cognizable onely in Parlyament and by diverse other Arbitrary and Illegal Courses.

Juries.

And whereas of late yeares Partiall Corrupt and Unqualified Persons have beene returned and served on Juryes in Tryalls and particularly diverse Jurors in Tryalls for High Treason which were not Freeholders,

1 Office O.

2 receive O.



A.D.1688.

1<sup>o</sup> GUL. & MAR. SESS. 2. c. 2.

143

And excessive Baile hath beene required of Persons committed in Criminnall Cases to elude the Benefit of the Lawes made for the Liberty of the Subjects.

Excessive Bail.

And excessive Fines have beene imposed.

Fines.  
Punishments.

And illegall and cruell Punishments inflicted.

And severall Grants and Promises made of Fines and Forfeitures before any Conviction or Judgement against the Persons upon whome the same were to be levied.

Grants of Fines, &c.  
before Conviction,  
&c.

All which are utterly and directly contrary to the knowne Lawes and Statutes and Freedome of this Realme.

And whereas the said late King James the Second havinge Abdicated the Government and the Throne being thereby Vacant His [Hignesse<sup>1</sup>] the Prince of Orange (whome it hath pleased Almighty God to make the glorious Instrument of Delivering this Kingdome from Popery and Arbitrary Power) did (by the Advice of the Lords Spirituall and Temporall and diverse principall Persons of the Commons) cause Letters to be written to the Lords Spirituall and Temporall being Protestants and other Letters to the severall Countyes Cities Universities Burroughs and Cinque Ports for the Choosing of such Persons to represent them as were of right to be sent to Parlyament to meete and sitt at Westminster upon the two and twentyeth day of January in this Yeaere one thousand six hundred eighty and eight in order to such an Establishment as that their Religion Lawes and Liberties might not againe be in danger of being Subverted, Upon which Letters EleCtions haveing beene accordingly made.

Recital that the late King James II. had abdicated the Government, and that the Throne was vacant, and that the Prince of Orange had written Letters to the Lords and Commons for the choosing Representatives in Parliament.

And thereupon the said Lords Spirituall and Temporall and Commons pursuant to their respective Letters and EleCtions being now assembled in a full and free Representative of this Nation takinge into their most serious Consideration the best meanes for attaining the Ends aforesaid Doe in the first place (as their Ancestors in like Case have usually done) for the Vindicating and Asserting their auintent Rights and Liberties, Declare

The Subject's Rights.

That the pretended Power of Suspending of Lawes or the Execution of Lawes by Regall Authority without Consent of Parlyament is illegall.

Dispensing Power.

That the pretended Power of Dispensing with Lawes or the Execution of Lawes by Regall Authority as it hath beene assumed and exercised of late is illegall.

Late dispensing Power.

That the Commission for erecting the late Court of Commissioners for Ecclesiasticall Causes and all other Commissions and Courts of like nature are illegall and Pernicious.

Ecclesiasticall Courts illegall.

That levying Money for or to the Use of the Crowne by ptence of Prerogative without Grant of Parlyament for longer time or in other manner then the same is or shall be granted is illegall.

Levying Money.

That it is the Right of the Subjects to petition the King and all Commitments and Prosecutions for such Petitioning are illegall.

Right to petition.

That the raising or keeping a standing Army within the Kingdome in time of Peace unlesse it be with Consent of Parlyament is against Law.

Standing Army.

That the Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law.

Subjct's Arms.

That EleCtion of Members of Parlyament ought to be free.

Freedom of EleCtion.

That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.

Freedom of Speech.

That excessive Baile ought not to be required nor excessive Fines imposed nor cruell and unusuall Punishments inflicted.

Excessive Bail.

That Jurors ought to be duely impannelled and returned and Jurors which passe upon Men in Trialls for High Treason ought to be Freeholders.

Juries.

That all Grants and Promises of Fines and Forfeitures of particular persons before Conviction are illegall and void.

Grants of Forfeitures.

And that for Redresse of all Grievances and for the amending strengthening and preservering of the Lawes Parlyaments ought to be held frequently.

Frequent Parliaments.

And they doe Claime Demand and Insist upon all and singular the Premises as their undoubted Rights and Liberties and that noe Declarations Judgements Doeings or Proceedings to the Prejudice of the People in any of the said Premises ought in any wise to be drawne hereafter into Consequence or Example. To which Demand of their Rights they are particularly encouraged by the Declaration of his Highnesse the Prince of Orange as being the onely meanes for obtaining a full Redresse and Remedy therein. Havinge therefore an intire Confidence That his said Highnesse the Prince of Orange will perfect the Deliverance soe farr advanced by him and will still preserve them from the Violation of their Rights which they have here asserted and from all other Attempts upon their Religion Rights and Liberties, The said Lords Spirituall and Temporall and Commons assembled at Westminster doe Resolve That William and Mary Prince and Princesse of Orange be and be declared King and Queene of England France and Ireland and the Dominions thereunto belonging to hold the Crowne and Royall Dignity of the said Kingdomes and Dominions to them the said Prince and Princesse dureing their Lives and the Life of the Survivour of them And that the sole and full Exercise of the Regall Power be onely in and executed by the said Prince of Orange in the Names of the said Prince and Princesse dureing their joynt Lives And after their Deceases the said Crowne and Royall Dignitie of the said Kingdoms and Dominions to be to the Heires of the Body of the said Princesse And for default of such Issue to the Princesse Anne of Denmarke and the Heires of her Body And for default of such Issue to the Heires of the Body of the said Prince of Orange. And the Lords Spirituall and Temporall and Commons doe pray the said Prince and (1) Princesse to accept the same accordingly.

The said Rights claimed.

Tender of the Crown.

Regal Power exercised.

Limitation of the Crown.

<sup>1</sup> Highnesse O.

<sup>2</sup> and O.



And that the Oathes hereafter mentioned be taken by all Persons of whome the Oathes of Allegiance and Supremacy might be required by Law instead of them And that the said Oathes of Allegiance and Supremacy be abrogated.

**New Oathes of Allegiance, &c.**

**Allegiance.** I A B doe sincerely promise and swear That I will be faithfull and beare true Allegiance to their Majestyes King William and Queene Mary Soe helpe me God.

**Supremacy.** I A B doe swear That I doe from my Heart Abhor, Detest and Abjure as Impious and Hereticall this damnable Doctrin and Position That Princes Excommunicated or Deprived by the Pope or any Authority of the See of Rome may be deposed or murdered by their Subjects or any other whatsoever. And I doe declare That noe Forreigne Prince Person Prelate, State or Potentate hath or ought to have any Jurisdiction Power Superiority Preeminence or Authoritie Ecclesiasticall or Spirituall within this Realme Soe helpe me God.

**Acceptance of the Crowne.** Upon which their said Majestyes did accept the Crowne and Royall Dignitie of the Kingdoms of England France and Ireland and the Dominions thereunto belonging according to the Resolution and Desire of the said Lords and Commons contained in the said Declaration. And thereupon their Majestyes were pleased That the said Lords Spirituall and Temporall and Commons being the two Houses of Parlyament should continue to sitt and with their Majesties Royall Concurrence make effectuall Provision for the Settlement of the Religion Lawes and Liberties of this Kingdome soe that the same for the future might not be in danger againe of being subverted, To which the said Lords Spirituall and Temporall and Commons did agree and proceede to act accordingly.

**The Two Houses to sit.** Now in pursuance of the Premisses the said Lords Spirituall and Temporall and Commons in Parlyament assembled for the ratifying confirming and establishing the said Declaration and the Articles Clauses Matters and Things therein contained by the Force of a Law made in due Forme by Authority of Parlyament doe pray that it may be declared and enacted That all and singular the Rights and Liberties asserted and claimed in the said Declaration are the true auintent and indubitable Rights and Liberties of the People of this Kingdome and soe shall be esteemed allowed adjudged deemed and taken to be and that all and every the particulars aforesaid shall be firmly and strictly holden and observed as they are expressed in the said Declaration And all Officers and Ministers whatsoever shall serve their Majestyes and their Successors according to the same in all times to come. And the said Lords Spirituall and Temporall and Commons seriously considering how it hath pleased Almighty God in his marvellous Providence and mercifull Goodness to this Nation to provide and preserve their said Majestyes Royall<sup>1</sup> Persons most happily to Raigne over us upon the Throne of their Auncestors for which they render unto him from the bottom of their Hearts their humblest Thanks and Praises doe truly firmly assuredly and in the Sincerity of their Hearts thinke and doe hereby recognize acknowledge and declare That King James the Second havinge abdicated the Government and their Majestyes havinge accepted the Crowne and Royall Dignity [as<sup>2</sup>] aforesaid Their said Majestyes did become were are and of right ought to be by the Lawes of this Realme our Sovereigne Liege Lord and Lady King and Queene of England France and Ireland and the Dominions thereunto belonging in and to whose Princely Persons the Royall State Crowne and Dignity of the said Realmes with all Honours Stiles Titles Regalities Prerogatives Powers Jurisdicions and Authorities to the same belonging and appertaining are most fully rightfully and intirely invested and incorporated united and annexed And for preventing all Questions and Divisions in this Realme by reason of any pretended Titles to the Crowne and for preserving a Certainty in the Succession thereof in and upon which the Unity Peace Tranquillity and Safety of this Nation doth under God wholly consist and depend The said Lords Spirituall and Temporall and Commons doe beseech their Majestyes That it may be enacted established and declared That the Crowne and Regall Government of the said Kingdoms and Dominions with all and singular the Premisses thereunto belonging and appertaining shall bee and continue to their said Majestyes and the Survivour of them durenge their Lives and the Life of the Survivour of them And that the entire perfect and full Exercise of the Regall Power and Government be onely in and executed by his Majestie in the Names of both their Majestyes durenge their joynt Lives And after their deceases the said Crowne and Premisses shall be and remaine to the Heires of the Body of her Majestie and for default of such Issue to her Royall Highnesse the Princess Anne of Denmarke and the Heires of her Body and for default of such Issue to the Heires of the Body of his said Majestie And thereunto the said Lords Spirituall and Temporall and Commons doe in the Name of all the People aforesaid most humbly<sup>3</sup> and faithfully submitt themselves their Heires and Posterities for ever and doe faithfully promise That they will stand to maintaine and defend their said Majesties and alsoe the Limitation and Succession of the Crowne herein specified and contained to the utmost of their Powers with their Lives and Estates against all Persons whatsoever that shall attempt any thing to the contrary.

**Limitation of the Crowne.** And whereas it hath beene found by Experience that it is inconsistent with the Safety and Welfare of this Protestant Kingdome to be governed by a Popish Prince or by any King or Queene marrying a Papist the said Lords Spirituall and Temporall and Commons doe further pray that it may be enacted That all and every person and persons that is are or shall be reconciled to or shall hold Communion with the See or Church of Rome or shall professe the Popish Religion or shall marry a Papist shall be excluded and be for ever uncapable to inherit possesse or enjoy the Crowne and Government of this Realme and Ireland and the Dominions thereunto belonging or any part of the same or to have use or exercise any Regall Power Authoritie or Jurisdiction within the same [And in all and every such Case or Cases the People of these Realmes shall be and are hereby absolved of their Allegiance<sup>4</sup>] And the said Crowne and Government shall from time to time descend to and be enjoyed by such person or persons being Protestants as should have inherited and enjoyed the same in case the said person or persons soe reconciled holding Communion or Professing or Marrying as aforesaid were naturally dead [And that every King and Queene of this Realme who at any time hereafter shall come to and succede in the Imperiall Crowne of this Kingdome shall on the first day of the meeting of the first Parlyament next after his or her

**Subjects' Liberties to be allowed,**

**and Ministers hereafter to serve according to the same.**  
William and Mary declared King and Queen.

**Papists debarred the Crowne.**

**Every King, &c. shall make the Declaration of 30 Car. II.**

<sup>1</sup> interlined on the Roll.<sup>2</sup> annexed to the Original Act in a separate Schedule.

A.D.1688.

1<sup>o</sup> GUL. & MAR. Sess.2. c. 2, 3.

145

coming to the Crowne sitting in his or her Throne in the House of Peeres in the presence of the Lords and Commons therein assembled or at his or her Coronation before such person or persons who shall administer the Coronation Oath to him or her at the time of his or her taking the said Oath (which shall first happen) make subscribe and audibly repeate the Declaration mentioned in the Statute made in the thirtyeth year of the Raigne of King Charles the Second Entituled An Act for the more effectuall Preserveing the Kings Person and Government by disabling Papists from sitting in either House of Parlyament But if it shall happen that such King or Queene upon his or her Succession to the Crowne of this Realme shall be under the Age of twelve yeares then every such King or Queene shall make subscribe and audibly repeate the said Declaration at his or her Coronation or the first day of the meeting of the first Parlyament as aforesaid which shall first happen after such King or Queene shall have attained the said Age of twelve yeares. All which Their Majestyes are contented and pleased shall be declared enacted and established by authoritie of this present Parliament and shall stand remaine and be the Law of this Realme for ever And the same are by their said Majesties by and with the advice and consent of the Lords Spirituall and Temporall and Commons in Parlyament assembled and by the authoritie of the same declared enacted and established accordingly

If under 12 Years old, to be done after Attainment thereof.

King's and Queen's Assent.

AND bee it further declared and enacted by the Authoritie aforesaid That from and after this present Session of Parlyament noe Dispensation by Non obstante of or to any Statute or any part thereof shall be allowed but that the same shall be held void and of noe effect Except a Dispensation be allowed of in such Statute [and except in such Cases as shall be specially provided for by one or more Bill or Bills to be passed durning this present Session of Parliament.]

II. Non obstantes made void. Exception.

PROVIDED that noe Charter or Grant or Pardon granted before the three and twentyeth Day of October in the year of our Lord one thousand six hundred eighty nine shall be any wayes impeached or invalidated by this Act but that the same shall be and remaine of the same force and effect in Law and noe other then as if this Act had never beene made.

III. Proviso for Charters, Pardons, &c. granted before 23d October.

CHAPTER III.

AN ACT for preventing all Doubts and Questions concerning the Collecting the Publique Revenue

Rot. Parl. p. 3. nr. 2.

FOR the preventing all Disputes and Questions concerning the Collecting Levying and Answering the Publique Revenue due and payable in the Raignes of the late Kings Charles the Second and James the Second whilst the better Settleing the same is under the Consideration of this present Parlyament Bee it enacted by the King and Queens most Excellent Majestyes by and with the Advice and Consent of the Lords Spirituall and Temporall and Commons in this present Parliament Assembled and by Authoritie of the same That the Subsidie of Tonnage and Poundage and other Summes of Money payable upon Merchandize Exported and Imported and the severall Impositions Duties and Charges upon Liquors Manufactures and other things And all and singular the Revenue and Revenues whatsoever (Except the Duties arising by Fire Hearths and Stoves other then such as were incurred at or before the Five and twentieth Day of March One thousand six hundred eighty nine) Given, Granted and Payable to or Lawfully Enjoyed by the said late Kings or either of Them which Remained and had Continuance on the Fifth Day of November One thousand six hundred eighty eight And all Arreares of the same shall be Raised Levvyed Collected Answered and Paid to Their Majestyes untill the Twenty fifth day of December which shall be in the year of our Lord One thousand six hundred and ninety in the same manner and forme according to such Rates and Orders and by such Rules Meanes and Wayes and under such Penalties and Forfeitures as are mentioned expressed and appointed in the Statutes made in the Raignes of the said late Kings or either of them concerning the same respectively and as by Law the same might or ought to have beene durning the said Raignes.

Arrears of Subsidy and Duties, (Exception) to be collected and paid until 25th Dec. 1690, as herein mentioned.

AND that all and singular Acts of Parlyament made durning the Reigns of either [of] the said late Kings for the Granting Settleing Raising Levying Collecting Answering and Paying the same or for Preventing Fraudes or Concealments or regulateing Abuses therein or for the better Ordering or Recovering the same And all Powers Provisions Penalties Articles Clauses and things contained in the said Acts or any of them be and are hereby Continued and Confirmed and shall stand and be in force and be Applied Practiced Executed and putt in Ure for the Raising Levying Collecting Paying and Answering the said Subsidie Summes of Money Impositions Duties and Revenues to Their Majestyes according to the Tenor and Intent of this present Act And alsoe that an Order of the Commons in Parlyament Assembled made in pursuance of the Rules and Orders annexed to the Act of Parlyament made in the Twelfth year of the Raigne of the late King Charles the Second Entituled A Subsidie Granted to the King of Tonnage and Poundage and other Summes of Money payable upon Merchandize Exported and Imported for Settleing of Officers Fees Dated the Seventeenth day of May One thousand six hundred sixty two and Signed by Sir Edward Turner then Speaker shall be of full Force and Effect untill the said Five and twentyeth day of December One thousand six hundred and ninety as if the same were particularly and at large recited in this Act.

II. Former Acts for collecting, &c. the Public Revenue, to be in force until the said 25th Dec. 1690.

and also an Order of the Commons made in pursuance of the Rules and Orders annexed to Stat. 12 Car. 11. c. 4.

PROVIDED always and bee it Enacted That nothing in this Act contained shall extend or be construed in any way to extend to the Confirming or Invalidating certaine Letters Patents bearing Date the Twentyeth day of February in the Second Year of the Raigne of the late King James the Second and Granted by the [said] late

III. Proviso for Letters Patent of the 20th Feb. 3 Jac. 11. to Trustees for the Prince and Princess Anne of Denmark.

\* annexed to the Original Act in a separate Schedule.

† interlined on the Roll.



escritz de venir au Roi a force & armes, en chescun temps qils furent maunde, sur peine de vie & de membre, & de q'nt qil p'roient forfaire; p force des queux escritz plusours de la Vre ont este diu'sement destrutz; Le Roi eyaunt regard q̄ tieux escritz furent faitz a deshonor du Roi, desicome chescun feust tenu de faire au Roi come a seign' lige ceo q̄ a luy appendoit sanz escrit, Voet q̄ tieux escritz desormes ne soient faitz; et q̄ ceux q̄ sont faitz, p la veue de Chancellor & Tresorer, soient monstrez au Roi; & le Roi fra dampner ceux q̄ sont faitz contre droit & reson.

Item pur la pees meultz garder & meyntener, le Roi veot qen chescun Countee q̄ bones gentz & loialx, queux ne sont mye meyntenours de malveis baretz en pays, soient assignez a la garde de la pees.

Item le Roi comaunde q̄ les viscontes & Bailiffs des franchises, & toutz autrs q̄ pnent enditementz a lor tourns, ou aillours ou enditementz v'rount faitz, preignent tieux enditementz p roule endente dount Lune p̄tie demeorge vs les enditours, & lautre p̄tie de vs cely qi prendra Lenqueste, issint q̄ les enditementz ne soient beseleez come avant ces heures ount este, & issint q̄ un de lenqueste peut monstrez lune p̄tie de lendenture a la Justice q'nt il vendra p' la deli'uaunce faire.

Memorand qd̄ ista duo statuta p̄cedencia missa fuerunt in Hib̄n̄ in forma patent̄i, cum quodam b̄n̄ inferi<sup>o</sup> seq̄i.

themselves by Writing, to come to the King with Force and Arms, whensoever they should be sent for, upon Pain of Life and Limb, and to forfeit all that ever they might forfeit; by virtue of which Writings divers of this Land have been often destroyed: The King, considering that such Writings were made to the King's dishonour, sithence that every Man is bound to do to the King, as to his Liege Lord, all that pertaineth to him without any manner of Writing, Willeth, that from henceforth no such Writing be made; and that such as be made, by the sight of the Chancellor and Treasurer, shall be shewed to the King; and the King shall cause all such as be made against Right and Reason to be cancelled.

None shall be bound by Writing to come with Arms to the King.

ITEM, For the better keeping and maintenance of the Peace, the King will, that in every County good Men and lawful, which be [no Maintainers of Evil, or Barretors'] in the Country, shall be assigned to keep the Peace.

XVI. Keepers of the Peace in each County.

ITEM, The King commandeth, That the Sheriffs and Bailiffs of Franchises, and all other that do take Indictments in their Turns, or elsewhere, where Indictments ought to be made, shall take such Indictment by Roll indented, whereof the one Part shall remain with the Indictors, and the other Part with him that taketh the Inquest; so that the Indictments shall not be imbezilled as they have been in times past; and so that one of the Inquest may shew the one part of the Indenture to the Justices, when they come to make Deliverance.

XVII. Indictments shall be taken by Indenture.

<sup>1</sup> No Maintainers of cursed Barretors MS. Tr. 2.

Be it Remembered, that the two preceding Statutes were sent into Ireland in form of Letters Patent, with a certain Writ hereunder following.<sup>1</sup>

<sup>1</sup> See Memorandum at the End of Stat. 5 Edw. III.

Anno 2° EDWARDI, III. A.D. 1298.

Statutū editū apud Northampton, anno r. R. E. t'ciii post conquestū sc'do.

STATUTE made at NORTHAMPTON;

In the SECOND Year of the Reign of K. EDWARD the THIRD after the Conquest.

Ex magno Rot. Stat. in Turr. Lond. m. 28.

Nō seign' le Roi Edward, le tierz ap̄s le conqueste, a son plement tenez a Northampton as trois semaines de Pasch, Lan de son regne secund, desiraunt q̄ la pees de sa Vre, & les leis & estatuz avant ces heures ordenez & usez, soient gardez & meintenuz en touz poyntz, Al hon' de dieu & de seinte eglise, & a cōe p̄fit du poeple, p assent des Prelatz, Countes & Barons & autres g'ntz, & tote la cōe du roialme, au dit plement somons, ordena & establet en meisme le plement les choses southescrites en la forme q̄ sensuit.

En primes q̄ la g'nte Chartre & la Chartre de la foreste soient tenez en touz pointz.

Ensemble p' ceo q̄ meffesours ont este esbauditz de ce q̄ chartres de pdoun ont este si leḡment g'ntees avant ces heures, des homicides, robies, felonies & autres trespas contre la pees; acorde est & establet q̄ tiels chartres ne soient mes g'ntees fors qen cas ou le Roi le poet faire p son v̄ment, cest assavoir en cas ou home tue autre soi defendant, ou p infortune: Et auxint ont este esbauditz de ceo q̄ Justicerias as deli'vances des gaoles, & a oier & yminer, ont estez g'ntees as gentz p̄curez cōuntre forme de lestatut fait en temps le Roi Edward, ael

OUR Lord King Edward, the Third after the Conquest, at his Parliament holden at Northampton, at the three weeks of Easter, in the second year of his Reign, desiring that the Peace of his Land, and his Laws and Statutes, ordained and used before this Time, may be kept and maintained in all Points; to the Honour of God and of Holy Church, and to the common Profit of the People, by Assent of the Prelates, Earls, Barons, and other great Men, and all the Commonalty summoned to the same Parliament, hath ordained and established in the said Parliament these Things underwritten, in Form following.

FIRST, That the Great Charter, and the Charter of the Forest, be observed in all Points.

I. The Charters.  
II. Pardons for Felony.

ITEM, Whereas Offenders have been greatly encouraged, because [the'] Charters of Pardon have been so easily granted in times past, of Manslaughters, Robberies, Felonies, and other Trespases against the Peace; It is ordained and enacted, That such Charter shall not be granted, but only where the King may do it by his Oath, that is to say, where a Man slayeth another in his own defence, or by Misfortune: And also they have been encouraged, because that ['] the Justices of Gaol-delivery, and of Oyer and Terminer, have been procured by great Men ['] against the Form of the Statute made in the xxvij year of the reign of King Edward,

<sup>1</sup> that  
<sup>1</sup> Commissions of Gaol Delivery and of Oyer and Terminer have been granted to Persons procured



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 Ldw. I. chapter 20, 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<sup>1</sup>] 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

<sup>1</sup> Commissioners  
upon a Proclamation of Drets of Arms in time of Peace, and that in Places where such Drets are to be done.—See Lib. Rub. Sec. Westm. fo 122 b. a Writ reciting a Grant of K. Richard I. "qd' Torneamenta sint in Angl' in v. placitis: In p' Sar' & Wilton: In p' Warrerewich & Kenelingsworth: In p' Stanford & Warneford: In p' Brakel & Mireb' : In p' Blic & Tykeliff. Ita qd' pax fre nre nō infringer, nō potestas Justiciarū minorabit' Nec de f. 122 b. nris dāpnū infrect'." <sup>2</sup> Grandfather  
\* of the King

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 clerck, & 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 g'ntees coudre la forme du dit estatut, & q̄ les assises, atteintes, & p̄ifications 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 Baunk & de lautre, ou les Justices errantz; & ce p' led & orrible trespas, & de lespeciale g'ce le Roi, solonc forme de statut de ce ordene en temps meisme le ael; & nemie autrement.

Ensement acorde est & establi, q̄ nul, g'nt ne petit de quele condicion qil soit, sauve les p̄jantz le Roi en la p̄sence le Roi, & les Ministres le Roi, enfesantz execucion des mandementz le Roi, ou de leur office, & ceux qi sont en leur compaignies, eidantz as ditz ministres, & auxint au cri de fait d'armes 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 affray 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 ailleurs, sur peine de p̄dre leur armures au Roi & de leur corps a la prisone a la volute le Roi. Et q̄ Justices le Roi en leur p̄sences, viscountes & autres Ministres le Roi en leur baillies, seign's des fraunchises & 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 acord. 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 trov'ont, qi nount mie fait ce q̄ a leur office appent.

Et p'ce q̄ la pees ne poet mie estre bien garde sauntz bons ministres, come Viscountes, Baillifs, & Hundreders qi doivent faire execucion, auxibien des p'vetez le Roi come dautres choses tochantes le Roi & son poeple, acorde est & establi q̄ lestatut fait en temps le Roi Edward, pere 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 ordine est, p̄ statut de Westmonst' le secund, q̄ ceux q̄ liv'er volent leur briefs as viscountes, les liv'ent 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 realx qi p̄ront 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 denquer de ce a chescun p̄leinte & de agarder damages, cant regard au delai, & a les pies & pils qi p'ront avenir.



Et q'nt a la garde de la pees en temps avenir, acorde est & establi q' les estatuz faites en temps passez, ovesq, lestatut de Wyncestř, soient tenuz & gardez en touz pointz; ajouste au dit estatut de Wyncestř, la ou contentuz est en la fin, q' Justices assignez eient poair denquere des defautes & des reporter au Roi en plement, dont home nad pas veu issue, q' les ditz Justices assignez eient poair de punir les desobeissantz & contrevenantz.

Et q'nt au punissement de felonies, robies, homicides, trespas & oppřssions du poeple, faitz en temps passe; acorde est q' nře Seign' le Roi assigne Justices en div's lieux de sa ĩre, ove le Baunk le Roi p aillours, come estoit faite en temps de son dit ael, des g'ntz de la ĩre q' sont de g'nt poair, ovesq's ascuns des Justices de lun Baunk ou de lautre, ou autres sages de la lei, denquere, auxibien a seute de pie, come a la seute le Roi, et doier & ĩminer totes mařes des felonies, robies, homicides, larcins, oppřssions, conspiracies, & grevances faitz au poeple, countre la lei, Les estatuz & la custume de la ĩre, auxibien p ministres le Roi come p autres, q' qils soient, & ce auxibien dedeinz fraunchises come dehors. Et auxint denquere des Viscontes, Coroners, Southeschetours, Hundreders, Baillifs, Conestables, & touz autres Ministres deinz franchise & dehors, & leur southministres, & doier & ĩminer a la seute le Roi & de pie. Et nře Seign' le Roi & touz les g'ntz du Roialme en plein plement ont empris de meintener la pees, garder & sauver les Justices le Roi, p la ou ils veignent, & deider p eux & les leurs, q' les juggementz & les execucions ne soient pas arestuz, mes executz, & q' le meffesours ne ĩront p eux covřtz ne meintenuz en p've nen apt: Mes nest pas lentencion du Roi ne de son conseil q' p ceste acord ĩjustice aveigne a les g'ntz de la ĩre, eantz fraunchises, ne a la Citee de Loundres, ne as autres Citees ne Burghs, ne a les Cynkportz en droit de leur franchises.

Ensement acorde est & establi q' mande ne soit, p le g'nt seal ne p le petit seal, a destourber ou delayer cōe droit; & mesq, tielx mandementz veignent q' p tant les Justices ne s'sessent pas de faire droit en nul point.

Ensement est acorde & establi q' les estaples p deca & p delaa, ordeineez p les Rois en temps passe, & les peines sur ce ordeinees, cessent; & q' touz marchantz aliens & p'veez peussent aler & venir od leur marchandises en Engleřre, solonc la tenour de la g'nte Chartre; & q' s' ceo briefs soient mandez a touz les viscontes Dengleřre & as Meires & baillifs des bones villes ou mestier ĩra.

Ensement come le Roi Edward, pere le Roi ĩore est, pdona a son poeple ancicementz & issues forfaitz, jesq's al vintisme an du regne son pere ael le Roi quore est, le Roi p' ees de son poeple ad pdone touz les fins q' ont este faitz en Chauncellerie p' briefs avoir, tanq, al vintisme an avantdit.

Et p' ce q' p remuement du cōe Bank les pleez bien sovent ont demore saunz jour, a g'ntz damage, & en pil de desħitance des plusieurs; acorde est & establi q' desore en avant les Justices, avant ce q' le Bank se remuera, soient garniz p temps, issint queux peussent ajorer les pties si p temps ĩeles ne pdent mie leur pees.

Et come touz les Countez Dengleřre furent ancicement assis a ĩteine ferme, & adonq's furent touz les Hundredz & les Wapentakes, en les meins des viscontes, aporcionez a cele ferme, et puis furent approwours mandez en div's Contez, les queux encrustrent les fermes dascuns Hundredz & Wapentakes, et puis les Rois en div's temps ont g'ntez as div's gentz pties des Hundredz & Wapentakes, p' les ancienes fermes tantoulement, & jatardeis les viscontes sont chargez entierment del

ITEM, 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 the said Statute of Winchester,] that the Justices assigned shall have power to enquire of Defaults, and to report to the King in his Parliament, [and the King to remedy it,] which no Man hath yet seen (¹) the same Justices shall have Power to punish the Disobeyers and Resisters.

ITEM, As to the Punishment of Felonies, Robberies, Manslaughters, Trespasses, and Oppressions of the People committed in times past: It is accorded that our Sovereign Lord the King, shall assign Justices in divers places of this Land, [within the King's Bench, and elsewhere,] as it was done in the Time of his said Grandfather, of great Men of the Land, which be of great Power, with some of the Justices of the one Bench, or of the other, [with ²] other learned Men in the Law, to enquire as well at the Suit of the Party, as at the King's Suit, and to hear and determine all manner of Felonies, Robberies, Manslaughters, Theft, Oppressions, Conspiracies, and Grievances done to the People against the Law, Statutes, and Customs of the Land, as well by the King's Ministers, as by other whatsoever they be, and that as well within Franchises as without. And also to enquire of Sheriffs, Coroners, [Under Sheriffs,] Hundreders, Baillifs, Constables, and all other Ministers within Liberties and without, and of their under-ministers; and to hear and determine at the King's Suit, and also the Party's. And our Sovereign Lord the King, and all the great Men of the Realm in the full Parliament, have taken upon them [to maintain and keep the peace; and they and theirs to save the King's Justices, and aid them where they come, so that the judgement ³] and executions be not let, but executed; and the Offenders be not hid by them, nor maintained privily nor apertly: but the intent of the King and his Council is not, that by this Act any prejudice should ensue to the great Men of the Land having Liberties, nor to the City of London, nor to other Cities nor Burghs, nor to the Five Ports in the right of their Franchise.

ITEM, It is accorded and established, That it shall not be commanded by the great Seal nor the little Seal to disturb or delay common Right; and though such Commandments do come, the Justices shall not therefore leave to do right in any point.

ITEM, It is enacted, That the Staples beyond the Sea and on this Side, ordained by Kings in Times past, and the Pains thereupon provided, shall cease; and that all Merchant Strangers and privy, may go and come with their Merchandises into England, after the Tenor of the Great Charter; and that Writs thereupon shall be sent to all Sheriffs of England, and to Mayors and Baillifs of good Towns, where need shall require.

ITEM, Whereas King Edward, Father to the King that now is, did pardon his People of Issues and Atnerciaments, that were forfeit till the twenty year of the Reign of his Father, Grandfather to the King that now is: The King for ease of his People, hath pardoned all the Fines that have been made in the Chancery, for to have Writs till the xx. year aforesaid.

ITEM, Whereas by removing of the Common Bench, the Pleas have oftentimes abiden without Day, to the great hurt, and peril of Disherson of divers; It is enacted, That from henceforth the Justices before that the Common Bench be removed, shall be warned by a Time, so that they may adjourn the Parties by such Time that they shall not lose their Process.

ITEM, Whereas all the Counties in England were in old Time assessed to a certain Ferm, and then were all the Hundredes and Wapentakes in the Sheriffs Hands rated to this Ferm; and after were Approvers sent into divers Counties, which did increase the Fermes of some Hundredes and Wapentakes; and after, the Kings at divers Times have granted to many Men part of the same Hundredes and Wapentakes for the old Fermes only; and now late the Sheriffs be wholly charged of the

¹ add to the said Statute of Winchester, where it is contained at the end thereof

² Not in the Original. ³ the effect of, that

⁴ with the King's Bench briefs, ⁵ or ⁶ Sub-Executors

⁷ to maintain the peace, to keep and save the King's Justices where-soever they come, and to aid by themselves, and theirs, that the Judgements

VI.  
The Statute  
of Wynston,  
13 Edw. I.  
confirmed,  
&c.

VII.  
Justices  
assigned to  
enquire of  
Felonies,  
Robberies,  
&c.

VIII.  
Commands  
shall not be  
in delay of  
Justice.

IX.  
All Staples  
shall cease.

X.  
Pardon of  
Fines for  
Writs in  
Chancery.

XI.  
The Common  
Bench not to  
be removed  
without  
Warning.

XII.  
Hundredes and  
Wapentakes  
shall be  
annexed to  
Counties, and  
not let to  
Ferm.



Increase, which amounteth to a great Sum, to the great hurt of the People, and Dishonour of the Sheriffs and their Heirs: It is ordained, That the Hundreds and Wapentakes let to Ferm by the King that now is, be it for Term of Life or otherwise, which were sometimes annexed to the Fermes of the Counties where the Sheriffs be charged, shall be joined again to the Counties; and that the Sheriffs and their Heirs have Allowance for the Time that is past; and that from henceforth such Hundreds and Wapentakes shall not be given nor severed from the Counties.

XIII.  
Trespas  
in the late  
King's Time.

ITEM, It is accorded and enacted, that like process shall be made of Trespas done in the Time of King Edward, father to the King that now is, as of Trespas done in the Time of the King that now is.

XIV.  
Measure  
and Assise  
of Cloths  
imported.

ITEM, It is enacted by our Sovereign Lord the King, and his Council, that from the Feast of Saint Michael, next coming forward, all Cloths in such Places where they shall be put to Land, shall be measured by the King's Aulnegeours in the presence of the Mayor and Bailiffs, where there is a Mayor, and where no Mayor is, in presence of the Bailiffs of the same Places; that is to say, the Length of every Cloth of Ray, by a Line of seven Yards, four times measured by the List, and the Breadth of every Ray Cloth six Quarters of measure by the Yard; and of coloured Cloths the Length shall be measured by the Back, by a Line of six Yards and a half, four times measured, and the breadth six Quarters and an half measured by the yard without [defoiling] the Cloths; and that the Mayor and Bailiffs where a Mayor is, or the Bailiffs where no Mayor is, of the Towns or Places where such Cloths shall come, shall be ready to make Proof what time they shall be required by the Meter, without taking any thing of the Merchants; and Cloths which be of the said Assise, shall be marked by the Mayor and Bailiffs, where a Mayor is, or by the Bailiffs where there is no Mayor, as well as by the Aulnegeour; and that all the Cloths which shall be found defective of the same Assise, shall be forfeit to the King, and prized at their true Value in the presence of the said Mayor and Bailiffs; and to remain with the Aulnegeours by Indenture between them, to answer to the King of the said Cloths so forfeit; and that the Mayor and Bailiffs shall deliver the Indentures made of such Cloths forfeit, every year into the Exchequer, the morrow after the Feast of Saint Michael, for to charge the said Aulnegeour; and at the same time shall the Aulnegeour be put to answer at the Exchequer of the said Forfeitures. It is in the King's mind and his Counsels, that this act shall extend to such Cloths as shall come into the Land after the Feast of Saint Michael; and this act shall be published and proclaimed throughout the Realm, so that no Merchant, Privy nor Stranger, shall be surprisid by this Statute.

XV.  
Keeping of  
Fairs, for  
the Time  
limited by  
Charter, &c.

ITEM, It is established, That it shall be commanded to all the Sheriffs of England, and elsewhere where need shall require, to cry and publish within Liberties and without, that all the Lords which have Fairs, be it for yielding certain Ferm for the same to the King, or otherwise, shall hold the same for the Time that they ought to hold it, and no longer; that is to say, such as have them by the King's Charter granted them, for the Time limited by the said Charters; and also they that have them without Charter, for the Time that they ought to hold them of right. And that every Lord at the beginning of his Fair shall there do cry and publish how long the Fair shall endure; to the Intent that Merchants shall not be at the same Fairs over the Time so published, upon pain to be grievously punished towards the King; nor the said Lords shall not hold them over the due Time, upon pain to seize the Fairs into the King's hands, there to remain till they have made a Fine to the King for the Offence, after it be duly found, that the Lords held the same Fairs longer than they ought, or that the Merchants have sitten above the Time so cried and published.

XVI.  
Ire Stat.  
11 Edw. II.  
4

ITEM, Whereas in a Statute made at York, in the Time of the Father of our Lord the King that now is, it is contained that Inquests and Juries, which be and shall be hereafter taken, requiring no great Examination, "defouling MS. 7. 2.—some old Printed Copies read "marring."

encrees q̄ amount a ḡnte sūme, a ḡnt damage du poeple & deshittance de viscountes & de lour heirs; acorde est & establi q̄ des Hundredz & Wapentakes baillee a ferme p̄ le Roi q̄ore est, soit il a l'ūme de vie ou autrement, q̄ aucienement furent annex as fermes des Countez ou les viscontes sont chargez, soient rejointz as Countez, et q̄ de temps passe eient les viscountes ou lour heirs allowance; & q̄ desore en avant teux Wapentakes, ne Hundredz ne soient donez ne sevez des Countez.

Ensement est acorde & establi q̄ a tieu p̄ces soit fait des trespas fait en temps le Roi Edward, pierre le Roi q̄ore est, come de de trespas fait en temps le Roi q̄ore est.

Ensement est acorde & establi p̄ n̄re Seign' le Roi & son conseil, q̄ de la seint Michel p̄schein avenir en avant, touz les draps es lieux ou ils s̄ront mis a l'ūre, soient aunez p̄ le auneour le Roi, en p̄sence des Meire & Baillifs ou Meire y est, ou des baillifs ou meire nyest, de meisme les lieux; cest assavoir la longure de chescun draḡ de Raye p̄ une corde de sept aunes quatrefoitz mesure p̄ le list, & la laoure de chescun draḡ de Reye sis q̄rters de lee, mesure p̄ laune; et de draḡs de colour la longure soit mesure p̄ le dos p̄ un corde de sis aunes & demi q̄trefoitz mesure; & la laoure sis q̄rters & demi mesure p̄ laune sanz defoler les draḡs; et q̄ Meire & Baillifs ou Meire y est, ou Baillifs ou Meire nest pas, des villes ou lieux ou les draps vendront, soient p̄stz a lassai faire, quele heure q̄ils soient requis p̄ launeour, saunz rien p̄ndre des marchantz; et q̄ touz les draḡs q̄ s̄ront trovez de la dite assise, soient n̄chez auxibien p̄ Meire & Baillifs ou Meire y est, ou p̄ baillifs ou Meire nest pas, come p̄ launeour, et les draps q̄ ne s̄ront pas trovez de lassise avantdite, soient forfaitz au Roi, & p̄sez a la v̄reie value, en p̄sence des ditz Meire & Baillifs, & demergerent deḡs launeour p̄ endenture entre eux faite, a respondre des ditz draps issint forfaitz au Roi; et q̄ les ditz Meire & Baillifs, les endentures issint faites de tieux draps forfaitz, facent liḡver chescun an a Lescheḡr a lendemeyn de Seint Michel, p̄ charger le dit auneour; & a meisme le temps soit le dit auneour a Lescheḡr a respondre des dites forfaitures. Et est lentencion de n̄re dit Seign' le Roi & de son conseil q̄ cest acord se tiegne des draps q̄ vendront en la l'ūre ap̄s la dite feste de Seint Michel; & q̄ cest acord soit public & crie p̄ tout le Roialme, issint q̄ les Marchantz ne p̄vez nestraunges soient supp̄s p̄ meisme lacord.

Ensement est acorde & establi q̄ maunde soit a touz les viscountes Dengleḡre, & p̄ aillours ou messier s̄ra, a crier & publier, deinz l'ūnichises & Jehors, q̄ touz les Seign's q̄ feires enount, soit il p̄ l'ūeine ferme ent rendant au Roi, ou autrement, les tiegnent p̄ le temps q̄ils deḡnt, & nemie outre; cest assavoir ceux q̄ les out p̄ chres des Rois p̄ les temps a eux ḡuntez p̄ les dites chres; et ceux q̄ les out sanz chre p̄ temps queux ils les deivent tenir de droit. Et q̄ chescun Seign' au comencement de sa feire face crier & publier en yecele come longement sa feire se tendra, issint q̄ les Marchantz ne secssent es dites feires outre le temps issint publicz, sur peine destre grevement puniz deḡs le Roi; ne q̄ les ditz Seign's outre les droitz temps les tiegnent, sur peine ap̄ndre les feires en la meyn le Roi, a demorer tanq̄ils eient fait fin au Roi p̄ le trespas, ap̄s ceo q̄ trove s̄ra duement qe les Seign's les out tenuz plus longement q̄ils deḡnt, ou q̄ les marchantz out sis outre le temps issint publicz & criez.

Et come en un estatut fait a Eḡwyk, en temps le pierre n̄re Seign' le Roi q̄ore est, soit contenuz q̄ les enquestes & jurees qe sont & s̄ront ap̄ndre, q̄ ne sont mie de ḡnt examenement, soient p̄ses devant



un Justice de la place ou la plee est, associe a lui un p̄dhōme du pais, Chivaler ou autre, issint q̄ d̄cein jour soit done en Bank, & d̄cein jour & lieu en pais en p̄sence de p̄ties, si le demandant le p̄e; & auxint les enquestes & jurees en plee de l̄re, qe demandent ḡnt examenement, soient p̄ses en pais en la forme susdite devant deux Justices du Bank: acorde est & establi q̄ totes tiels enquestes, q̄ sont ou en temps avenir a p̄ndre l̄ront, en plee de l̄re, soient p̄ses auxibien a la p̄ere le tenant come le demandant; tout lautre p̄ces acorde en dit estatut, en tieu cas sauve & garde.

Auxint est acorde & establi q̄ brief de deceit soit meintenu & lieu tiegne, auxibien en cas de garnissement q̄ touche plee du l̄re, ou tieu garnissement est done, come en cas de somons en plee de l̄re.

Et Viç Norht, saltm. Quoddam statutū p̄ nos & conciliū n̄rm in pleno pliameto n̄ro apud Northampton convocato, ad emendacōem stat<sup>o</sup> populi regni n̄ri, editū, sigillo n̄ro consignatū tibi mittim<sup>o</sup>; mandantes qd̄ statutū illud, & om̄es articulos in eo contentos, in pleno Com̄ tuo & in Civitatib; Burgis, villis m̄icatoriis, & aliis locis in balliva tua ubi expedire videris, tam infra libtates q̄m ext<sup>a</sup>, legi & publice p̄clamari & observari faç. T. R. apud North xxii die Junii.

Eodem modo mand̄ est singulis vicecomitib; p̄ Angl. Memorand qd̄ istud statutum missum fuit in Hibn in forma patentis cum quodam b̄ri inferius seq̄n.

shall be taken before one Justice of the Place where the Plea is, adjoining to him one discreet Man of the Country, Knight, or other, so that a certain Day be given in the Bench, and a certain Day and Place in the Country, in the presence of the Parties, if the Demandant pray the same; and also the Inquests and Juries in Plea of Land, which require great Examination, shall be taken in the Country in the said Form before Two Justices of the Bench: It is accorded and enacted, That all such Inquests which are, or in Time to come shall be taken, in Plea of Land, shall be taken as well at the Request of the Tenant as the Demandant; all other Process according to the said Statute in such Case saved and kept.

ITEM, It is enacted, That a Writ of Deceit shall be maintainable, and hold Place, as well in the Case of Garnishment touching Plea of Land, where such Garnishment is given, as in case of Summons in Plea of Land. [Dated at Northampton.]

The King to the Sheriff of Northampton, Greeting. A certain Statute, by Us and our Council, in our full Parliament called at Northampton, for the Amendment of the State of the People of our Realm, set forth, We do send to you under our Seal; Commanding that the same Statute, and all the Articles therein contained, in your full County Court, and in the Cities, Boroughs, Market Towns, and other Places in your Bailiwick, where you shall see meet, as well within Liberties as without, you do cause to be read and to be publicly proclaimed and observed. Witness the King at Northampton the twenty-second day of June.

In the same manner it was commanded to the several Sheriffs throughout England.

Be it Remembered, that this Statute was sent into Ireland, in form of Letters Patent with a certain Writ hereunder following.\*

\* See Memorandum at the end of Stat. 5 Edw. III.

Inquests in the Country shall be granted on Request of the Tenant.

XVII. Writ of Deceit.

Anno 4° EDWARDI, III. A.D.1330.

Statutū editū apud Westm̄, anno regni R. E. t̄cii post conquest' quarto.

STATUTE made at WESTMINSTER;

In the FOURTH Year of the Reign of K. EDWARD the THIRD after the Conquest.

Ex magno Rot. Stat. in Turr. Lond. m. 27.

AU Parlement somons a Westmostier, le Lundy pscheyn ap̄s la feste de Sainte Katerine, lan du regne n̄re Seign' le Roi Edward, tierz ap̄s le Conquest, quart, Si sont les choses soutezscriptes, a la requeste de la Cōmunalte, assentuz & acordez p̄ n̄re Seign' le Roi, Prelatz, Countes, Barons, & autres ḡntz de mesme le plement, les queux choses n̄re Seign' le Roi voet qen touz les Counteez de Engleterre soient mandez, a publier & fermement garder.

Adep'mes acorde est q̄ la Ḡnde Chartre & la Chartre de la Foreste, & les estatuz faitz en temps des p̄genitours n̄re Seign' le Roi, & auxint en son temps demaigne, soient gardez & meyntenez en touz pointz.

Ensement est acorde q̄ bones gentz & sages, autres q̄ des places si hōme les puisse trover suffisantz, soient assignez en touz les Counteez Dengleterre ap̄ndre les assises, jureez & clificacions, & a deliv̄er les gaoles; et q̄ les ditz Justices preignent les assises, jurees, & clificacions, & deliv̄ent les gaoles, au meyns troiz foitz p̄ an, & plus sovent si mestier v̄ra, & soient auxint assignez

AT the Parliament, summoned at Westminster, the Monday next after the Feast of Saint Katherine, in the Fourth Year of the Reign of King Edward, the Third after the Conquest, these Things underwritten, at the request of the Commons be established and enacted by our Lord the King, his Prelates, Earls, and Barons, and other (') of the same Parliament; which Things our Lord the King will (') to be published, and surely observed in all his Counties of England.

FIRST, It is accorded, That the Great Charter, and the Charter of the Forest, and all other Statutes, made as well in the time of the King's Progenitors, as in the King's time that now is be kept and maintained in all Points.

ITEM, It is ordained, that good and discreet Persons, other than of the Places, if they may be found sufficient, shall be assigned in all the Shires of England, to take Assises, Juries, and Certifications, and to deliver the Gaols; and that the said Justices shall take the Assises, Juries, and Certifications, and deliver the Gaols, at the least three times a Year, and more often, if need be; also there shall be assigned good and lawful Men

I. Charters and Statutes confirmed.

II. Justices of Assise, Gaol-delivery, and Justices of the Peace.

\* great men

\* that they be sent

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, Extorsions, 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, Extorsions, 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, Extorsions, 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, & ipsius populi destructiōem & injuriam manifestas, ac cont' justiciam & formā statuti p'dē: Volum' & firmū p'cipim' qd' Justic' n'r Hib' qui p' tempe fuit, in singulis Com' & p'tib' p' quos t'nsierit, associatis sibi Prelato loci, & aliquo Comite seu alio nobili vel Milite eazdem p'ciū vicinaz, de p'dēis falsitatib', extorsionib', opp'assionib', g'vaminib', & excessib', & om'ib' sup'dēis p' ip'os firmarios quomodolibet ppet'is, & de ip'oz sc'is & gestib' in hac pte, tam ad secutam n'ram q'm alioz quozcūq', inde conqueri volentiū tam de tempe p'rito q'm futuro inquirat; & vsus eos pcedat, & contemptus, falsitates, extorsiones, opp'assiones, g'vamina & excessus, ac alia p'dēa audiat & t'minet, necnon delinquentes & culpabiles cum tales inventi fūint castiget & puniat, sc'dm legem & consuetudinem t're n're Hib' antedēas; & nos & consiliū n'rm in Angl' de nōib' sic culpabiliū, ac de falsitatib', extorsionib', opp'assionib' & g'vaminib' & aliis p'dēis sub sigillis ipsius Justic' & sibi associatoz, distincte & apte de tempore in tempus nichilomin' p'ificet ex t'ra causa. [In cujus, &c. T. R. apud Westm' xxv. die Octobr. p' ip'm Regem & Cons.]

In cujus rei testimoniū has tras n'ras fieri fecim' patentes. Teste me ip'o apud Westm' vicesimo quinto die Octobr', anno regni n'ri Angl' t'cessimo p'mo, regni v'o n'ri Franc' decimo octavo.

Nos autem Ordinaciōes Voluntates & p'cepta p'dēa, ac om'ia alia & singla in his p'dēis cōtenta rata hentes & g'ra, ea p' nob' & heredib' n'ris quantum in nob' est, acceptam' approbamus, ratificam' & confirmam', put' t're p'dēe rationalit' testant'. In cujus, &c. T. R. apud Westm' xxv. die Junii.

Rot. Pat. 17 Ric. II.

Anno 34° EDWARDI, III. A.D. 1360-1.

Statutū fc'm in p'ltamēto tento apud Westm̄; anno rxxiiii<sup>to</sup>.

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

In Margine Rotuli.

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 (')

I. Who shall be Justices of the Peace. Their Jurisdiction over Offenders; Rioters; Barators; 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 Trespas 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

1. that is to say:

\* All Translations read thus.

Ex magno Rot. Stat. in Turr. Lond. m. 10.

CES sont les choses queles n're Seign' le Roi Prelatz Seign's & la cōmune ont ordinez en cest p'sent plement, tenuz a Westm'ustier le Dymenge p'schein devant la feste de la Con'v'sion de Saint Paul, a tenir & publier o'v'tement pny le Roialme; Cestassavoir:

Primement q' en chescun Countee D'engleterre soient assignez, p' la garde de la pees, un Seign', & ovesq' lui trois ou quatre des meultz vauz du Countee, ensemblement ove ascuns sages de la ley, & dient poer de restreindre les mesfesours, rioters, & touz aut's baretors, & de les p'suir, arester, p'ndre, chastier, selonc leur t'pas ou mesp'ision; & de faire emprisonner, & duement punir selonc la ley & custumes du Roialme, & selonc ce q'ils v'ront mieltz affaire p' lo' discrecions & bon avisement; & ausint de eux enformer & denquere de touz ceuz q' ont este pilours & robeours es p'ties de dela, & sont ore revenez & vont vagantz, & ne voillent t'vailler come ils solcient avant ces hours; & de p'ndre & arester touz ceuz q'ils p'ront trov' p' auditement, ou p' susp'ecion & les mettre en prisonne & de p'ndre de touz ceuz [q' sont] de bone fame, ou ils s'ront trevez, souffisant seurete & meinprise de

1. q' ne sont Lib. Soc. Westm. IX. MS. Cott. Nere C. 1. & 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 rioto'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 p̄ra avenir de tieux mesfours: & auxint doier & yminer a la suite le Roi, tote ma<sup>n</sup>e de felonies & v̄spas faites en meisme le Countee, selonc les leys & custumes avandites; & q̄ briefs doier & yminer soient g<sup>n</sup>tes selonc les estatuz ent faites, mes q̄ les Justices q̄ enserront assignez soient nomez p̄ la Court, & nemie p̄ la pie. Et le Roi voet q̄ totes g<sup>n</sup>ales enquerres avant ces heures g<sup>n</sup>tez deinz seign<sup>n</sup>ies queconqes p̄ les meschiefs & opp<sup>r</sup>ssions q̄ ont este faites au poeple p̄ tieles enquerres, cessent outriement & soient repellez: Et q̄ fins q̄ sont affaire devant Justices, p̄ v̄spas fait p̄ aucune p<sup>o</sup>ne, soient resonables & justes, eant regard au q<sup>n</sup>-tite du v̄spas & les causes p̄ queles eles sont faites.

Item acorde est q̄ prises desore ne soient faites p̄ au<sup>t</sup>s q̄ p̄ les p<sup>v</sup>eurs le Roi, ma Dame la Roine & le Prince leur eisme filtz; & q̄ si Purveours 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<sup>v</sup>eurs en la ma<sup>n</sup>e duement puniz.

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

Item porce q̄ viscontes & au<sup>t</sup>s ministres sovent araient lour panels en tote ma<sup>n</sup>e denquestes des gentz p<sup>c</sup>urez & plus lointifs du Countee, q̄ nont connaissance du fet dount lenqueste s<sup>r</sup>a prise; Acorde est, q̄ tieu paneles soient faites des plus p<sup>s</sup>cheins gentz, q̄ ne sont pas suspectes, ne p<sup>c</sup>urez; & q̄ les viscontes, Coroners & au<sup>t</sup>s ministres q̄ font alencontre soient puniz devant les Justices q̄ la dite enqueste p<sup>n</sup>dra, selonc la q<sup>n</sup>tite de leur v̄spas, sibien de<sup>v</sup>s le Roi come de<sup>v</sup>s la ptie, p<sup>r</sup> la q<sup>n</sup>tite du damage q̄il ad s<sup>r</sup>fert en tieu ma<sup>n</sup>e.

Item est acorde, q̄ ceux q̄ s<sup>r</sup>ont assignez de garder la pees eient poair denquere des inasures & auxint des pois, selonc lestatut ent fait lan du regne n<sup>r</sup>e Seign<sup>r</sup> le Roi vint & quint, en quel est contenu la forme q̄ sensuit. Porce q̄ v̄sg<sup>n</sup>t damage & descet est fait au poeple p̄ tant q̄ plusieurs Marchantz usent dachater & poiser leines & au<sup>t</sup>s marchandises p̄ une pois qest 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 owclement poisez p̄ droit pois, et q̄ le sac de leine ne poise q̄ vint & sis peres, & chescun pere poise quatorze livres, & q̄ lestatu de la balance ne encline ne a l'une ptie ne al autre, & q̄ le pois soit acordant al estandard del Eschequer; et si nul Achatur face al encontre, soit grevousment puny sibien a la suite de ptie come a la suite n<sup>r</sup>e Seign<sup>r</sup> le Roi.

Item come contenu soit en la g<sup>n</sup>t Ch<sup>r</sup>e, q̄ une mesure soit use p<sup>m</sup>y tut Engle<sup>t</sup>re, la quele Ch<sup>r</sup>e 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 Trespas done by any Person, be reasonable and just, having regard to the Quantity of the Trespas, 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 Trespas, 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 Merchandises 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. th. 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.

<sup>1</sup> put in fear by peril which might happen

<sup>2</sup> Takings

<sup>3</sup> of

<sup>4</sup> all



Contents of the Quarter. Measures of Corn shall be struck, saving the Rents of Lords.

Justices shall be assigned to enquire hereof.

Saving of Franchises.

Proclamation hereof.

*Sa Statute 28 Edw. III. chapter 10.*

VII. An Attaint in Plea real.

VIII. Proceedings against Jurors taking Reward to give their Verdict.

Imprisonment of Jurors shall not be pardoned for any Fine.

IX. Labourers shall not be punished by Fine under the Statute 15 Edw. III. stat. 1. ch. 5; but only by Imprisonment.

Penalty on bailing them.

Carpenters and Masons included.

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 struck without Heap, saving the Rents and Ferns of Lords, which shall be measured by such Measure as they were wont in Times past; and the Purveyors of the King, the Queen, and of all other, shall make their Purveyances by the same Measure struck, and in the same Manner: And that at all Times when need shall be, the King shall assign certain Justices in every County of England, to enquire, hear, and determine upon the Points aforesaid, and so make Punishment thereupon according to every Trespass, as well at the Suit of the Party as at the King's Suit; so always that all Manner of Franchises be saved to the Lords in all Points: which Things the King will that they shall be cried in every County, within Franchise and without, betwixt this and the Feast of Easter next coming, to the Intent that they be holden and kept in all Points; and that the said Keepers of the Peace inquire and punish all those whom they shall find to have done against the said Statute, after the said Proclamation made. And also the said Proclamation shall be made in Cities, Boroughs, and Towns enfranchised, that the said Articles be holden and kept in all Points, upon the Pains contained in the Statute, made the xxviii. Year of our Sovereign Lord the King that now is, touching the City of London, and other Cities and Boroughs of the Realm; and if they keep not the said Articles, the King in their Default shall do the same Statute, made of the same Pains, to be put in Execution against them.

ITEM, It is accorded against the Falshood of Jurors, That every Man against whom they pass, may have Attaint, as well in Plea Real as Personal; and that the Attaint be granted to the Poor, which will affie, that they have nothing whereof to make Fine, saving their Countenance, without Fine, and to all other by easy Fine.

ITEM, That in every Plea, whereof the Inquest or Assise doth pass, if any of the Parties will sue against any of the Jurors, that they have taken of his Adversary, or of him, for to give their Verdict, he shall be heard, and shall have his Plaint by Bill presently before the Justices before whom they did swear, and that the Juror be put to answer without any Delay; and if they plead to the Country, the Inquest shall be taken presently: And if any Man, other than the Party, will sue for the King against the Juror, it shall be heard and determined as afore is said; and if the Juror be attainted at the Suit of other than the Party, and maketh Fine, the Party that sueth shall have Half the Fine; and that the Parties to the Plea shall recover their Damages by the Assessment of the Inquest; and that the Juror so attainted have Imprisonment for one Year, which Imprisonment the King granteth that it shall not be pardoned for any Fine. And if the Party will sue by Writ before other Justices, he shall have the Suit in the Form aforesaid.

ITEM, It is accorded in this present Parliament, That the Statute of Labourers of old Times made, shall stand in all Points, except the pecuniar Pain, which from henceforth is accorded, that the Labourers shall not be punished by Fine and Ransom; and it is assented, That the said Statute shall be enforced in Punishment of Labourers, in the Form following, that is to say; that the Lords of Towns may take and imprison them by fifteen Days, if they will not justify themselves; and then to send them to the next Gaol, there to abide till they will justify them, by the Form of the Statute: And that the Sheriff, Jailer, nor other Minister shall not let them to Mainprise nor Bail, and if he do, he shall pay to the King, Ten Pound, and to the Party an Hundred Shillings: nor that the Sheriff, Jailer, nor other Minister shall take no Fee nor Portage of Prison, nor at his entering, nor at his going out, upon the same Pain. And that as well Carpenters and Masons be comprised in this Ordinance, as all other Labourers, Servants, and Artificers; and that the Carpenters and

soient acordantz a lestandard nre Seign' le Roi; et contiegne le quarter oyt bussels p lestandard, & nient plus; & soit chescune mesure de ble rase saunz comble, sauvez les rentes & fermes des Seign's queles soient mesures p tiele mesure come eles soleient avant ces heures; et facent les p'veours le Roi, ma Dame la Roine & touz aut's leur p'veances p mesmes les mesures rases & en mesme la manere: & a totes les foitz q mestier sera le Roi assignera certains Justices en chescune Countee, denquere & doier & terminer s' les pointz susditz, & de faire s' ce due punissement, selonc chescun respas, sibien a la suite de partie come a la suite le Roi; issint totesfoitz q tote manere des franchises soient sauvez as Seign's en toutz pointz: les queles choses le Roi voet q soient criez en chescune Countee, deinz franchise & dehors entre cy & la Pasch p'schein avenir, au fin queles soient gardez & tenuz en toutz pointz; & q les dites gardeins de la pees enquergerent & punissent touz ceux qils trovont q' ont fait contre le dit estatut, ap's la dite p'clamacion faite. Et soit aussint meisme la p'clamacion faite en Citees, Burghs, & villes enfranchez, q les ditz articles ysoit tenuz et gardez en toutz pointz, s' les peines contenues en lestatut fait lan du regne nre f' le Roi vint et oyisme, touchant la Citee de Londres, & aut's Citees & Burghs du Roialme; & sils ne gardent les ditz articles, le Roi en leur defaute fera mettre meisme lestatut fait de meismes les peines en execucion contre eux.

Item acorde est contre la fauxine des Jurours q chescun home contre q ilz passent puisse avoir latteint, sibien en plee Reale come psonelle; & q latteint soit g'nte as povres q voillent affier qils nont riens de tant faire fin sauve leur contenance saunz fin, & as touz aut's p eise fin.

Item q en chescun plee dount lenqueste ou lassise passe si aucun des parties voudra suivre vs aucuns des Jurors q'il ad pris de son adverser ou de lui, p' dire son verdit, soit oy; & cit sa plainte maintenant p bille devant les Justices devant queux ils jurerunt, & q le jurour soit mis a respoudre saunz nul delai; & sils p'cedent au pais, q enqueste soit pris maintenant: et si nul home autre q la partie vodra suyre p' le Roi vs le jurour, soit oy & termine come dissus est dit; et si le juror soit atteint a suite dautre q la partie & face fin, q la partie q seust eit la moite du fin; et q les parties au plee recoivent leur damages p taxacion de lenquest, & q le juror issint atteint eit la prisonne dun an quel emprisonnement le Roi g'nte q ne soit pdone p' nul fin. Et si la partie vodra suivre p brief devant aut's Justices eit sa suyte, en la forme avantdite.

Acorde est en ceste p'sent plement q lestatut des laborers auncinement fait estoise en toutz pointz; forspris la penance pecuniere quel desore est acorde q les laborers ne soient pas punitz p fins & ranceons; & est assentuz q le dit estatut soit efforce en punissement des laborers en forme q sensuyt; q les Seign's des villes les puissent p'ndre & emprisonner p quinze jours, sils ne se voillent justicer, & adonques les maunder au p'scheine gaole illoques a demorer tant q ils se voillent justicer p forme de lestatut; Et q le viscont Gaoler nautre ministre ne lui lesse a nulle mainprise nen baillie et sil face q'il paie au Roi x. li. & a la partie C. s. ne q le viscont Gaoler nautre ministre ne p'gne nul fee ne portage du prison ne a son entree ne a son issir s' meisme la peine. Et qen ceste ordinance soient comprise: sibien Carpenters & Maceons, come touz aut's laborers svantz & artificers; & q



les Carpenters & Maceons pignent desore salarie p la jo'neie, et nemie p s'aigne nen autre manere; et q les chiefs mestres des Carpenters & Maceons pignent le jo' iij d. & les aut's iij. ou ij. d. solonc ce qils vallent: et q totes alliances & covignes des Maceons & Carpenters, & congregacions Chapitres ordinances, & vementz entre eux faites ou affaires, soient desore anientiz & anullez de tout: Issint q chescun Maceon & Carpenter de quel condicion qil soit, soit arte, p son Mestre a qi il sert, de faire chescun o'aigne q a lui appent affaire, ov de franche pere ou de grosse pere, et aussint chescun Carpent' en son degre; mes bien lise a chescun Seign' & autre de bargainier & covenanter de leur o'aignes en grosse ou tiels labo- rers & artificers q'nt leur pierra issint qils p'font tielz o'aignes bien & loialment, selonc les bargaine & covenant ove eux ent faitz.

Item des laborers & artificers qi salloignent hors de lo' s'vices en autre ville ou en autre Countee, q la ptie eit sa suite devant Justices, & q le visconte lui pigne au p'm jour come est contenu en lestatut, sil soit trouve, & face de lui execucion come dessus est dit; et sil reto'n'e qil nest mie trouve eit lexigende au p'm jour, & ce suy tanq, il soit utlaie; & ap's la utla- garie soit brief de mesmes les Justices mande a qe- conq, visconte Dengle're q la ptie vodra suir de lui p'ndre, & lui mander au visconte du Countee ou il est utlaie; et q'nt il s'ra illoeqes mesne, eit illoeqes la prison tanq, il se voet justicer, & eit fait gree a la ptie; Et nientmeins p' sa fauxine soit ars en le frount dune fer fait & fo'ime au manere de la tre F, en signe de Fauxine si la ptie greve le vodra suyer; mes soit celle penance de laron mis en respit tanq, al Seint Mi- chel p'schein avenir, & adonques ne soit mie execute sil ne soit p avis des Justices, & demoege le fer en la garde du viscont. Et q viscont & chescun B'ailiff de franchise soit entendant au pleintif de mettre ceste ordinance en execucion s' la peine avantdit: et q nul laborer nartificer ne pigne nulle manere de lower le jo' de festes.

Item q si nul laborer s'vant ou artificer salloigne a ascun Citee ou Burgh, & la ptie pleintif veigne au Meire & Baillifs & demande la livree de son s'vant, qils lui facent la livree sanz delay; & sils le refusent de faire, eit le pleintif sa suite devers les Maire & Bai- liffs devant les Justices de laborers; et si de ce soient atteintz paient au Roi x. li. & a la ptie C. s.

Item, come la cõe se eit pleint des Eschetours, queux p colour de leur office ont seisis plusours tres & tenementz come forfaites au Roi p' treson s'mys en psones mortes, q unqs ne furent atteintes en leur vies; le Roi en ad bon regard: Mes porce qil & ses pgenitours ont este seisie des forfait'es de guerre de tout temps, le Roi ne se voet ouster de tiel droit, dont il trova sa Corone seisie, & cel droit voet conti- nuer de tieux forfait'es escheues en son temps & en temps son piere, en la manere come ad este usee; nient- mains de sa g'ce speciale il voet & g'unte q de tieux forfait'es escheues en temps son ael & touz ses pgenito's pdevant a pluistost qenquest ent s'ra reto'ne en Chancellerie p Eschetour ou autre qi poair ad denquer, q le tenant ne soit pas ouste de sa posses- sion, mes soit garny p Scire fa'e destre au t'cin jour de respoudre a cel Scire fa'e sil vodra: Et si nulle tiele forfait'e soit ore, ou s'ra seise de cel temps, q la main le Roi ent soit ouste: Issint totes voies qen touz autres cas de forfait'e de treson des psones mortz

Masons take from henceforth Wages by the Day, and not by the Week, nor in other Manner; and that the chief Masters of Carpenters and Masons take Four- pence by the Day, and the other Three-pence or Two- pence according as they be worth: And that all Alliances and Covines of Masons and Carpenters, and Congregacions, Chapters, Ordinances and Oaths betwixt them made, or to be made, shall be from henceforth void and wholly annulled: so that every Mason and Carpenter of what Condition that he be, shall be compelled by his Master to whom he serveth, to do every Work that to him pertaineth to do, or of free Stone, or of rough Stone; and also every Carpenter in his Degree; but it shall be lawful to every Lord or other, to make Bargain or Covenant of their Work in Gross, with such Labourers and Artificers when please them, so that they perform such Works well and lawfully according to the Bargain or Covenant with them thereof made.

Wages of Carpenters and Masons. Their Conspiracies annulled.

ITEM, of Labourers and Artificers that absent them out of their Services in another Town, or another County, the Party shall have the Suit before the Justices, and that the Sheriff take him at the first Day, as is con- tained in the Statute, if he be found, and do of him Execucion as afore is said; and if he return, that he is not found, he shall have an Exigend at the first Day, and the same pursue till he be outlawed, and after the Out- lawry a Writ of the same Justices shall be sent to every Sheriff of England, that the Party will sue, to take him, and to send him to the Sheriff of the County where he is outlawed; and when he shall be there brought, he shall have there Imprisonment, till he will justify himself, and have made gree to the Party; and nevertheless for the Falsity he shall be burnt in the Forehead, with an Iron made and formed to this Letter F. in Token of Falsity, if the Party grieved the same will sue; but this Pain of Burning shall be put in respite till Saint Michael next ensuing, and then not executed, unless it be by the Advice of the Justices; and the Iron shall abide in the Custody of the Sheriff. And that the Sheriff [and some Bailiff of the ' ] Franchise be attending to the Plaintiff, to put this Ordinance in Execution, upon the Pain aforesaid: And that no Labourer, [Servant, ' ] nor Artificer shall take no Man- ner of Wages the festival Days.

X. Punishment of fugitive Labourers;

Process of Outlawry;

Imprison- ment; Burning in the Forehead.

No Wages on Festivals.

ITEM, If any Labourer, Servant, or Artificer, absent himself in any City or Borough, and the Party Plain- tiff come to the Mayor and Bailiffs, and require Delivery of his Servant, they shall make him Delivery without Delay; and if they refuse to do the same, the Party shall have his Suit against the Mayor and Bailiffs before the Justices of Labourers; and if they be thereof attainted, they shall pay to the King Ten Pounds, and to the Party One hundred Shillings.

XI. Mayors and Bailiffs shall deliver up fugitive Labourers.

ITEM, Whereas the Commons have complained them of Escheators, which by Colour of their Office have seised divers Lands and Tenements as forfeit to the King for Treason surmised in dead Persons, which were never attainted of Treason in their Lives; the King thereof hath good Regard; but because he and his Pro- genitors have been seised of the Forfeitures of Wars of all Times, the King will not exclude himself of such Right, whereof he found his Crown seised, and will continue his Right of such Forfeitures fallen in his Time, and in the Time of his Father, in the Manner as hath been used: Nevertheless, of his special Grace he will and granteth, That of such Forfeitures fallen in the Time of his Grandfather, and all his Progenitors before, as soon as an Inquest shall be thereof returned in the Chancery by the Escheators, or other which have Power to inquire, that the Tenant shall not be put out of his Possession, but shall be warned by Scire facias, to be at a certain Day to answer to [his ' ] Scire facias, if he will: And if any such Forfeiture be now, or shall be seised of the same Time, that the King's Hand shall be out thereof: So always, that in all other Cases of Forfeiture for Treason of dead Persons

XII. Seizure of Lands on Surmise of Treason in dead Persons.

Forfeitures of Wars reserved to the King.

Process thereon.

\* every Bailiff of \* Not in Original. \* that MS. Tr. 2.



No Forfeiture for Treason of Persons not attainted in their Lives. Forfeitures of Felons reserved.

XIII. Escheators shall take Inquests by good People; by Indenture; and not privily.

XIV. Offices found before Escheators may be traversed in Chancery, and tried in the King's Bench.

XV. Alienations made by the Tenants of K. Henry III. confirmed.

XVI. Nonclaim of Fines shall be no Bar.

XVII. Freedom of Trade in Ireland.

XVIII. English Land-owners in Ireland may import and export from and to England.

XIX. No Custom for Canvas to pack Wool in.

XX. Exportation of Corn forbidden.

XXI. Confirmation of a Grant by the King and Council to Denizens to transport Wool beyond Sea.

not attainted or judged in their Lives, their Heirs, nor their Land Tenants shall not be impeached nor challenged; nor of any other Forfeiture, except the Forfeitures in old Time judged after the Death of the Persons, by Presentment in Eyre, or in the King's Bench, as of Felons of themselves and other.

ITEM, It is accorded, That every Escheator shall take his Inquests of his Office of good People and lawful, which be sufficiently inherited and of good Fame, and of the same County where the Inquiry shall be; and that the Inquests so taken be indented betwixt the Escheators and the Jurors; and if it be otherwise done, that such Inquests be holden for void: And the King will, that such Inquests be taken in good Towns openly, and not privily.

ITEM, It is accorded, That where Lands or Tenements be seized into the King's Hand by Office of the Escheator, containing that the King's Tenant made thereof Alienation without the King's Licence, or that the King's Tenant by Knights Service died seized of the Lands and Tenements aforesaid in his Demesne as of Fee, and his Heir within Age; and after the Cause certified into the Chancery, and he whose Lands be seized come into the Chancery, and will traverse the Office, which was first taken by the King's Commandment, [and] that the said Lands be not seizable; he shall be thereto received, and the Process shall be sent into the King's Bench [to try according to the Law,'] and further to do Right.

ITEM, It is accorded, That the Alienations of Lands and Tenements made by People which did hold of King Henry, great Grandfather to the King that now is, or of other Kings before him, to hold of themselves, that the Alienations shall stand in their Force; saving always to our Lord the King his Prerogative of the Time of his Grandfather, his Father, and of his own Time.

ITEM, It is accorded, That the Plea of Nonclaim of Fines, which from henceforth be to be levied, shall not be taken nor holden for any Bar in Time to come.

ITEM, It is accorded, That all the Merchants, as well Aliens as Denizens, may come into Ireland with their Merchandises, and from thence freely to return with their Merchandises and Victuals without Fine or Ransom to be taken of them; saving always to the King his antient Customs and other Duties.

ITEM, That the People of England, as well Religious as other, which have their Heritage and Possessions in Ireland, may bring their Corn, Beasts, and Victuals to the said Land of Ireland, and from thence to recarry their Goods and Merchandises into England, freely without Impeachment, paying their Customs and [their Devoirs'] to the King.

ITEM, Because that Merchants, Aliens, and Denizens, by an evil Custom risen of late, have been constrained to pay Custom and Subsidy for their Canvas, with which their Wools be packed; It is accorded, That such Canvas with their Corners shall from henceforth be allowed to them without paying Custom or Subsidy for the same.

ITEM, It is accorded, That the Passage of Corn shall be defended in all the Parts of England, so that none have Licence nor Warrant to pass with such Corn in anywise, unless it be to Calais or Gascoign, or to other special Places, which it behoveth that the King [do to be warned'] of the Corn of England, and that at his own Ordinance (').

ITEM, Whereas in the Parliament late made upon the Ordinance of the Staple in England, it was ordained that Merchants Aliens should [bring'] Wools and other Merchandises of the Staple over the Sea, and that no Merchant Denizen should make Passage of them; and after by the Assent of the King and of his Council for certain Enchasons, Passage was granted of the said

' Omit this word.  
' other Duties  
' and licence

' to be tried MS. Tr. 2.  
' cause to be furnished  
' carry

nient atteintz ne juggez en lo' vies, ne soient pas lo' heires ne lour Pre tenantz empeschez ne chalengez; ne de nulle autre forfait'e forspries les forfait'es auncienement ajuggez ap's la mort des psones p' presentementz en Eyre ou en Bank le Roi, come des felons de soi & autres.

Item accorde est, q' chescun Eschetour p'igne ses enquestes de son office des bones gentz & loialx, q' soient enheritez soufficalment & de bone fame, & de mesme le Countee ou lenquerre se ferra; & q' les enquestes issint prises soient edenteez entre les Escheto's & les jurro's, et si autrement soit fait q' tieles enquestes soient tenuz p' nulles: & le Roi voet q' tieles enquestes soient prises en bones villes, o'ntement & nemie en prive.

Item accorde est, q' ou Pres ou teiltz soient seizis en la main le Roi p' office descheto', contenant q' le tenant le Roi en fist alienacion sanz conge le Roi, ou q' le tenant le Roi p' vice de Chivaler morust seisi des Pres & teiltz avantditz en son demesne come de fee, & son heir deinz age, & puis la cause t'ifie en la Chauncellerie & cellui q' Pres sont seizitz, viegne en Chauncellerie, & voet t'nvser lofficce q' fut primes pris p' mandement du Roi, q' les diies Pres ne soient mie seisables, soit [il a ceo receu, & soit le pces mande en Banc le Roi a trier, & outi faire droit.']

Item accorde est, q' les alienacions des Pres & teiltz faites p' gentz q' tenoient du Roi Henr', Besael au Roi qore est, ou des autres Rois devant lui, a tenir de eux mesmes, q' les alienacions estoient en lour force; sauvant totesfoitz a n're Seign' le Roi sa p'rogative, du temps son ael, son pierre, & de son temps demesne.

Item est acorde, q' plee de noun claym des fins, q' sont [desore'] a lever, ne soit pris ne tenuz p' baare, en temps avenir.

Item accorde est, q' touz marchantz sibien aliens come denzeins puissent venir en Irlande ove lour marchandises & dilloeqes retourner f'nchement, ove lo' marchandises & vitailles, saunz fin ou raunceon p'ndre de eux; sauve totesfoitz au Roi ses auncienes costumes & au's devoirs.

Item, q' gentz Dengle're sibien Religieuses come autres, qont lour heritages & possessions en Irlande, puissent mener lo' bledz bestes & vitailles a la dite Pre Dirland, & dilloeqes remener lour biens & marchandises en Engle're, franchement & saunz empeschement; paient lour costumes & au's devoirs au Roi.

Item porce q' les Marchantz aliens & denzeins p' une malveise custume leve de novel ont este constreintz de paier custume & subside p' lo' canevace deinz quel lo' leines sont packes; Acorde est q' tieu canevace ensemblement ove lo' corners lo' soient desore allowes, sanz ent paier custume ou subside.

Item accorde est q' passage des bledz soit defendu en touz les Portz Dengle're, siq' nulle eit congie ne garaunt de passer tielx bledz en nulle man'e, sil ne soit a Calays & Gascoign, ou as au's lieux especiales, queux il convient q' le Roi face garnir des bledz Dengle're, & ce a sa p'pre ordonnance & congie.

Item come en une plement nadgairs fait, sur l'ordnance de lestaple en Engle're, estoit ordne q' Marchantz aliens duissent mesner leines & les au's marchandises de lestaple outre meer, & q' nulle Marchant denzein les duisse passer; Et puis, p' assent du Roi & de son conseil p' aucunes t'cines enchasons fuist

' Written on an Erasure.

' Interlined on the Roll.

M. 9.



g'nte passage des dites marchandises as denzeins, & s' ce p'clamacion fait, & maunde a les custumeres es divers portz de les soeffrir passer, tanq' a un c'tein temps, paiant le custume & subsidie come aliens; Et porce q' les dites marchandes denzeins se doutont destre empeschez en temps avenir, p' leur marchandises q'ils ont issint passez p' l'ue de tiel g'unt & p'clamacion, porce q'ils estoient faites hors du plement; le Roi voillant p'voier p' leur seurte en celle ptie ad ratifie & conferme en ceste p'sent plement les passages q'ils ont fait des leines & lo' au's marchandises as pties outre meer, puis les g'unt & p'clamacion avantdites; & les g'unte autiel passage desore saunz chalange ou empeschement de nully; issint totesfoitz q'ils paient les dites custume & subsidie tanq' al Seint Michel p'schein avenir, & de mesmes la feste tanq' al Seint Michel p'schein suant, come ils ont paieez avant ces heures puis q' le dit subsidie estoit g'nte.

Item ordire est en cest plement q' queconq' p'sone q' troeve Faucon, P'cel lanere ou lanet austoure ou autre Faucon, q' soit pdu de lo' Seign', q' maintenant il l'apporte au viscount du Countee, & q' le visconte face p'clamacion en toutes les bones villes du Countee qil ad un tiel Faucon en garde; et si le Seign' qi le p'di, ou aucun des soens, viegne p' lui chalanger & proeve resonablement q' ce est a son Seign', paie p' ses coustages & eit le Faucon; & si nully viegne deins les quatre Mois p' lui chalanger, qadonqes le visconte eit le Faucon, fesant gree a cellui qi le prist, sil soit simples h'ome; et sil soit gentils h'ome destat davoir Faucon, q' le visconte rebaille al lui le dit Faucon, pnant de lui resonables coustages p' le temps qil lavoit en garde; & si null eit pris tiel Faucon, & le concele du Seign' a qui il estoit, ou a ses Fauconers, ou qi q' lemporte du Seign', & de ce soit atteint, eit la prison de deux ans, & rend au Seign' le pris du Faucon issint concele ou emporte, sil eit de quoi; et si noun, eit plus longe demoeure en prison.

Merchandises [of ''] Denizens, and thereupon Proclamation made and sent to the Customers [to ''] divers Ports, to suffer them to pass till a certain Time, paying the Customs and Subsidies as Aliens; And because that the said Merchants Denizens doubteth them to be impeached in Time to come for their Merchandises, which they have so passed by virtue of such Grant and Proclamation, forasmuch as they were made out of the Parliament; the King, willing to provide for their Surety in this Behalf, hath ratified and confirmed in this present Parliament the Passage that they have made of Wools, and of their other Merchandises to the Parts beyond the Sea, after the Grant and Proclamation aforesaid; and granteth to them such Passage from henceforth without Challenge or Impeachment of any, so always that they pay the said Custom and Subsidy till St. Michael next coming, (') as they have payed before this Time after that the said Subsidy was granted.

ITEM, It is accorded in this present Parliament, That every Person which findeth a Faulcon, Terceler, Laner, or Laneret, (') or other [Hawk'] that is lost of their Lord, that presently he bring the same to the Sheriff of the County, and that the Sheriff make Proclamation in all the good Towns in the County, that he hath such a Hawk in his Custody; and if the Lord which lost the same, or any of his People come to challenge it, and proveth reasonably that the same is his Lord's, let him pay for the Costs, and have the Hawk; and if none come within Four Months to challenge it, that then the Sheriff have the Hawk, making gree to him that did take him, if he be a simple Man; and if he be a Gentleman, and of Estate to have the Hawk, that then the Sheriff redeliver to him the Hawk, taking of him reasonable Costs for the Time he had him in his Custody: And if any Man take such Hawk, and the same conceal from the Lord whose it was, or from his Faulconers, or whosoever taketh him from the Lord, and thereof be attained, shall have Imprisonment of Two Years, and yield to the Lord the Price of the Hawk so concealed and carried away, if he have whereof, and if not, he shall the longer abide in Prison.

<sup>1</sup> to MS. Tr. 2. <sup>2</sup> in MS. Tr. 2.  
<sup>3</sup> and from the same feste til to Scynt Michel then next ensuyng, MS. Tr. 2. <sup>4</sup> Gushaw.  
<sup>5</sup> The Old Translations and MS. Tr. 2. have the Word Fawcon instead of Hawk throughout the Chapter.

XXII.  
Stray  
Hawks, &c.  
shall be  
carried to the  
Sheriff.  
Proclamation.  
The Owner  
shall have the  
Hawk;  
or on his  
Default, the  
Sheriff;  
or the Finder  
if he be a  
Gentleman.

Punishment  
for taking a  
Hawk, and  
concealing it,  
Imprison-  
ment.

Anno 35° EDWARDI, III. A.D. 1360-1.

### Ordinacio facta de Allece.

#### AN ORDINANCE OF HERRING.\*

*Ex magno Rot. Stat. in Turr. Lond. m. 12, d.*

EDWARD p la g'ce de Dieu Roi Dengleterre, Seign' Dirlande & Daquitaigne, a touz ceux as queux cestes tres vendront, saluz. Coment q' nadgairs a p'urement dascuns fesantz entendre a nous & n're conseil q' p' cause q' les hostes de n're ville de g'nd Jernemuth, qi heibgent les Pescheours venantz illoeqs od leur harang en temps de feire, ne voleient soeffrir les ditz Pescheours vendre lo' harang ne meller de la vente dicelle einz le vendent a leur volentee demesne, si chier come ils volent, & donerent as Pescheours ce q' lo' plust si q' les Pescheours se retirerent de venir illoeqes, & le harang feust mys a plus

(')THOUGH that late at the Procurement of some doing Us and our Council to understand, that because that the Hosts of our Town of Great Yarmouth, which lodge the Fishers coming there with their Herring, in the Time of the Fair, will not suffer the said Fishers to sell their Herrings, nor to meddle with the Sale of the same, but sell them at their own Will as dear as they will, and give the Fishers that (') pleaseth them, so that the Fishers do withdraw themselves to come there, and the Herring was set at a greater Dearth than it was

<sup>1</sup> Edward by the Graces of God, King of England, Lord of Ireland, and Aquitain, to all to whom these Letters shall come, Greeting.

<sup>2</sup> that MS. Tr. 2.

See Statute  
31 Edw. III.  
chapter 1, 2.

\* These Titles are from the Printed Copies and Translations: No Title appears on the Statute Roll.—This Ordinance is entered on the Back of Membrane next following that on which is entered the Duplicate of the ' Ordinacio de Pisce salito de Blakeney,' 31 Edw. III. Statute 3; ante page 355.

✕ MASTERPIECES <sup>c</sup>  
OF ELOQUENCE

FAMOUS ORATIONS OF GREAT WORLD  
LEADERS FROM EARLY GREECE  
TO THE PRESENT TIME

EDITED BY

MAYO W. HAZELTINE, A.M.

HON. JOHN D. LONG

HON. HENRY CABOT LODGE

HON. ALBERT J. BEVERIDGE

HON. WILLIAM E. MASON

HON. JOHN C. SPOONER

ARCHBISHOP IRELAND

IN TWENTY-FIVE VOLUMES

VOLUME VI



NEW YORK  
P. F. COLLIER & SON  
MCMV

ROOT  
G  
HAC



JOHN ADAMS

2569

## THE BOSTON MASSACRE

FIRST DAY'S SPEECH IN DEFENCE OF THE BRITISH SOLDIERS ACCUSED OF  
MURDERING ATTUCKS, GRAY AND OTHERS, IN THE BOSTON RIOT OF 1770

*May it Please Your Honor, and You, Gentlemen of the Jury:*

I AM for the prisoners at the bar, and shall apologize for it only in the words of the Marquis Beccaria: "If I can but be the instrument of preserving one life, his blessings and tears of transport shall be a sufficient consolation for me for the contempt of all mankind."

As the prisoners stand before you for their lives, it may be proper to recollect with what temper the law requires we should proceed to this trial. The form of proceeding at their arraignment has discovered that the spirit of the law upon such occasions is conformable to humanity, to common-sense and feeling; that it is all benignity and candor. And the trial commences with the prayer of the court, expressed by the clerk, to the Supreme Judge of judges, empires, and worlds, "God send you a good deliverance."

We find in the rules laid down by the greatest English judges, who have been the brightest of mankind: We are to look upon it as more beneficial that many guilty persons should escape unpunished than one innocent should suffer. The reason is, because it is of more importance to the community that innocence should be protected than it is that guilt should be punished; for guilt and crimes are so frequent in the world that all of them cannot be punished; and many times they happen in such a manner that it is not of much consequence to the public whether they are punished or not. But when innocence itself is brought to the bar and

JOHN ADAMS

2575

purse, I have a right to kill him without asking any questions. If a person commit a bare assault on me, this will not justify killing; but if he assault me in such a manner as to discover an intention to kill me, I have a right to destroy him, that I may put it out of his power to kill me. In the case you will have to consider, I do not know there was any attempt to steal from these persons; however, there were some persons concerned who would, probably enough, have stolen, if there had been anything to steal, and many were there who had no such disposition. But this is not the point we aim at. The question is, Are you satisfied the people made the attack in order to kill the soldiers? If you are satisfied that the people, whoever they were, made that assault with a design to kill or maim the soldiers, this was such an assault as will justify the soldiers killing in their own defence. Further, it seems to me, we may make another question, whether you are satisfied that their real intention was to kill or maim, or not? If any reasonable man in the situation of one of these soldiers would have had reason to believe in the time of it, that the people came with an intention to kill him, whether you have this satisfaction now or not in your own minds, they were justifiable, at least excusable, in firing. You and I may be suspicious that the people who made this assault on the soldiers did it to put them to flight, on purpose that they might go exulting about the town afterward in triumph; but this will not do. You must place yourselves in the situation of Weems and Killroy—consider yourselves as knowing that the prejudice of the world about you thought you came to dragoon them into obedience, to statutes, instructions, mandates, and edicts, which they thoroughly detested—that many of these



2576

## THE BOSTON MASSACRE

people were thoughtless and inconsiderate, old and young, sailors and landsmen, negroes and mulattoes—that they, the soldiers, had no friends about them, the rest were in opposition to them; with all the bells ringing to call the town together to assist the people in King Street, for they knew by that time that there was no fire; the people shouting, huzzaing, and making the mob whistle, as they call it, which, when a boy makes it in the street is no formidable thing, but when made by a multitude is a most hideous shriek, almost as terrible as an Indian yell; the people crying, “Kill them, kill them. Knock them over,” heaving snowballs, oyster shells, clubs, white-birch sticks three inches and a half in diameter; consider yourselves in this situation, and then judge whether a reasonable man in the soldiers’ situation would not have concluded they were going to kill him. I believe if I were to reverse the scene, I should bring it home to our own bosoms. Suppose Colonel Marshall when he came out of his own door and saw these grenadiers coming down with swords, etc., had thought it proper to have appointed a military watch; suppose he had assembled Gray and Attucks that were killed, or any other person in town, and appointed them in that situation as a military watch, and there had come from Murray’s barracks thirty or forty soldiers with no other arms than snowballs, cakes of ice, oyster shells, cinders, and clubs, and attacked this military watch in this manner, what do you suppose would have been the feelings and reasonings of any of our householders? I confess, I believe they would not have borne one-half of what the witnesses have sworn the soldiers bore, till they had shot down as many as were necessary to intimidate and disperse the rest; because the law does not oblige us to

bear insults to the danger of our lives, to stand still with such a number of people around us, throwing such things at us, and threatening our lives, until we are disabled to defend ourselves.

Foster, 274: "Where a known felony is attempted upon the person, be it to rob or murder, here the party assaulted may repel force with force, and even his own servant, then attendant on him, or any other person present, may interpose for preventing mischief, and if death ensue, the party so interposing will be justified. In this case nature and social duty co-operate."

Hawkins, P. C., Chapter 28, Section 25, toward the end: "Yet it seems that a private person, *a fortiori*, an officer of justice, who happens unavoidably to kill another in endeavoring to defend himself from or suppress dangerous rioters, may justify the fact inasmuch as he only does his duty in aid of the public justice."

Section 24: "And I can see no reason why a person, who, without provocation, is assaulted by another, in any place whatsoever, in such a manner as plainly shows an intent to murder him, as by discharging a pistol, or pushing at him with a drawn sword, etc., may not justify killing such an assailant, as much as if he had attempted to rob him. For is not he who attempts to murder me more injurious than he who barely attempts to rob me? And can it be more justifiable to fight for my goods than for my life?"

And it is not only highly agreeable to reason that a man in such circumstances may lawfully kill another, but it seems also to be confirmed by the general tenor of our books, which, speaking of homicide *se defendo*, suppose it done in some quarrel or affray.

Hawkins, p. 71, § 14: "And so, perhaps, the killing of dangerous rioters may be justified by any private persons, who cannot otherwise suppress them or defend themselves



2578

## THE BOSTON MASSACRE

from them, inasmuch as every private person seems to be authorized by the law to arm himself for the purposes aforesaid.”

Here every private person is authorized to arm himself; and on the strength of this authority I do not deny the inhabitants had a right to arm themselves at that time for their defence, not for offence. That distinction is material, and must be attended to.

Hawkins, p. 75, § 14: “And not only he who on an assault retreats to the wall, or some such strait, beyond which he can go no further before he kills the other, is judged by the law to act upon unavoidable necessity; but also he who being assaulted in such a manner and in such a place that he cannot go back without manifestly endangering his life, kills the other without retreating at all.”

Section 16: “And an officer who kills one that insults him in the execution of his office, and where a private person that kills one who feloniously assaults him in the highway, may justify the fact without ever giving back at all.”

There is no occasion for the magistrate to read the Riot Act. In the case before you, I suppose you will be satisfied when you come to examine the witnesses and compare it with the rules of the common law, abstracted from all mutiny acts and articles of war, that these soldiers were in such a situation that they could not help themselves. People were coming from Royal Exchange Lane, and other parts of the town, with clubs and cordwood sticks; the soldiers were planted by the wall of the Custom House; they could not retreat; they were surrounded on all sides, for there were people behind them as well as before them; there were a number of people in the Royal Exchange Lane; the soldiers were so near to the Custom House that

JOHN ADAMS

2579

they could not retreat, unless they had gone into the brick wall of it. I shall show you presently that all the party concerned in this unlawful design were guilty of what any one of them did; if anybody threw a snowball it was the act of the whole party; if any struck with a club or threw a club, and the club had killed anybody, the whole party would have been guilty of murder in the law. Lord Chief-Justice Holt, in Mawgrige's case (Keyling, 128), says:

"Now, it has been held, that if A of his malice prepense assaults B to kill him, and B draws his sword and attacks A and pursues him, then A, for his safety, gives back and retreats to a wall, and B still pursuing him with his drawn sword, A in his defence kills B; this is murder in A. For A having malice against B, and in pursuance thereof endeavoring to kill him, is answerable for all the consequences of which he was the original cause. It is not reasonable for any man that is dangerously assaulted, and when he perceives his life in danger from his adversary, but to have liberty for the security of his own life, to pursue him that maliciously assaulted him; for he that has manifested that he has malice against another is not fit to be trusted with a dangerous weapon in his hand. And so resolved by all the judges when they met at Seargeant's Inn, in preparation for my Lord Morley's trial."

In the case here we will take Montgomery, if you please, when he was attacked by the stout man with a stick, who aimed it at his head, with a number of people round him crying out, "Kill them, kill them." Had he not a right to kill the man? If all the party were guilty of the assault made by the stout man, and all of them had discovered malice in their hearts, had not Montgomery a right, according to Lord Chief-Justice Holt, to put it out of their power to wreak their malice upon him? I will not at present look



COMMENTARIES

ON THE

L A W S

O F

E N G L A N D.

BOOK THE FIRST.

BY

WILLIAM BLACKSTONE, Esq.

VINERIAN PROFESSOR OF LAW,

AND

SOLICITOR GENERAL TO HER MAJESTY.

THE THIRD EDITION.

O X F O R D,

PRINTED AT THE CLARENDON PRESS.

M. DCC. LXVIII.

wherein justice is directed to be done according to the law of the land; and what that law is, every subject knows; or may know if he pleases: for it depends not upon the arbitrary will of any judge; but is permanent, fixed, and unchangeable, unless by authority of parliament. I shall however just mention a few *negative* statutes, whereby abuses, perversions, or delays of justice, especially by the prerogative, are restrained. It is ordained by *magna carta*<sup>x</sup>, that no freeman shall be outlawed, that is, put out of the protection and benefit of the laws, but according to the law of the land. By 2 Edw. III. c. 8. and 11 Ric. II. c. 10. it is enacted, that no commands or letters shall be sent under the great seal, or the little seal, the signet, or privy seal, in disturbance of the law; or to disturb or delay common right: and, though such commandments should come, the judges shall not cease to do right; which is made a part of their oath by 18 Edw. III. st. 4. And by 1 W. & M. st. 2. c. 2. it is declared, that the pretended power of suspending, or dispensing with laws, or the execution of laws, by regal authority without consent of parliament, is illegal.

NOT only the substantial part, or judicial decisions, of the law, but also the formal part, or method of proceeding, cannot be altered but by parliament: for, if once those outworks were demolished, there would be an inlet to all manner of innovation in the body of the law itself. The king, it is true, may erect new courts of justice; but then they must proceed according to the old established forms of the common law. For which reason it is declared in the statute 16 Car. I. c. 10. upon the dissolution of the court of starchamber, that neither his majesty, nor his privy council, have any jurisdiction, power, or authority by English bill, petition, articles, libel (which were the course of proceeding in the starchamber, borrowed from the civil law) or by any other arbitrary way whatsoever, to examine, or draw into question, determine or dispose of the lands or goods of any subjects of this kingdom; but that the same ought to be tried and determined in the ordinary courts of justice, and by *course of law*.

<sup>x</sup> c. 29.



4. IF there should happen any uncommon injury, or infringement of the rights before-mentioned, which the ordinary course of law is too defective to reach, there still remains a fourth subordinate right appertaining to every individual, namely, the right of petitioning the king, or either house of parliament, for the redress of grievances. In Russia we are told<sup>y</sup> that the czar Peter established a law, that no subject might petition the throne, till he had first petitioned two different ministers of state. In case he obtained justice from neither, he might then present a third petition to the prince; but upon pain of death, if found to be in the wrong. The consequence of which was, that no one dared to offer such third petition; and grievances seldom falling under the notice of the sovereign, he had little opportunity to redress them. The restrictions, for some there are, which are laid upon petitioning in England, are of a nature extremely different; and while they promote the spirit of peace, they are no check upon that of liberty. Care only must be taken, lest, under the pretence of petitioning, the subject be guilty of any riot or tumult; as happened in the opening of the memorable parliament in 1640: and, to prevent this, it is provided by the statute 13Car.II. ft. 1. c. 5. that no petition to the king, or either house of parliament, for any alterations in church or state, shall be signed by above twenty persons, unless the matter thereof be approved by three justices of the peace or the major part of the grand jury, in the country; and in London by the lord mayor, aldermen, and common council: nor shall any petition be presented by more than two persons at a time. But, under these regulations, it is declared by the statute 1W. & M. ft. 2. c. 2. that the subject hath a right to petition; and that all commitments and prosecutions for such petitioning are illegal.

5. THE fifth and last auxiliary right of the subject, that I shall at present mention, is that of having arms for their defence, suitable to their condition and degree, and such as are allowed by

<sup>y</sup> Montefq. Sp. L. 12. 26.

law.



law. Which is also declared by the same statute 1 W. & M. ft. 2. c. 2: and is indeed 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.

IN these several articles consist the rights, or, as they are frequently termed, the liberties of Englishmen: liberties more generally talked of, than thoroughly understood; and yet highly necessary to be perfectly known and considered by every man of rank or property, lest his ignorance of the points whereon they are founded should hurry him into faction and licentiousness on the one hand, or a pusillanimous indifference and criminal submission on the other. And we have seen that these rights consist, primarily, in the free enjoyment of personal security, of personal liberty, and of private property. So long as these remain inviolate, the subject is perfectly free; for every species of compulsive tyranny and oppression must act in opposition to one or other of these rights, having no other object upon which it can possibly be employed. To preserve these from violation, it is necessary that the constitution of parliaments be supported in it's full vigor; and limits, certainly known, be set to the royal prerogative. And, lastly, to vindicate these rights, when actually violated or attacked, the subjects of England are entitled, in the first place, to the regular administration and free course of justice in the courts of law; next to the right of petitioning the king and parliament for redress of grievances; and lastly to the right of having and using arms for self-preservation and defence. And all these rights and liberties it is our birthright to enjoy entire; unless where the laws of our country have laid them under necessary restraints. Restraints in themselves so gentle and moderate, as will appear upon farther enquiry, that no man of sense or probity would wish to see them slackened. For all of us have it in our choice to do every thing that a good man would desire to do; and are restrained from nothing, but what would be pernicious either to ourselves or our fellow citizens. So that this review of our situation



Ch. I.

*of* PERSONS.

145

tion may fully justify the observation of a learned French author, who indeed generally both thought and wrote in the spirit of genuine freedom<sup>z</sup>; and who hath not scrupled to profess, even in the very bosom of his native country, that the English is the only nation in the world, where political or civil liberty is the direct end of it's constitution. Recommending therefore to the student in our laws a farther and more accurate search into this extensive and important title, I shall close my remarks upon it with the expiring wish of the famous father Paul to his country, "ESTO PERPETUA!"

<sup>z</sup> Montesq. Sp. L. 11. 5.

# COMMENTARIES

ON THE

L A W S

OF

E N G L A N D.

BOOK THE FOURTH.

BY

WILLIAM BLACKSTONE, Esq.  
SOLICITOR GENERAL TO HER MAJESTY.

THE FOURTH EDITION.

O X F O R D,  
PRINTED AT THE CLARENDON PRESS.  
M. DCC. LXX.



which record alone shall be a sufficient conviction of the offenders. In the interpretation of which statute it hath been holden, that all persons, noblemen and others, except women, clergymen, persons decrepit, and infants under fifteen, are bound to attend the justices in suppressing a riot, upon pain of fine and imprisonment; and that any battery, wounding, or killing the rioters, that may happen in suppressing the riot, is justifiable<sup>j</sup>. So that our antient law, previous to the modern riot act, seems pretty well to have guarded against any violent breach of the public peace; especially as any riotous assembly on a public or general account, as to redress grievances or pull down all inclosures, and also resisting the king's forces if sent to keep the peace, may amount to overt acts of high treason, by levying war against the king.

7. NEARLY related to this head of riots is the offence of *tumultuous petitioning*; which was carried to an enormous height in the times preceding the grand rebellion. Wherefore by statute 13 Car. II. ft. 1. c. 5. it is enacted, that not more than twenty names shall be signed to any petition to the king or either house of parliament, for any alteration of matters established by law in church or state; unless the contents thereof be previously approved, in the country, by three justices, or the majority of the grand jury at the assises or quarter sessions; and, in London, by the lord mayor, aldermen, and common council<sup>k</sup>; and that no petition shall be delivered by a company of more than ten persons: on pain in either case of incurring a penalty not exceeding 100*l*, and three months imprisonment.

8. An eighth offence against the public peace is that of a *forcible entry or detainer*; which is committed by violently taking or keeping possession of lands and tenements, with menaces, force, and arms, and without the authority of law. This was for-

<sup>j</sup> 1 Hal. P. C. 495. 1 Hawk. P. C. 161. the restoration, usually taken the lead in

<sup>k</sup> This may be one reason (among others) petitions to parliament for the alteration of why the corporation of London has, since any established law.



merly allowable to every person disseised, or turned out of possession, unless his entry was taken away or barred by his own neglect, or other circumstances; which were explained more at large in a former volume<sup>1</sup>. But this being found very prejudicial to the public peace, it was thought necessary by several statutes to restrain all persons from the use of such violent methods, even of doing themselves justice; and much more if they have no justice in their claim<sup>m</sup>. So that the entry now allowed by law is a peaceable one; that forbidden is such as is carried on and maintained with force, with violence, and unusual weapons. By the statute 5 Ric. II. st. 1. c. 8. all forcible entries are punished with imprisonment and ransom at the king's will. And by the several statutes of 15 Ric. II. c. 2. 8 Hen. VI. c. 9. 31 Eliz. c. 11. and 21 Jac. I. c. 15. upon any forcible entry, or forcible detainer after peaceable entry, into any lands, or benefices of the church, one or more justices of the peace, taking sufficient power of the county, may go to the place, and there record the force upon his own view, as in case of riots; and upon such conviction may commit the offender to gaol, till he makes fine and ransom to the king. And moreover the justice or justices have power to summon a jury, to try the forcible entry or detainer complained of: and, if the same be found by that jury, then, besides the fine on the offender, the justices shall make restitution by the sheriff of the possession, without inquiring into the merits of the title; for the force is the only thing to be tried, punished, and remedied by them: and the same may be done by indictment at the general sessions. But this provision does not extend to such as endeavour to maintain possession by force, where they themselves, or their ancestors, have been in the peaceable enjoyment of the lands and tenements, for three years immediately preceding.

9. 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

<sup>1</sup> See Vol. III. pag. 174, &c.

<sup>m</sup> 1 Hawk. P. C. 141.

by



by the statute of Northampton, 2 Edw. III. c. 3. upon pain of forfeiture of the arms, and imprisonment during the king's pleasure: in like manner as, by the laws of Solon, every Athenian was finable who walked about the city in armour<sup>a</sup>.

10. SPREADING *false news*, to make discord between the king and nobility, or concerning any great man of the realm, is punished by common law<sup>o</sup> with fine and imprisonment; which is confirmed by statutes Westm. I. 3 Edw. I. c. 34. 2 Ric. II. st. 1. c. 5. and 12 Ric. II. c. 11.

11. FALSE and *pretended prophecies*, with intent to disturb the peace, are equally unlawful, and more penal; as they raise enthusiastic jealousies in the people, and terrify them with imaginary fears. They are therefore punished by our law, upon the same principle that spreading of public news of any kind, without communicating it first to the magistrate, was prohibited by the antient Gauls<sup>p</sup>. Such false and pretended prophecies were punished capitally by statute 1 Edw. VI. c. 12. which was repealed in the reign of queen Mary. And now by the statute 5 Eliz. c. 15. the penalty for the first offence is a fine of 100*l*, and one year's imprisonment; for the second, forfeiture of all goods and chattels, and imprisonment during life.

12. BESIDES actual breaches of the peace, any thing that tends to provoke or excite others to break it, is an offence of the same denomination. Therefore *challenges to fight*, either by word or letter, or to be the bearer of such challenge, are punishable by fine and imprisonment, according to the circumstances of the offence<sup>q</sup>. If this challenge arises on account of any mo-

<sup>a</sup> Pott. Antiqu. b. 1. c. 26.

<sup>o</sup> 2 Inst. 226. 3 Inst. 198.

<sup>p</sup> "Habent legibus sanctum, si quis quid de republica a finitimis rumore aut fama acceperit, uti ad magistratum deferat, neve cum alio communicet: quod saepe homines temerarios

"atque imperitos falsis rumoribus terreri, et

"ad facinus impelli, et de summis rebus confilium capere, cognitum est." Caes. de bell. Gall. lib. 6. cap. 19.

<sup>q</sup> 1 Hawk. P. C. 135, 138.



ney won at gaming, or if any assault or affray happen upon such account, the offender, by statute 9 Ann. c. 14. shall forfeit all his goods to the crown, and suffer two years imprisonment.

13. OF a nature very similar to challenges are *libels*, *libelli famosi*, which, taken in their largest and most extensive sense, signify any writings, pictures, or the like, of an immoral or illegal tendency; but, in the sense under which we are now to consider them, are malicious defamations of any person, and especially a magistrate, made public by either printing, writing, signs, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, and ridicule<sup>r</sup>. The direct tendency of these libels is the breach of the public peace, by stirring up the objects of them to revenge, and perhaps to bloodshed. The communication of a libel to any one person is a publication in the eye of the law<sup>s</sup>: and therefore the sending an abusive private letter to a man is as much a libel as if it were openly printed, for it equally tends to a breach of the peace<sup>t</sup>. For the same reason it is immaterial with respect to the essence of a libel, whether the matter of it be true or false<sup>u</sup>; since the provocation, and not the falsity, is the thing to be punished criminally: though, doubtless, the falshood of it may aggravate it's guilt, and enhance it's punishment. In a civil action, we may remember, a libel must appear to be false, as well as scandalous<sup>w</sup>; for, if the charge be true, the plaintiff has received no private injury, and has no ground to demand a compensation for himself, whatever offence it may be against the public peace: and therefore, upon a civil action, the truth of the accusation may be pleaded in bar of the suit. But, in a criminal prosecution, the tendency which all libels have to create animosities, and to disturb the public peace, is the sole consideration of the law. And therefore, in such prosecutions,

<sup>r</sup> 1 Hawk. P. C. 193.

<sup>s</sup> Moor. 813.

<sup>t</sup> 2 Brownl. 151. 12 Rep. 35. Hob. 215.

Poph. 139. 1 Hawk. P. C. 195.

<sup>u</sup> Moor. 627. 5 Rep. 125. 11 Mod. 99.

<sup>w</sup> See Vol. III. pag. 125.

the



TO  
THE RIGHT HONOURABLE THE  
L O R D - M A Y O R,  
THE  
A L D E R M E N,  
R E C O R D E R,  
S H E R I F F S,  
AND  
C O M M O N - C O U N C I L,  
OF THE  
*City of London,*

IN FULL ASSURANCE OF THEIR ATTENTION  
TO EVERY SINCERE ENDEAVOUR  
FOR PROMOTING PUBLIC PEACE AND PROSPERITY,

THESE  
R E F L E C T I O N S  
ARE MOST RESPECTFULLY INSCRIBED,

BY  
W I L L I A M B L I Z A R D,

( vii )

to add others yet more extraordinary ; and thus to endeavour, in some degree, to assist magistrates in their laudable undertakings, and, if possible, promote public virtue.

My professional duties allowed me but little time for the execution of my design ; and, on looking over the sheets, I have remarked many inaccuracies, but none that affect my meaning. The truth of the whole is incontrovertible ; and I am more anxious concerning its influence on the minds of my readers than for my own reputation as a writer : the former may happily produce some good to mankind ; the latter can be of little consequence to myself, and of none to the world.

Lime-Street,  
September 10, 1785.

L E T T E R S



( 61 )

dividually, *instructed* in the use of them, if it be true, which I apprehend it most clearly is, that the safe and effectual use of arms in collective bodies cannot be taught to separate individuals.

“ Thus far, I think, we advance on firm and solid ground. But here the difficulty commences; for it may be asked: “ If the right of being *collectively* instructed in the use of arms is admitted in its full extent, would it be lawful for a vast multitude, to the amount of many thousand armed men, without any visible occasion or apparent lawful object, unauthorized by government or any magistrate, to assemble together, and march where they pleased, for the purpose, as they professed, of instructing and exercising themselves in the use of arms? ”

To this question, *stated in these unlimited terms*, I should certainly answer in the negative; because, in my opinion, an affirmative answer would amount to a dissolution of all government and a subversion of all law.

“ Where, then, shall we draw the line? or how define the number and manner of assembling to exercise

( 62 )

“ exercise in the use of arms, which shall determine  
“ such an act to be legal or otherwise ?”

“ To this I answer, that the best consideration I can give the subject does not enable me to draw any such *precise line*, or to lay down any proposition respecting the legality of armed societies, which will hold true, *at all times and in all cases, without qualification or restriction*. The circumstances of the case must, in my opinion, decide upon the legality of every such meeting. It is clearly necessary, that the *professed purpose and object* of such a society *shall be lawful*; and that they shall, at all times, when assembled, demean themselves in a peaceable and orderly manner, conformably to their professed purpose; for every breach of the peace would receive high aggravation from the circumstance of being committed by a *body of armed men*. It is, in my opinion, farther necessary, that the number of such a society shall not manifestly and greatly *exceed the professed objects of their institution*; and that they shall not, in any case, except for the suppression of sudden, violent, and *felonious*, breaches of the peace, proceed to *act* without *the authority of the civil magistrate*. With these restrictions,



( 63 )

restrictions, I am clearly of opinion that it is lawful, and, in many cases, highly meritorious, for the Protestant subjects of this realm to instruct themselves in the use of arms in private orderly societies.

“ The lawful purposes, for which arms may be used, (besides immediate self-defence,) are, the suppression of violent and *felonious* breaches of the peace, the assistance of the civil magistrate in the execution of the laws, and the defence of the kingdom against foreign invaders. Whenever these occasions occur, the use of arms becomes not only the right, but the duty, of every Protestant able to bear them. And I have already given my opinion, that, under certain restrictions, it cannot be unlawful so to instruct themselves as to be prepared to act on those lawful occasions. The two first of these, the suppression of sudden and *felonious riots*, and the assistance of the civil magistrate, properly belong to every subject, as a member of the CIVIL state; and no commission from the crown is, in my opinion, either *necessary* or *proper*, to enable them to act for those purposes. —

As to the third, though it is the duty of every man to assist, in the most effectual manner that he can, in the

the

( 64 )

the general defence of his country, yet, in the modern system of war, the ordinary *civil* power of the state is become so completely and manifestly inadequate to the resistance of foreign invaders, that the defence of the country against them is more immediately intrusted to the *military*, which, in every country of Europe, is become a kind of *separate state*, or body, subject to different regulations and governed by different laws from the rest of the people ; and which, fortunately, can, in this country, derive its existence from parliament alone. It seems, therefore, to me, that, when men are called upon, by their duty, to act against foreign enemies, they become, in some degree, a part of the *military state* for so long as the occasion continues, and therefore ought, properly and regularly, to act under commission from the crown or under the command of some of the king's officers : the king being, by the constitution, the legal commander of *the whole military force* of the country. In any other situation, but that of invasion by a foreign enemy, I should very much doubt not only the *propriety*, but the *legality*, of  
any



THE  
**NEW-YORK JUSTICE;**  
OR, A  
**DIGEST**  
OF THE LAW

RELATIVE TO  
JUSTICES OF THE PEACE

IN THE  
STATE OF NEW-YORK.

---

BY JOHN A. DUNLAP, ESQ.  
" "  
COUNSELLOR AT LAW.

---

PRINTED AND PUBLISHED BY ISAAC RILEY.

*New-York—1815.*

1815

8

## AFFRAY.

mon gaol of the county, there to remain, without bail or main-prize, for the term of six calendar months." (s. 3.)

## AFFRAY.

- I. *What is an affray.*
- II. *How far it may be suppressed by a private person.*
- III. *How far by a constable.*
- IV. *How far by a justice of the peace.*

I. *What is an affray.*

4 Black. Com.  
145. 1 Hawk. c.  
63. s. 2. 3 Inst.  
158.

An affray is the fighting of two or more persons in some public place to the terror of the people; for if the fighting be in private it is not an affray, but an assault; neither will threatening words amount to an affray, although it seems that the constable may, at the request of the party threatened, carry the person using the threats before a justice of the peace, in order that he may find sureties.

4 Black. Com.  
145. 1 Hawk. c.  
63. s. 21. 3 Inst.  
158.

The punishment of common affrays is by fine and imprisonment, the measure of which must be regulated by the circumstances of the case; for where there is any material aggravation, the punishment proportionably increases. As where two persons coolly and deliberately engage in a duel; this being attended with an apparent intention and danger of murder, and being a high contempt of justice, is a strong aggravation of the affray, though no mischief has actually ensued.

1 Hawk. c. 63.  
s. 4.

It is likewise said to be an affray, at common law, for a man to arm himself with dangerous and unusual weapons, in such manner as will naturally cause terror to the people.

II. *How far it may be suppressed by a private person.*

1 Hawk. c. 63.  
s. 1b

Any one who sees others fighting may lawfully part them, and also stay them till their heat be over, and then deliver them to the constable, who may carry them before a justice of the peace, in order to their finding sureties of the peace: also it is said that any private person may stop those whom he shall see coming to join either party. If the person endeavouring to suppress an affray, receive an injury from either party, he may have his action against him; but should he, unavoidably, happen to hurt either party, he may justify it.

1 Hawk. c. 63.  
s. 12.

So if either party be dangerously wounded in such an affray, and a stander-by, endeavouring to arrest the other, be not able to take him without hurting, or even wounding him, yet he is no way liable to be punished for the same, inasmuch as he is bound, under pain of fine and imprisonment, to arrest such an offender.



## AFFRAY.

9

and either detain him till it appear whether the party will live or die, or carry him before a justice of the peace, by whom he either is to be bailed or committed. But no private person can of his own authority arrest another for a breach of the peace after it is over.

Phillips v. Trull,  
11 Johns. Rep.  
486.

A private person interposing in the case of sudden affrays, to part the combatants or prevent mischief, must give express notice of his friendly intent, and should he be assaulted by them or either of them, and in the struggle should happen to kill, this will be justifiable homicide; for it is the duty of every man to interpose in such cases, for preserving the public peace, and preventing mischief. On the other hand, if the party so interposing, giving such notice, should be killed by either of the combatants, it will be murder in the person so killing.

1 East, P. C.  
304. Fost. 272.  
311.

But it is not murder in both, unless both struck him that came to part them.

1 Hale, P. C.  
442.

When, however, the third person does not show his intention not to take part in the quarrel, or to appease it, he who kills him is guilty of manslaughter only, for he might suspect that he came to side with his adversary.

1 Hawk. c. 31.  
s. 49.

II. *How far by a constable.*

A constable is not only empowered, as all private persons are, to part an affray which happens in his presence, but is also bound at his peril to use his best endeavours to this purpose, and not only to do his utmost himself, but also to demand the assistance of others, which if they refuse to give him they are punishable with fine and imprisonment. And if an affray be in a house, the constable may break open the doors to preserve the peace; and if the affrayers fly to a house, and he follow with fresh suit, he may break open the doors to take them.

1 Hawk. c. 63.  
s. 13. 15.

It is said that if a constable see persons either actually engaged in an affray, as by striking, or offering to strike, or drawing their weapons, or upon the very point of entering upon an affray, as where one shall threaten to kill; wound, or beat another, he may either carry the offender before a justice of the peace that he may be compelled to find sureties of the peace, or he may imprison him of his own authority for a reasonable time, until his heat shall be over; but whether he can make him find sureties of the peace appears to be doubtful: but it seems that he has no power to imprison such an offender in any other manner, or for any other purpose; for he cannot justify the committing an affrayer to gaol till he shall be punished for his offence: and it is said that he ought not to lay hands on those who barely contend with hot words, without any threats of personal hurt, and that all he can do in such case, is to command them under pain of imprisonment to avoid fighting.

1 Hawk, c. 63.  
s. 14.

4 Black. Com.  
145. 1 East, P.  
C. 305.

*Handwritten notes:*  
A  
K...  
EH  
A.H.I  
GT+  
1/2  
2

**TREATISE**  
OF THE  
**PLEAS OF THE CROWN;**

OR,  
**A SYSTEM OF THE PRINCIPAL MATTERS RELATING TO THAT  
SUBJECT, DIGESTED UNDER PROPER HEADS.**

BY  
**WILLIAM HAWKINS,**  
SERJEANT AT LAW.

*The Eighth Edition, in Two Volumes.*

**VOL. I.**  
**OF CRIMINAL OFFENCES.**

ARRANGED ACCORDING TO THE ANALYSIS OF BLACKSTONE, WITH THE STATUTES  
AND DECISIONS DOWN TO THE PRESENT TIME.

BY **JOHN CURWOOD, ESQ.**  
BARRISTER AT LAW.

**LONDON:**

PRINTED FOR S. SWEET, 3, CHANCERY LANE; R. PHENEY, INNER TEMPLE-LANE;  
A. MAXWELL, 21, AND R. STEVENS AND SONS, 39, BELL YARD,  
LINCOLN'S INN; LAW BOOKSELLERS AND PUBLISHERS;  
AND J. CUMMING, DUBLIN.  
1824.



“ more, shall, in a tumultuous and riotous manner, assemble them-  
 “ selves to rescue any offender or offenders against the said first-  
 “ mentioned act; or to assault, beat, or wound any person or per-  
 “ sons who shall have given, or be about to give, any information  
 “ or evidence against, or shall have discovered or given evidence  
 “ against, or be about to discover or give evidence against, seize,  
 “ or bring to justice any person or persons offending against the  
 “ said first-mentioned act; that then all and every person or per-  
 “ sons so assembling themselves, and their aiders and abettors,  
 “ being thereof lawfully convicted, shall be, and be adjudged to  
 “ be, guilty of felony; and every such felon and felons shall be  
 “ subject and liable to the like pains and penalties as in cases of  
 “ felons; and the courts by and before whom he, she, or they  
 “ shall be convicted, shall have full power and authority of trans-  
 “ porting such felon and felons for the space of seven years.”

Armed persons to the number of three, assembled to assist in the illegal exporting or running of goods, &c. or appearing in disguise with such goods, or who shall resist, &c. officers in the execution of their duty, are guilty of felony without benefit of clergy.

† Sect. 6. By 19 Geo. 2. c. 34. it is recited, “ That divers dissolute persons have associated themselves, and entered into confederacies to support one another, and have appeared in great gangs in several parts of this kingdom, carrying fire-arms, or other offensive weapons; and when so assembled, have been aiding and assisting in running, landing, or carrying away prohibited or uncustomed goods, or goods liable to duties of excise, or in the illegal relanding of any goods or merchandizes, which have been shipped or exported upon debenture or certificate, or in rescuing the same after seizure, or in obstructing the officers of the revenue in the execution of their office, to the great discouragement of the fair trader, and the loss of the public revenue: And whereas several officers of the customs and excise, and their assistants, have been wounded, maimed, and some of them killed, when in the execution of their office or otherwise, by the said dissolute persons so associated and assembled as aforesaid, to the great terror of his majesty’s peaceable subjects, in defiance of the laws, and to the utter subversion of all civil authority and power whatsoever:” it is therefore enacted, “ That if any persons, to the number of three  
 “ or more, armed with fire-arms or other offensive weapons, shall  
 “ be assembled, in order to be aiding and assisting in the illegal  
 “ exportation of wool or other goods prohibited to be exported, or  
 “ the carrying of wool or other such goods, in order to such ex-  
 “ portation, or in the running, landing, or carrying away pro-  
 “ hibited or uncustomed goods, or goods liable to pay any duties,  
 “ which have not been paid or secured; or in the illegal reland-  
 “ ing of any goods whatsoever, which have been shipped or ex-  
 “ ported upon debenture or certificate; or in rescuing or taking  
 “ away the same, after seizure, from any officer or officers of the  
 “ customs or excise, or other his majesty’s revenue, or other per-  
 “ son or persons employed by him or them, or assisting him or  
 “ them, or from the place where they shall be lodged by him or  
 “ them; or in rescuing any person who shall be apprehended for  
 “ any of the offences made felony by this or any other act, relating  
 “ to the revenues of customs or excise; or in preventing the ap-  
 “ prehending any person who shall be guilty of any such offence;  
 “ or in case any persons to the number of three or more, so armed  
 “ as aforesaid, shall be so aiding or assisting; or if any person  
 “ shall



“ shall have his face blacked, or wear any vizard, mask, or other  
 “ disguise, when passing such goods, or shall forcibly hinder,  
 “ obstruct, assault, oppose, or resist any of the officers of the  
 “ customs or excise, or other his majesty’s revenue, in the seizing  
 “ or securing any such goods; or if any person or persons shall  
 “ maim or dangerously wound any officer of the customs or  
 “ excise, or any other his majesty’s revenue, in his attempting to  
 “ go on board any ship or vessel, within the limits of any of the  
 “ ports of this kingdom; or shoot at, maim, or dangerously wound  
 “ him when on board such ship or vessel, and in the due execution  
 “ of his office or duty, then every person so offending, being thereof  
 “ lawfully convicted, shall be adjudged guilty of felony, and shall  
 “ suffer death as in cases of felony without benefit of clergy, (1)  
 “ and that all and every person and persons who shall at any time  
 “ be convicted of any of the offences aforementioned, within that  
 “ part of Great Britain called Scotland, shall for every such of-  
 “ fence incur and suffer the pains of death and confiscation of  
 “ moveables.”

Under this statute the following determinations have been made.

† *Sect. 7.* It seems agreed, that, in order to bring an offender within the penalties of this act, there must be an assembling of three persons or more for the purpose of committing some or one of the offences described in the statute.

*Rex v. Spice,*  
 Old Bailey  
 Dec. Session,  
 1785. Cases,  
 C. L. 281.

† *Sect. 8.* It is also said, (a) that to bring the offenders within the penalties of the first clause of the above statute, they must be armed with offensive weapons; but it is also said, that it is not necessary that every individual assembled should be provided with an offensive weapon (b); and yet it seems (c) that it must appear on the trial that the prisoner was armed with an offensive weapon.

(a) *Hutchin-  
 son’s Case,*  
 Cases, C.L. 280.  
 (b) *Franklyn’s  
 Case,* Cald. 244.  
 (c) *Fletcher’s  
 Case,* Cases,  
 Cro. Law, 281.  
*notis.*

† *Sect. 9.* It has also been said, that the weapons must be such as are calculated for the purposes of offence; therefore where one man had only a common horsewhip, although all the rest of the gang had fire-arms, the Attorney-general declined to argue the point, and the prisoner was discharged. So also a hatchet has been thought no offensive weapon within this act, where it was only caught up upon the spur of the occasion, and belonged to the prisoner in the way of his business. So also a large stick with three natural prongs and a large head has been held no offensive weapon. But it is impossible for the law to draw a precise line which will hold in all cases as to what shall, or shall not, be called an offensive weapon. It must greatly depend on the circumstances of the case; for it would be going a great deal too far to say that nothing but guns, pistols, daggers, and instruments of war should be considered as offensive weapons; bludgeons, clubs, and any thing not in common use, pokers, shovels, tongs, &c. and even a common walking-stick, may be offensive weapons, according to the circumstances which accompany the use of them. It is therefore a question of fact for the jury, whether the instrument was carried for the purposes of offence or not?

*Str.* 1166.  
*O. B.* 1786,  
 p. 857.  
*O. B.* 1785,  
 p. 424.  
*O. B.* 1785,  
 p. 780.  
*Cases in Cro.  
 Law,* 280..

† *Sect.*

(1) See postea, the statute 52 Geo. 3. c. 143.  
 “ for reducing into one act all the provisions now

in force inflicting the penalty of death for any act  
 done in breach of the revenue laws.” p. 668.



Hutchinson's  
Case, Cases  
Cro. Law, 280.

† Sect. 10. It is said, that the third branch of the above statute, viz. "or if any person shall have his face blacked, or wear any vizard, mask, or other disguise when passing with such goods," has, apparently, no regard to the number of persons, nor to their being armed with offensive weapons; and therefore that an individual passing disguised with uncustomed goods would, in all probability, be deemed within the penalties of the act: and also that the fourth branch of the statute, viz. "or shall forcibly hinder, obstruct, assault, &c." being coupled by the word "or" to the preceding section, seems to be a clause that would reach any individual who shall forcibly hinder or obstruct a revenue-officer in the execution of his duty. But it is also said, that as the statute 19 Geo. 3. c. 69. s. 10. has reduced this offence to a misdemeanor, the clause in the statute 19 Geo. 2. c. 34. is virtually repealed.

Any person who shall obstruct any officer in seizing goods;

or shall attempt to rescue the same; or shall damage any casks, &c. in which such goods shall be contained; may be arrested, &c.

If any person shall maliciously shoot at any ship, &c. or any officer when in execution of duty, he shall suffer death as a felon.

† Sect. 11. By 19 Geo. 3. c. 69. s. 10. it is further enacted, "That if any person or persons whatsoever shall assault, resist, oppose, molest, obstruct, or hinder, any officer or officers of the customs or excise in due seizing or securing any coffee, tea, coea-nuts, chocolate, foreign brandy, or other foreign spirituous liquors, or any other goods whatsoever which by any officer or officers of the customs or excise shall or may be liable to be seized by virtue of or in pursuance of any act now in force; or shall by force or violence rescue, or shall cause to be rescued, any of the said goods, after the same shall have been seized by such officer or officers as aforesaid, or shall attempt or endeavour so to do; or, after such seizure, shall cut, stave, break, or otherwise destroy or damage any casks, vessels, boxes, or package, wherein the same respectively shall be contained; it shall and may be lawful to and for the officers of the customs and excise, and for all persons acting in their aid and assistance, to stop, arrest, and detain, all and every the person and persons so offending, and him, her, or them, forthwith to carry and convey before one or more of his majesty's justices of the peace, near to the place where the offence shall be committed or done; and the justice or justices shall, if he or they see cause, commit the person or persons, so brought before him or them, to the next county gaol, until the next general quarter-sessions of the peace to be holden for the same county or place, there to be tried and dealt with as by this act is in hereinafter directed."

† Sect. 12. By 24 Geo. 3. c. 47. s. 11. it is further enacted, "That if any person or persons upon the shore, or on board any ship, vessel, or boat, shall maliciously shoot at or upon any ship, vessel, or boat, belonging to his majesty's navy, or in the service of the customs or excise, within the limits of any port, harbour, or creek of Great Britain, or within four leagues from any part of the coast thereof; or if any person or persons, being on shore, or on board any ship, vessel, or boat, shall maliciously shoot at, maim, or dangerously wound any officer or officers of his majesty's navy, or of the customs or excise, whether attempting to go on board, or being on board, or returning from on board any ship, vessel, or boat, or otherwise acting in the due execution of his or their duty on shore, or within the limits of any port, harbour, or creek of Great Britain, or within four leagues  
" of

*James for How Court in 1873*

A *William Blakeney*  
*Middle Temple*

# TREATISE

OF THE

# PLEAS

OF THE

# CROWN:

OR A

SYSTEM of the Principal Matters relating to that  
SUBJECT, digested under their proper Heads.

---

## BOOK I.

---

By *WILLIAM HAWKINS,*  
of the *Inner-Temple, Esq;*

---

In the *SAVOY,*

Printed by *Ells. Nutt,* (Executrix of *J. Nutt,* Assignee  
of *Edward Sayer, Esq;*) for *J. Walthoe* in the *Middle-*  
*Temple-Cloysters;* and *J. Walthoe, jun.* against the  
*Royal-Exchange* in *Cornhill.* 1716.



1 Keb. 921.  
40 Ed. 3. 40. 2.  
42 Ed. 3. 7. 2.  
45 Ed. 3.  
24. b. 25. 2.  
22 Aff. 60.  
2 R. A. 545.  
Pl. 1, 2, 3, 4,  
5, 6, 7, 8.  
22 Aff. Pl. 11.  
Pult. 3.  
Lamb. 126.  
6 Mod. 149,  
172.

one's Fist at him, or by any other such like Act done in an angry threatening Manner; and from hence it clearly follows, That one charged with an Assault and Battery, may be found guilty of the former, and yet acquitted of the later. But notwithstanding the many ancient Opinions to the contrary, it seems agreed at this Day, that no Words whatsoever can amount to an Assault.

*Sec̄. 2.* As to the second Point, *viz.* What shall be said to be a Battery, It seems that any Injury whatsoever, be it never so small, being actually done to the Person of a Man, in an angry, or revengeful, or rude, or insolent, Manner, as by Spitting in his Face, or any Way touching him in Anger, or violently justling him out of the Way, are Batteries in the Eye of the Law: But it is said to be no Battery to lay one's Hand gently on another whom an Officer has a Warrant to arrest, and to tell the Officer that this is the Man he wants.

2 R. A. 546.  
Pl. 1, 2.

*Sec̄. 3.* As to the third Point, *viz.* In what Cases an Assault and Battery may be justified, this is so fully set forth already in the Chapter of *Surety of the Peace*, that there seems to be no need of any farther Consideration thereof in this Place; and therefore I shall only add, That where a Man in his own Defence beats another who first assaults him, &c. he may take an Advantage thereof upon an Indictment, as well as upon an Action; but with this Difference, that in the first Case he may give it in Evidence upon the Plea of Not guilty, and in the later he must plead it specially.

6 Mod. 172.

*Sec̄. 4.* As to the fourth Point, *viz.* How unlawful Assaults and Batteries are punished, there is no doubt but that the Wrong doer is Subject, both to an Action at the Suit of the Party, wherein he shall render Damages, &c. and also to an Indictment at the Suit of the King, wherein he shall be fined according to the Heinousness of the Offence.

## C H A P. LXIII.

### Of Affrays.

**I**N treating of Affrays, I shall consider,

1. What shall be said to be an Affray.
2. How far it may be suppressed by a private Person.
3. How far by a Constable.
4. How far by a Justice of Peace.
5. In what Manner the several Kinds of Affrays may be punished.

3 Inst. 158.  
Dalt. ca. 8.

Lamb. 125,  
126.

*Sec̄. 1.* As to the first Point, it is said, That the word Affray is derived from the *French* word *Effraier*, to terrify, and that in a legal Sense it is taken for a publick Offence, to the Terror of the People, from whence it seems clearly to follow, That there may be an Assault which will not amount to an Affray; as where it happens in a private Place, out of the hearing or seeing of any, except the Parties concerned; in which Case it cannot be said to be to the Terror of the People; and for this



## Chap. 63.

## Of Affrays.

139

this Cause such a private Assault seems not to be inquirable in a Court-  
Leet, as all Affrays certainly are, as being common Nufances.

4 H. 6. 10. 2.  
8 Ed. 4. 5. b.

*Secf. 2.* Also it is said, That no quarrellsome or threatening Words  
whatsoever shall amount to an Affray; and that no one can justify lay-  
ing his Hands on those who shall barely quarrel with angry Words,  
without coming to blows; yet it seemeth, That the Constable may, at  
the Request of the Party threatened, carry the Person who threatens to  
beat him before a Justice of Peace, in Order to find Sureties.

H. P. C. 135.  
23 E. 4. 45. b.  
Dal. ch. 8.  
Lamb. Con-  
stable 14.

*Secf. 3.* Also it is certain, That it is a very high Offence to challenge  
another, either by Word or Letter, to fight a Duel, or to be the Messen-  
ger of such a Challenge, or even barely to endeavour to provoke ano-  
ther to send a Challenge, or to fight, as by dispersing Letters to that  
purpose, full of Reflections, and insinuating a Desire to fight, &c.

Poph. 158.  
3 Liff. 158.  
1 Sid. 186.  
1 Keb. 694.  
Hob. 120,  
215.  
2 Rol. Ab. 78.

*Secf. 4.* But granting that no bare Words, in the Judgment of Law,  
carry in them so much Terror as to amount to an Affray; yet it seems  
certain, That in some Cases there may be an Affray where there is no  
actual Violence; as where a Man arms himself with dangerous and un-  
usual Weapons, in such a Manner as will naturally cause a Terror to the  
People, which is said to have been always an Offence at Common Law,  
and is strictly prohibited by many Statutes: For by 2 Ed. 3. 3. it is en-  
acted, 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 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 en-  
quire 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; and this Statute is farther enforced by 7 Rich. 2. 13. and  
20 Rich. 2. 1.

Lamb. 126.  
3 Inst. 160.  
76 D.  
2 Rol. Ab. 78.  
Pl. 4.  
H. P. C. 137.

And in the Exposition of it, the following Points have been holden:

*Secf. 5.* I. That any Justice of Peace, or other Person, who is im-  
powered to execute this Statute, may proceed thereon, either *ex Officio*,  
or by Force of a Writ out of Chancery formed upon the Statute, and  
that if he find any Person in Arms contrary to the Form of the Statute, he  
may seize the Arms, and commit the Offender to Prison; and that he  
ought also to make a Record of his whole Proceeding, and certify the same  
into the Chancery, where he proceeds by Force of the said Writ, or into  
the Exchequer, where he proceeds *ex Officio*.

F. N. B. 249.

3 Inst. 161.  
Dal. ch. 22.  
Lamb. 168,  
&c.  
Dalif. 23.  
2 Bulf. 330.

*Secf. 6.* II. That where a Justice of Peace, &c. proceeds upon the  
said Writ, he may not only imprison those whom he shall find offending  
against the Statute in his own View, but also those who shall be found  
by an Inquest taken before him, to have offended in such Manner in his  
Absence; and I do not see why he may not do the same where he pro-  
ceeds *ex Officio*; for seeing the said Writ hath no other Foundation but the

Cro. El. 294.  
Con. Lamb.  
170.



the said Statute, and is the most authentick Explication thereof, it seemeth that the Rules therein prescribed, should be the best Direction for all Proceedings upon that Statute.

*Sec. 7.* III. That the Under-Sheriff may execute the said Writ, being directed to the Sheriff, if it name him only by the Name of his Office, and not by his proper Name, and do not expressly command him to act in his proper Person.

*Sec. 8.* That a Man cannot excuse the wearing such Armour in Publick, by alledging that such a one threatened him, and that he wears it for the Safety of his Person from his Assault; but it hath been resolved, That no one shall incur the Penakty of the said Statute for assembling his Neighbours and Friends in his own House, against those who threaten to do him any Violence therein, because a Man's House is as his Castle.

*Sec. 9.* V. That no wearing of Arms is within the meaning of this Statute, unless it be accompanied with such Circumstances as are apt to terrify the People; from whence it seems clearly to follow, That Persons of Quality are in no Danger of Offending against this Statute by wearing common Weapons, or having their usual Number of Attendants with them, for their Ornament or Defence, in such Places, and upon such Occasions, in which it is the common Fashion to make use of them, without causing the least Suspicion of an Intention to commit any Act of Violence or Disturbance of the Peace. And from the same Ground it also

follows, That Persons armed with privy Coats of Mail to the Intent to defend themselves against their Adversaries, are not within the Meaning of this Statute, because they do nothing *in terrorem Populi*.

*Sec. 10.* VI. That no Person is within the Intention of the said Statute, who arms himself to suppress Rioters, Rebels, or Enemies, and endeavours to suppress or resist such Disturbers of the Peace or Quiet of the Realm; for Persons who so arm themselves, seem to be exempted out of the general Words of the said Statute, by that Part of the Exception in the beginning thereof, which seems to allow all Persons to arm themselves upon a Cry made for Arms to keep the Peace, in such Places where such Acts happen.

*Sec. 11.* As to the second Point, *viz.* How far an Affray may be suppressed by a private Person, it seems agreed, That any one who sees others fighting, may lawfully part them, and also stay them till the Heat be over, and then deliver them to the Constable, who may imprison them till they find Surety for the Peace; also it is said, That any private Person may stop those whom he shall see coming to join either Party; and from hence it seems clearly to follow, That if a Man receive a Hurt from either Party in thus endeavouring to preserve the Peace, he shall have his Remedy by an Action against him; also upon the same Ground it seems equally reasonable, That if he unavoidably happen to hurt either Party, in thus doing what the Law both allows and commends, he may well justify it, inasmuch as he is no Way in Fault; and the Damage done to the other, was occasioned by a laudable Intention to do him a Kindness.

*Sec. 12.* However it seems clear, That if either Party be dangerously wounded in such an Affray, and a Stander-by, endeavouring to assist the other, be not able to take him without hurting, or even wounding him, yet he is no Way liable to be punished for the same, inasmuch as he is bound under Pain of Fine and Imprisonment, to arrest such an Offender, and either detain him till it appear whether the Party will live or die, or carry him before a Justice of Peace, by whom he either is to be bailed, or committed, &c.



## Chap. 61.

## Of Affray.

137

*Sec.* 13. As to the third Point, *viz.* How far an Affray may be suppressed by a Constable; it seems agreed, That a Constable is not only empower'd, as all private Persons are, to part an Affray which happens in his Presence, but is also bound at his Peril to use his best Endeavours to this Purpose, and not only to do his utmost himself, but also to demand the Assistance of others, which if they refuse to give him, they are punishable with Fine and Imprisonment.

3 Inst. 158.  
H. P. C. 135.  
Lamb. 132,  
133.  
Dalt. cap. 8.  
3 H. 7. 10. b.

*Sec.* 14. And it is said, That if a Constable see Persons either actually engaged in an Affray, as by Striking, or offering to strike, or drawing their Weapons, &c. or upon the very Point of entering upon an Affray, as where one shall threaten to kill, wound, or beat another, he may either carry the Offender before a Justice of Peace, to the End that such Justice may compel him to find Sureties for the Peace, &c. or he may imprison him of his own Authority for a reasonable Time, till the Heat shall be over, and also afterwards detain him till he find such Surety by Obligation: But it seems, That he has no Power to imprison such an Offender in any other manner, or for any other Purpose; for he cannot justify the committing an Affrayer to Gaol till he shall be punished for his Offence: And it is said, That he ought not to lay Hands on those, who barely contend with hot Words, without any Threats of personal Hurt, and that all which he can do in such a Case, is to command them under Pain of Imprisonment to avoid Fighting.

Lamb 132,  
133.  
Dalt. ca. 1, 8.

H. P. C. 136.  
Dalt. cap. 18.  
Bro. Surety,  
23. 36.  
Moore 284.  
Pl. 436.  
3 H. 4. 9. a.  
2 Ed. 4. 35. b.  
10 Ed. 4. 18.  
5 H. 7. 6. a.  
Savil. 97, 98.

*Sec.* 15. But he is so far intrusted with a Power over all actual Affrays, that though he himself is a Sufferer by them, and therefore liable to be objected against, as likely to be partial in his own Cause, yet he may suppress them; and therefore, if an Assault be made upon him, he may not only defend himself, but also imprison the Offender, in the same manner as if he were no way a Party.

5 H. 7. 6. a.  
H. P. C. 136.  
1 Rol. Re. 238.  
2 Bullst. 329.

*Sec.* 16. And if an Affray be in a House, the Constable may break open the Doors to preserve the Peace; and if the Affrayers fly to a House, and he follow with fresh Suit, he may break open the Doors to take them.

13 Ed. 4. 9. a.  
7 Ed. 3. 12. b.  
Dalt. cap. 8,  
67.  
Lamb 133,  
134.

*Sec.* 17. But it is said, That a Constable hath no Power to arrest a Man for an Affray done out of his own View, without a Warrant from a Justice of Peace, unless a Felony were done or likely to be done; for it is the proper Business of a Constable to preserve the Peace, not to punish the Breach of it; nor does it follow from his having Power to compel those to find Sureties who break the Peace in his Presence, that he has the same Power over those who break it in his Absence, inasmuch as in such Case it is most proper to be done by those who may examine the whole Circumstances of the Matter upon Oath, which a Constable cannot do; yet it is said, That he may carry those before a Justice of Peace, who were arrested by such as were present at an Affray, and delivered by them into his Hands.

H. P. C. 135.  
Cro. El. 375.  
Owen 105.  
H. P. C. 136.  
H. P. C. 92.

Lamb, 131.  
Dalt. cap. 8.

*Sec.* 18. As to the fourth Point, *viz.* In what manner an Affray may be suppressed by a Justice of Peace; there is no doubt, but that he may and must do all such Things to that Purpose, which a private Man or Constable, are either enabled, or required by the Law to do: But it is said, That he cannot without a Warrant authorize the Arrest of any Person for an Affray out of his View; yet it seems clear, that in such Case he may make his Warrant to bring the Offender before him, in order to compel him to find Sureties for the Peace.

H. P. C. 136.  
Dalt. cap. 8.  
Bro. false Imprisonment  
6. 12, 33.  
14 H. 8. 7.  
Moore 468.  
Pl. 552.

N n

Sec.



**COMPENDIUM**

OF THE

**COMMON LAW**

IN FORCE

IN

*Paul*

*Hill*

**KENTUCKY,** *Law Statute*

*Free Lib. ...*

TO WHICH IS PREFIXED

A BRIEF

**SUMMARY**

OF THE

**LAWS OF THE**

**UNITED STATES.**

BY **CHARLES HUMPHREYS.**

LEXINGTON, Ky.

PRINTED BY WILLIAM GIBBES HUNT.

1822.

or where the affray occurs in the presence of a court of justice, or in a church or churchyard. Quarrelsome words or the like in a church, amount to an affray, on account of the sacredness of the place. We have a statute on the subject of disturbances of the peace, authorising justices of the peace to punish inconsiderable affrays, but the common law is still retained to be used against great offenders. 4. B. 144.

Both routs and unlawful assemblies must have three persons at least to constitute them. An unlawful assembly, is when three or more do assemble together to do some unlawful act, as to pull down inclosures, to destroy houses, and part without doing it, or making any motion. A rout is where rioters meet on a common quarrel or unlawful design, and make some advance towards it. A riot is where three or more actually do an unlawful act of violence, either with or without a common cause or quarrel, as if they beat a man or do any other unlawful act, with force and violence, or even do a lawful act, as removing a nuisance, in a violent and tumultuous manner.

By statute of Henry IV, chapter 7; any two justices, together with the sheriff, or under sheriff, with the *posse comitatus*, if need be, may come and suppress any such riot, rout, or unlawful assembly, and record the circumstances of the transaction, which record alone shall be a sufficient conviction of the offenders.

This is somewhat doubtful at the present day.

All males over fifteen, able to go, are bound to attend the peace officer, in suppressing the disorder under pain of fine and imprisonment, and any battery, wounding or killing of the rioters that may necessarily or unavoidably happen in suppressing the riot, is justifiable.



The punishment by common law for these offences, is fine and imprisonment. 4. B. 147.

The statute of this state has a bearing on these offences, and also expressly recognizes the common law to be in force.

Another offence against public peace is that of a forcible entry or detainer, which is committed by violently taking or keeping possession of lands and tenements, with menaces, with force of arms, and without the authority of law. This was formerly allowed to such as were wrongfully disseised of their estates, but it was found that it was attended with prejudice to the public peace; so that the entry now allowed by law is a peaceable one, and that which is forbidden, is such as is carried on and maintained with force and violence. This however does not prevent persons from forcibly defending their possessions, when unlawfully invaded.

The punishment is fine and imprisonment. A summary mode of trying the right to the possession of the controverted premises is pointed out by our act of assembly. 4. B. 148.

Riding or going armed with dangerous or unusual weapons, is a crime against the public peace, by terrifying the people of the land, which is punishable by forfeiture of the arms, and fine and imprisonment. But here it should be remembered, that in this country the constitution guarranties to all persons the right to bear arms; then it can only be a crime to exercise this right in such a manner, as to terrify the people unnecessarily.

We have a statute on the subject, relating to concealed weapons.

False and pretended prophecies, with an intent to disturb the peace, raise enthusiastic jealousies in the peo-

ple, and terrify them with imaginary fears, are offences, for which by the statute of Elizabeth, c. 15, the penalty is a fine of ten pounds and one year's imprisonment. 4. B. 149.

Besides actual breaches of the peace, any thing which tends to provoke or excite others to break it, is an offence of the same denomination, therefore challenges to fight, either by word or letter, or being the bearer of such challenges, are punishable by fine and imprisonment, according to the circumstances of the case. 4. B. 150.

Of a nature similar to challenges, are libels, which are malicious defamations of any person, made by either writing or printing, signs or pictures, in order to provoke him to wrath, or to expose him to public hatred, contempt and ridicule; the direct tendency of these libels is the breach of the peace, by stirring up the object of them to revenge, and perhaps bloodshed. The communication of the libel to any one person, is a publication in the eye of the law; therefore, the sending an abusive private letter to a man, is equally a libel as if printed, because it tends to a breach of the peace.

By the common law, a libel was equally punishable, whether true or false. But by the constitution of Kentucky, it is provided that in prosecutions for libels, the truth of the matter alleged may be given in evidence in justification, where the matter is proper for public information, and no conviction can take place. Moreover, the constitution of the United States secures the liberty of the press and of speech.

The constitution of the United States guaranties to each citizen, the liberty of speech and of the press, and the common law not having been adopted by congress, in relation to the government of the United States, it



THE PAPERS OF  
**Thomas Jefferson**

Volume 1 · 1760-1776

JULIAN P. BOYD, EDITOR

LYMAN H. BUTTERFIELD AND MINA R. BRYAN,  
ASSOCIATE EDITORS



PRINCETON, NEW JERSEY  
PRINCETON UNIVERSITY PRESS

1950

### III. Third Draft by Jefferson

[Before 13 June 1776]

A Bill<sup>1</sup> for new-modelling the form of Government and for establishing<sup>1</sup> the Fundamental principles thereof in future.

Whereas George Guelf king of Great Britain and Ireland and Elector of Hanover, heretofore entrusted with the exercise of the kingly office in this government hath endeavored to pervert the same into a detestable and insupportable tyranny; by putting his negative on laws the most wholesome & necessary for ye. public good;

by denying to his governors permission to pass laws of immediate & pressing importance, unless suspended in their operation for his *(con)* assent, and, when so suspended, neglecting to attend to them for many years;

by refusing to pass certain other laws, unless the persons to be benefited by them would relinquish the inestimable right of representation in the legislature

by dissolving legislative assemblies repeatedly and continually for opposing with manly firmness his invasions on the rights of the people;

when dissolved, by refusing to call others for a long space of time, thereby leaving the political system without any legislative head;

by endeavoring to prevent the population of our country, & for that purpose obstructing<sup>1</sup> the laws for the naturalization of foreigners & raising the conditions of new appropriations<sup>1</sup> of lands;

by keeping among us,<sup>1</sup> in times of peace, standing armies & ships of war;

by affecting<sup>1</sup> to render the military independent of & superior to the civil power;

by combining with others to subject us to a foreign jurisdiction, giving his assent to their pretended acts of legislation

for quartering large bodies of troops among us;

for cutting off our trade with all parts of the world;

for imposing taxes on us without our consent;

for depriving us of the benefits of trial by jury;

for transporting us beyond seas to be tried for pretended offences; and

for suspending our own legislatures & declaring themselves invested with power to legislate for us in all cases whatsoever;



## III. JEFFERSON'S THIRD DRAFT

by plundering our seas, ravaging our coasts, burning our towns and destroying the lives of our people;  
 by inciting insurrections of our fellow subjects with the allurements of forfeiture & confiscation  
 by prompting our negroes to rise in arms among us; those very negroes whom *(he hath from time to time)* by an inhuman use of his negative he hath refused us permission to exclude by law  
 by endeavoring to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, & conditions of existence;  
 by transporting at this time a large army of foreign mercenaries to compleat<sup>1</sup> the works of death, desolation, & tyranny already begun with circumstances<sup>1</sup> of cruelty & perfidy so unworthy the head of a civilized nation;  
 by answering our repeated petitions for redress with a repetition of injuries;  
 and finally by abandoning the helm of government and declaring us out of his allegiance & protection;  
 by which several acts of misrule the said George Guelf has forfeited the kingly office and has rendered it necessary for the preservation of the people that he should be immediately deposed from the same, and divested of all it's privileges, powers, & prerogatives:

And forasmuch as the public liberty may be more certainly secured by abolishing an office which all experience hath shewn to be inveterately inimical thereto *(in which)* and it will thereupon become further necessary to re-establish such antient principles as are friendly to the rights of the people and to declare certain others which may co-operate with and fortify the same in future.

Be it therefore enacted by the authority of the people that the said George Guelf be, and he hereby is deposed from the kingly office within this government and absolutely divested of all it's rights, powers and prerogatives; and that he and his descendants and all persons claiming<sup>1</sup> by or through him, and all other persons whatsoever shall be & for ever remain<sup>1</sup> incapable of<sup>2</sup> the same; and that the said office shall henceforth cease<sup>1</sup> and never more either in name or substance be re-established within this colony.<sup>1</sup>

And be it further enacted by the authority aforesaid that the following fundamental laws and principles of government shall henceforth be established.

VIRGINIA CONSTITUTION 1776

The Legislative, Executive and Judiciary offices shall be kept for ever separate, & no person exercising the one shall be capable of appointment to the others, or to either of them.

I. LEGISLATIVE.

Legislation shall be exercised by two separate houses, to wit a house of Representatives and a house of Senators, which shall be called the General Assembly of Virginia.

H. of Representatives.

The sd. house of Representatives shall be composed of persons chosen by the people annually on the [1<sup>st</sup> day of October]<sup>3</sup> and shall meet in General assembly on the [15<sup>th</sup> day of November] following, and so from time to time on their own adjournments, or at any other time when summoned by the Administrator and <to> shall continue sitting so long as they shall think the publick service requires.

Vacancies in the said house by death or disqualification shall be filled by the electors under a warrant from the Speaker of the said house.

Electors.

All male persons of full age and sane mind having a freehold estate in [one fourth of an acre] of land in any town, or in [25] acres of land in the country, and all persons resident in the colony who shall have paid *scot* and *lot* to government the last [two years] shall have right to give their vote in the election of their respective representatives.

Elected.

and every person so qualified to elect shall be capable of being elected, provided he shall have given no bribe either directly or indirectly to any elector, and shall take an oath of fidelity to the state and of duty in his office, before he enters on the exercise thereof. during his continuance in the said office he shall hold no public pension nor post of profit, either himself, or by another for his use.

The number of representatives for each county or borough shall be so proportioned to the number of it's qualified electors that the whole number of representatives shall not exceed [300] nor be less than [125.] for the present there shall be one representative for every [ ] qualified electors in each county or borough: but whenever this or any future proportion shall be likely to exceed or fall short of the limits beforementioned, it shall be again adjusted by the house of representatives.

The house of Representatives when met shall be free to act according to their own judgment(s) and conscience.

Senate.

The Senate shall consist of not less than [15] nor more than [50] members who shall be appointed by the house of Representatives.



### III. JEFFERSON'S THIRD DRAFT

one third of them shall be removed out of office by lot at the end of the first [three] years and their places be supplied by a new appointment; one other third shall be removed by lot in like manner at the end of the second [three] years and their places be supplied by a new appointment; after which one third shall be removed annually at the end of every [three] years according to seniority. when once removed, they shall be for ever incapable of being re-appointed to that house. their qualifications shall be an oath of fidelity to the state, and of duty in their office, the being [31] years of age at the least, and the having given no bribe directly or indirectly to obtain their appointment. while in the Senatorial office they shall be incapable of holding any public pension or post of profit either themselves, or by others for their use.

The judges of the General court and of the High court of Chancery shall have session and deliberative voice, but not suffrage in the house of Senators.

The Senate and the house of representatives shall each of them have power to originate and amend bills; save only that bills for levying money (*bills*) shall be originated and amended by the representatives only: the assent of both houses shall be requisite to pass a law.

The General assembly shall have no power to pass any law inflicting death for any crime, excepting murder, & (*such*) those offences in the military service for which they shall think punishment by death absolutely necessary: and all capital punishments in other cases are hereby abolished. nor shall they have power to prescribe torture in any case whatever: nor shall there be power any where to pardon crimes or to remit fines or punishments: nor shall any law for levying money be in force longer than [ten years.] from the time of it's commencement.

[Two thirds] of the members of either house shall be a *Quorum* to proceed to business.

### II. EXECUTIVE.

The executive powers shall be exercised in manner following.

One person to be called the [Administrator] shall be annually appointed by the house of Representatives on the second day of their first session, who after having acted [one] year shall be incapable of being again appointed to that office until he shall have been out of the same [three] years.

Adminis-  
trator

Under him shall be appointed by the same house and at the same time a Deputy Administrator to assist his principal in the discharge

Deputy  
Admr.

## VIRGINIA CONSTITUTION 1776

of his office, and to succeed, in case of his death before the year shall have expired, to the whole powers thereof during the residue of the year.

The Administrator shall possess the powers formerly held by the king: save only that, he shall be bound by acts of legislature tho' not expressly named;

he shall have no negative on the bills of the Legislature;

he shall be liable to action, tho' not to personal restraint for private duties or wrongs;

he shall not possess the prerogatives

of dissolving, proroguing or adjourning either house of Assembly;

of declaring war or concluding peace;

of issuing letters of marque or reprisal;

of raising or introducing armed forces, building armed vessels, forts, or strong holds;

of coining monies or regulating their value;

of regulating weights and measures;

of erecting courts, offices, boroughs, corporations, fairs, markets, ports, beacons, lighthouses, seamarks.

of laying embargoes, or prohibiting the exportation of any commodity for a longer space than [40] days.

of retaining or recalling a member of the state but by legal process pro delicto vel contractu.

of making denizens;

*(of pardoning crimes, or remitting fines or punishments;)\**

of creating dignities or granting rights of precedence.

but these powers shall be exercised by the legislature alone. and excepting also those powers which by these fundamentals are given to others, or abolished.

**Privy council** A Privy council shall be annually appointed by the house of representatives, whose duty it shall be to give advice to the Administrator when called on by him. with them the Deputy Administrator shall have session and suffrage.

**Delegates.** Delegates to represent this colony in the American Congress shall be appointed when necessary by the house of Representatives. after serving [one] year in that office they shall not be capable of being re-appointed to the same during an interval of [one] year.

**Treasurer.** a Treasurer shall be appointed by the house of Representatives who shall issue no money but by authority of both houses.

**Attorney Genl.** an Attorney general shall be appointed by the house of Representatives.



III. JEFFERSON'S THIRD DRAFT

High-sheriffs and Coroners of counties shall be annually elected by those qualified to vote for representatives: and no person who shall have served as highsheriff [one] year shall be capable of being re-elected to the said office in the same county till he shall have been out of office [five] years. High sheriffs &c.

All other Officers civil and military shall be appointed by the Administrator; but such appointment shall be subject to the negative of the Privy council, saving however to the Legislature a power of transferring to any other persons the appointment of such officers or of any of them. other Officers.

III. JUDICIARY.

The Judiciary powers shall be exercised

First by County courts and other inferior jurisdictions:

Secondly by a General court & a High court of Chancery:

Thirdly by a Court of Appeals.

The judges of the County courts and other inferior jurisdictions shall be appointed by the Administrator, subject to the negative of the privy council. they shall not be fewer than [five] in number. their jurisdiction shall be defined from time to time by the legislature: and they shall be removeable for misbehavior by the court of Appeals. County Courts &c.

The Judges of the General court and of the High court of Chancery shall be appointed by the Administrator and Privy council. if kept united they shall be [5] in number, if separate, there shall be [5] for the General court & [3] for the High court of Chancery. the appointment shall be made from the faculty of the law, and of such persons of that faculty as shall have actually exercised the same at the bar of some court or courts of record within this colony for [seven] years. they shall hold their commissions during good behavior, for breach of which they shall be removeable by the court of Appeals. their jurisdiction shall be defined from time to time by the Legislature. Genl. Court and High Ct. of Chancery.

The Court of Appeals shall consist of not less than [7] nor more than [11] members, to be appointed by the house of Representatives: they shall hold their offices during good behavior, for breach of which they shall be removeable<sup>5</sup> by an act of the legislature only. their jurisdiction shall be to determine finally all causes removed before them from the General court or High court of Chancery on suggestion of error: to remove judges of the General court or High court of Chancery, or of the County courts or other inferior jurisdictions for misbehavior: [to try impeachments against high of- Court of Appeals.

## VIRGINIA CONSTITUTION 1776

fenders lodged before them by the house of representatives for such crimes as shall hereafter be precisely defined by the Legislature, and for the punishment of which the said legislature shall have previously prescribed certain and determinate pains.] in this court the judges of the General court and High court of Chancery shall have session and deliberative voice, but no suffrage.

**Juries.** All facts in causes, whether of Chancery, Common, Ecclesiastical, or Marine law, shall be tried by a jury upon evidence given vivâ voce, in open court: but where witnesses are out of the colony or unable to attend through sickness or other invincible necessity, their depositions may be submitted to the credit of the jury.

**Fines &c.** All Fines and Amercements shall be assessed, & Terms of imprisonment for Contempts & Misdemeanors shall be fixed by the verdict of a jury.

**Process.** All Process Original & Judicial shall run in the name of the court from which it issues.

**Quorum.** Two thirds of the members of the General court, High court of Chancery, or Court of Appeals shall be a Quorum to proceed to business.

## IV. RIGHTS PRIVATE AND PUBLIC.

**Lands.** Unappropriated or Forfeited lands shall be appropriated by the Administrator with the consent of the Privy council.

Every person of full age neither owning nor having owned [50] acres of land, shall be entitled to an appropriation of [50] acres or to so much as shall make up what he owns or has owned [50] acres in full and absolute dominion, and no other person shall be capable of taking an appropriation.

Lands heretofore holden (*in fee*) of the crown in feesimple, and those hereafter to be appropriated shall be holden in full and absolute dominion, of no superior whatever.

No lands shall be appropriated until purchased of the Indian native proprietors; nor shall any purchases be made of them but on behalf of the public, by authority of acts of the General assembly to be passed for every purchase specially.

The territories contained within the charters erecting the colonies of Maryland Pennsylvania, North and South Carolina, are hereby ceded, released, & for ever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and government and all other rights whatsoever which might at any time heretofore have been claimed by this colony. the Western and



III. JEFFERSON'S THIRD DRAFT

Northern extent of this country shall in all other respects stand as fixed by the charter of

until by act of the Legislature one or more territories shall be laid off Westward of the Alleghaney mountains for new colonies, which colonies shall be established on the same fundamental laws contained in this instrument, and shall be free and independant of this colony and of all the world.

Descents shall go according to the laws of Gavelkind, save only that females shall have equal rights with males.

No person hereafter coming into this country shall be held within the same in slavery under any pretext whatever. Slaves.

All persons who by their own oath or affirmation, or by other testimony shall give satisfactory proof to any court of record in this colony that they purpose to reside in the same [7] years at the least and who shall subscribe the fundamental laws, shall be considered as residents and entitled to all the rights of persons natural born. Naturalization.

All persons shall have full and free liberty of religious opinion; nor shall any be compelled to frequent or maintain any religious institution. Religion.

No freeman shall be debarred the use of arms [within his own lands or tenements] Arms.

There shall be no standing army but in time of actual war. Standing army.

Printing presses shall be free, except so far as by commission of private injury cause may be given of private action. Free press.

All Forfeitures heretofore going to the king, shall go to the state; save only such as the legislature may hereafter abolish. Forfeitures.

The royal claim to Wrecks, waifs, strays, treasure-trove, royal mines, royal fish, royal birds, are declared to have been usurpations on common right. Wrecks.

No Salaries or Perquisites shall be given to any officer but by some future act of the legislature. no salaries shall be given to the Administrator, members of the Legislative houses, judges of the court of Appeals, judges of the County courts, or other inferior jurisdictions, Privy counsellors, or Delegates to the American Congress: but the reasonable expences of the Administrator, members of the house of representatives, judges of the court of Appeals, Privy counsellors, & Delegates, for subsistence while acting in the duties of their office, may be borne by the public, if the Legislature shall so direct. Salaries.

*(The Qualifications of all officers not otherwise hereby directed, shall be an oath of fidelity to the state, and the having given no bribe* Qualifications.



## VIRGINIA CONSTITUTION 1776

to obtain their office) No person shall be capable of acting in any office, Civil, Military [or Ecclesiastical] who shall have given any bribe to obtain such office, or who shall not previously take an oath of fidelity to the state.

None of these fundamental laws and principles of government shall be repealed or altered, but by the personal consent of the people on summons to meet in their respective counties on one and the same day by an act of Legislature to be passed for every special occasion: and if in such county meetings the people of two thirds of the counties shall give their suffrage for any particular alteration or repeal referred to them by the said act, the same shall be accordingly repealed or altered, and such repeal or alteration shall take it's place among these fundamentals & stand on the same footing with them, in lieu of the article repealed or altered.

The laws heretofore in force in this colony shall remain (*still*) in force, except so far as they are altered by the foregoing fundamental laws, or so far as they may be hereafter altered by acts of the Legislature.

Dft (NN). This copy of TJ's constitution was folded and docketed in correct legislative form. At the top of the two sheets, after it was folded, TJ endorsed this title on his substantive law: "A Bill for new modelling the form of government, & for establishing the fundamental principles thereof in future." Below this, he added: "It is proposed that this bill, after correction by the Convention, shall be referred by them to the people to be assembled in their respective counties and that the suffrages of two thirds of the counties shall be requisite to establish it."

The provenance of this text is given in a memorandum of Victor H. Paltsits (Ford Papers, NN, 1 Feb. 1916): the document was acquired from Cassius F. Lee, Jr., of Alexandria, by "William Eyarts Benjamin, then a well-known dealer of New York City who acted in the matter for some woman whose name is not revealed." Alexander Maitland purchased it of Benjamin for the Lenox Library. Shortly after this text was brought to light in 1890, efforts were made to identify it as the copy that TJ had given to George Wythe to convey to the Virginia Convention (D. R. Anderson, "Jefferson and the Va. Const.," *Amer. Hist. Rev.*, XXI [1915-1916], 751). A close comparison of the copy found among Wythe's

papers at his death in 1806 and printed with meticulous accuracy in the *Richmond Enquirer*, 20 June 1806, clearly establishes the identity of that copy and the one now in the New York Public Library, here designated as the Third Draft (Boyd, *Declaration of Independence*, 1945, p. 44-5). In 1825 TJ wrote: "I . . . drew a sketch or outline of a Constitution, with a preamble, which I sent to Mr. Pendleton, president of the convention. . . . He informed me afterwards by letter, that he received it on the day on which the Committee of the whole had reported to the House the plan they had agreed to . . ." (TJ to Augustus B. Woodward, 3 Apr. 1825). It has been assumed that this was a mistake of memory on TJ's part and that he confused Pendleton with Wythe (Hazelton, p. 451). Wythe reported to TJ that "the one you put into my hands was *shewn* [italics supplied]" to those chiefly engaged in framing the Constitution (Wythe to TJ, 27 July 1776). This, together with the significant fact that Wythe's copy remained among his papers, indicates that TJ was correct in saying he had sent a copy to Pendleton. If so, this would tend to confirm the supposition advanced in the notes to the Second Draft that two copies were sent. Wirt indicates that the copy he saw in the State archives was the one "forwarded . . . to Mr. Wythe";



## III. JEFFERSON'S THIRD DRAFT

however, he also describes it as "an original rough draught," a description which scarcely fits the Wythe copy or Third Draft (Wirt, *Henry*, 1, 196). Moreover, if Wythe's copy had been used by the Convention as the text from which several parts were taken for incorporation in the Constitution adopted by that body, it seems very likely that some corrections or markings on the MS of the text would have been made to indicate what parts had been selected, how they had been altered, &c. (see *Conv. Jour.*, May 1776, 1816 edn., p. 78, for 28 June, when it was ordered that "the said plan of government, together with the amendments, be *fairly transcribed*" [italics supplied]). No such alterations or markings appear on the Third Draft.

<sup>1</sup> MS torn; text supplied from the precisely correct and literal text printed in the *Richmond Enquirer*, 20 June 1806.

<sup>2</sup> A word must have been omitted by TJ at this point; elsewhere in the document the comparable phrase is employed: e.g., "incapable of holding any public pension . . .," not "incapable of any pension." The fact is that at this point in the Second Draft TJ wrote: "incapable of being again appointed to the same"; then struck out the words "being again appointed to"; then interlined "holding," making the phrase read as he usually wrote it "incapable of holding the same." However, the word "holding" appears also to have had a line drawn through it, though it also bears evidence of the slight smudge that TJ occasionally made in his rough drafts, as if he had run his finger over a freshly drawn line or word to expunge it. At all events, it is certain that "incapable of *holding*" is what he normally would have written and it is equally certain that "holding" was interlined though perhaps lined out. The point is worth noting since both the text of the Third Draft and the text of the *Enquirer* omit the word "holding" at this point, thus adding to the preponderant evidence that they are identical.

<sup>3</sup> The square brackets here and below in the text are in the MS.

<sup>4</sup> The words in italics were struck out, and then TJ interlined the following words at the top of the same page of MS: "nor shall there be power any where to pardon or to remit fines or punishments." This clause was finally inserted

in the next to the last paragraph under "I. Legislative," above.

<sup>5</sup> The six lines in the MS beginning with the words "by an act of the legislature" down to and including "defined by the legislature, and for" are written on a slip of paper pasted on the MS at this point. This represents a curious omission made by TJ in copying, an omission that seems inexplicable except on the ground that the Third Draft (Wythe's copy in NN) was copied not from the Second Draft (DLC) but from another text. As originally copied in the Third Draft, TJ caused this passage to read in part, without a break in the lines, "for breach of which they shall be removeable [end of line] the punishment of which the said legislature shall have previously prescribed certain and determinate pains. . . ." The First Draft includes in rough, interlined form the six lines thus omitted at the end of the line "they shall be removeable," but in the Second Draft this passage comprises four and a half lines at the bottom of page 7 and two and a half lines at the top of page 8. It is conceivable that TJ could have accidentally skipped such a passage if it had ended at the bottom of a page or if its beginning and end coincided with the beginning and end of a line. But it is difficult to believe that he could have made this error if he had been copying from a text where the passage began in the middle of the line near the bottom of one page and ended in the middle of the line near the top of another, particularly in a case where the omission involved such a sharp break in the continuity and sense. The evidence in this instance alone is not conclusive, but taken in connection with TJ's remarks in 1825, with the statements of Wirt and Leigh as cited in notes to the Second Draft, and other evidences given in these notes, it seems certain that the Third Draft was copied from another fair copy made from the Second Draft. At all events, the omission of this passage conclusively proves that the Third Draft is the copy that George Wythe carried to Virginia, for the *Richmond Enquirer* printed the six lines written on the slip of paper, but neglected to include the lines written underneath. This typographical error obviously could have occurred only in the use of the copy now in NN, which, therefore, is the copy transmitted by Wythe.

*Bedford Journals*

AN  
ASSISTANCE  
TO  
Justices of the Peace,  
FOR THE  
EASIER PERFORMANCE  
OF THEIR  
DUTY.

---

By JOS. KEBLE, of Grays Inn, Esq;

---

L O N D O N,

Printed by *W. Rawlins, S. Roycroft, and H. Sawbridge*  
Assigns of *Richard and Edward Atkins Esq;*

For ~~Samuel Keble~~ at the *Turks Head* over against *Fetter*  
*Lane* End in *Fleet-street*. MDCLXXXIII.



## Constable.

223

same Authority that the Constable of a Vill or Wapentake hath at this day by the Common Law, *Dalt.* 47. cap. 16. *Infra* §. 54, 56.

IV. *Dalt.* 3. cap. 1. The High-Constables of Hundreds are Conservators of the Peace within their several Hundreds and Limits, by the Common Law, 12 *H.* 7. 18. *Crompt.* 6 b. 222 b. and therefore these High-Constables at their Pety-Sessions for any Affray made in disturbance of their Court, may imprison the offenders, 11 *Co.* 43, 44. *Dalt.* 46. cap. 16. Pety-Sessions;

V. *Dalt.* 3. cap. 1. Every Pety-Constable within the limits of their several Towns, be Conservators of the Peace at the Common Law, by vertue of their Office; see *tit. Affray, & Forcible Entry, Dalt.* 204. cap. 78. and these Pety-Constables may do what they can to keep the Peace, but they cannot take Surety of the Peace at the request of any man, *Crompt.* 6 b. 222 b. 12 *H.* 7. 18. *Infra* 17. *Kitch.* 47 b. *Infra* §. 65. Peace

VI. *Lamb.* 1. cap. 3. pag. 15. I have read also that a Constable might at the Common Law, have Bailed a suspect of Felony by Obligat', because he was a Conservator of the Peace, and that both he and the Sheriff lost this Authority by the Statutes 3 *H.* 7. 3. §. 1. N. 2. & 1 & 2 *Phil. & Mar.* 13. the which Statutes in giving that power to Justices of the Peace, do in the opinion of some men take it from the Sheriff and Constable; reported by Justice *Dalison.* Bail.

VII. *Lamb.* 1. cap. 13. pag. 65. And if a Justice of Peace make any Warrant, although it be beyond his Authority, yet is it not disputable by a Constable or other Ministers, but must be obey'd, *Lamb. Duty of Constable,* 19, 20. Process,

VIII. *Lamb.* 2. cap. 2. pag. 118, 119. Besides this, you may see admitted 13 *H.* 7. 10. *Recogn. Br.* 14. by the opinion of the Court, that if a man in the Night-season haunt a House that is suspected for Bawdry, or use suspicious Company, then may the Constable Arrest him to find Sureties of his Good abearing, *Lamb. Duty of Constable,* 12, 13. *Kitch.* 48 b. Imprisonm.

IX. *Lamb.* 2. cap. 3. pag. 134. If one do make an Affray upon a Justice of the Peace, Constable, or such other Officer, he may not only defend himself, but may also apprehend the offender, and send him to the Goal till he will find Sureties of the Peace, 5 *H.* 7. 6. *Crompt.* 223. *Kitch.* 48 a. b. Affray;

X. *Lamb.* 134. *ibid.* And the Justice or Constable may, if need be, command assistance of the Kings people for the pacifying of an Affray, *Dalt.* 33. cap. 8. *Kitch.* 48 a. b. Process.

XI. *Lamb.* 134. *ibid.* If he that maketh an Affray do flee into a House when the Justice of Peace or Constable cometh to Arrest him, they may also in Fresh Suit break open the doors and take him, by *Marwood*; or if he flee thence, they may make Fresh Suit and Arrest him though in another County, by the opinion of some men, 13 *Ed.* 4. 9. and it should seem by the reason of that Book, that in this case also they may break open the doors to apprehend him, *Lamb. Duty of Constable,* 15. Fresh Suit;

XII. *Lamb.* 134, 135. Now if the Constable do Arrest one that hath hurt another, and do wilfully suffer him to escape, and then he that was hurt dieth thereof within the year and day, the Constable shall make a great Fine, and that to the value of his Goods, in the opinion of some, 11 *H.* 4. 12. & *Stamf.* 35. *Lamb. Duty of Constable,* 16, 22, 23. Escape,

XIII. *Lamb. Duty of Constable,* 5. Out of which Office (*viz.* of Constable of England) this lower Constableship was at the first drawn and fetcht, and is as it were a very Finger of that hand, 13 *Rich.* 2. 2. for the Statute of *Winchester,* 13 *Ed.* 1. St. 2. cap. 6. §. 1. N. 11. by which these lower Constables of Hundreds and Franchises were first ordained, doth amongst other things appoint, that for the better keeping of the Peace, two Constables in every Hundred and Franchise should make the view of Armour, Officer,



- and 13 *Ed. 1. St. 2. cap. 6. §. 1. N. 12.* shall present before Justices assigned such defaults as they do see in the Country about Armour, and of the Suits of Towns, and of Highways: and also shall present all such as do lodge Strangers in uplandish Towns, for whom they will not answer, *Dalt. 46. cap. 16. infra 54. supra 3.*
- Officer. XIV. *Lamb. Duty of Constable, 9.* For as about the beginning of the Reign of *Ed. 3.* Pety-Constables were devised in Towns and Parishes for the aid of the Constables of the Hundred, (or High-Constables) so of later times also Borsholders, Tythingmen, Headboroughs, and such like have been used as Pety-Constables within their own Boroughs and Tythings, *Dalt. 46. cap. 16. infra §. 54. 4 Ed. 3. 3. 10.*
- Arrest. XV. *Lamb. Duty of Constable, 12. §. 13.* Any of these Officers may also Arrest such strange persons as do walk abroad in the Night-season, and for that cause 13 *Ed. 1. cap. 4. of Winchester,* did ordain, that Night-watches should be kept yearly, &c. and of these Watches the Officers, &c. have the charge within the limits or places of their Authorities; as the Constable in his Town, the Borsholder in his Borough, and the High-Constable within all his Hundred: and these Officers ought to see these Watches duly set and kept, and ought also to cause Hue-and-cry to be raised after such as will not obey the Arrest of such Watchmen.
- Force. XVI. *Lamb. ibid. 13, 14.* Again, if any person whatsoever (except the Kings Servants and Ministers in his presence, or in executing his Precepts, or other Officers, or such as shall assist them, and except it be upon Hue-and-cry made to keep the Peace, &c.) shall be so bold as to go or ride Armed, by night or by day, in Fairs, Markets, or any other places, against 2 *Ed. 3. 3. §. 1. N. 4.* then any Constable, or any of the said Officers may take such Armour from him for the Kings use, and may also commit him to the Goal; and therefore it shall be good in this behalf for these Officers to stay and Arrest all such persons as they shall find to carry Dags or Pistols, or to be apparelled with Privy-Coats or Doublets, as by the Proclamation made 21 *Eliz.* they are specially commanded, 12 *Rich. 2. 6. Crompt. 223 b.*
- Arrest. XVII. *Lamb. Duty of Constable, 14.* If any man do threaten to kill another, and he which is so threatened do pray any of these Officers to Arrest the other to find Sureties of the Peace, then may such an Officer Arrest him to find such Surety before a Justice of the Peace, and may also carry him to Prison if he refuse to find it; but if he yield to go, it shall be good to take the party threatened to the Justice with him, *supra 5. Crompt. 223. Kitch. 47 b. & 4 Ed. 3. Barre 102.*
- Peace. XVIII. *Lamb. ibid. 15.* If a Constable or any other of the said Officers, shall see any men going about to break the Peace, as by using hot words, by which an Affray is like to grow, then ought such Officers to command those persons to avoid upon pain of Imprisonment: and if they will not depart, but shall draw weapon or give any blow, then ought he to do his best to depart them and to keep them asunder, and he may for that purpose both use his own weapon, and may also call others to assist him, 3 *H. 7. 10. & 21 H. 7. 21.*
- Process. XIX. *Lamb. Duty of Constable, 17.* Any of these Officers may of his own Authority, Arrest one that is Indicted of Felony; so if the common voice and fame be, that *A. B.* hath done a Felony, that is sufficient cause for any of these Officers that shall therefore suspect him, to Arrest him for it, *Dalt. 303, 352, 353.*
- Seizure. XX. *Lamb. Duty of Constable, 17, 18.* And if any man shall flee upon Felony, it is the Office of the Constable of the Town, or of any of those other Officers there, to seize his Goods, and to keep them safely, for he is to answer for the loss or impairing of them, and therefore it is meet that he



he do it by Inventory taken in the presence, and by the testimony of the honest Neighbours, 3 *Ed. 3. iter Northumb. 1 R. 3. 3. 6. 1. N. 4. Dalt. 293.* cap. 110. *Poult. de Pace. 235. Forfeiture, 44. 33. 70. Stamsf. 192.*

XXI. *Lamb. ibid. 18.* I like well of their opinion which do hold: 1 *H. 7.* Imprisonment; 7. that if Information be given to any such Officer, that a man and a woman be in Adultry or Fornication together, then the Officer may take company with him; and that if he find them so, he may carry them to Prison.

XXII. *Lamb. ibid. 18.* But this is to be marked, that in the cases before, and such-like, where such an Officer hath arrested, or hath in his ward any Offender that ought to be carried to the Goal, there such an Officer is not bound forthwith to carry him, but may well for a reasonable time keep him in the Stocks, until that convenient provision of strength may be made to convey him safely thither, 22 *Ed. 3. 35. & 3 H. 4. 9. Crompt. 224.* Imprisonment

XXIII. *Lamb. Duty of Constable, 20, 21, 22.* If a Warrant for the peace or good abearing happen to be directed to any of these said Officers, then ought he with all speed and secrecie to find out the party; and then also may he lay his hands upon him, and shew him the matter, and require him in the King's Name to go with him, to put in Surety according to the Warrant, 21 *H. 7. 39.* Process.

And this if the party shall refuse to do, then ought such Officer forthwith to arrest him, and to convey him to Prison, without carrying him to any Justice; in which doing, if the party shall offer any resistance, or seek to escape, then also may such Officer justify the beating or hurting of him; but if the party shall yield to go, and give Surety, and yet will not go to such Justice as made out the Warrant, but to some other Justice, then ought such Officer to give him that liberty, so that it be not far out of the limit; for else so great travel might follow upon the Officer, as rather he than the Offender might seem to be punished by it, 21 *H. 7. 30.*

And here the Officer must take regard, and consider whether the Warrant do come directly from the meer authority of the Justices of Peace, or else be grounded upon a Writ of *Supplicavit* sent down from higher authority; which difference ought to appear plainly in all Warrants that be well and orderly made; And if the Warrant be grounded upon such a Writ, then may such Officer compel the party to go to the very same Justice or Justices of Peace that made out the Warrant, and otherwise he may convey him to Prison, &c.

Neither is it requisite that such an Officer should dance after the party, as many use to do, till he can find out Sureties; but he may lawfully keep him until that he can get Sureties to come unto him; the ignorance of which point is the cause both that many an evil man escapeth, and many an honest Officer is punished for it.

But here it happeneth many times, that the party hearing that such a Warrant is granted against him, offereth himself with Sureties for that cause unto some other Justice of the Peace, or findeth such Surety in some of the Courts at *Westminster*, 21 *Jac. 8. 6. 3.* and so hath a *Superfedeas* ready to shew such Officer as cometh to him with a Warrant, &c. then is the Officer discharged thereby, and ought not any longer to molest the party; But yet it shall be good that such Officer do keep the *Superfedeas* for his better discharge, and shew it to the Justice from whom he received the Commandment of service, lest otherwise he be called to account for not serving the Warrant that was sent unto him.

XXIV. *Lamb. Duty of Constable, 22.* If a Warrant be directed to a Constable, or such other Officer, to arrest one that is Indicted of Felony, then may such Officer justify the killing of such a party, if it be so that he cannot otherwise take him, or if so be that he resist, or fly when he is taken, 22 *Aff. 59. Coron 261, 288, 328.* Process.

*John Adams*

ARCHÆOLOGIA GRÆCA:

OR, THE  
ANTIQUITIES  
OF  
GREECE.

The FOURTH EDITION.

By JOHN POTTER, D. D.  
now Lord Bishop of OXFORD.

VOLUME the FIRST.

CONTAINING,

I. The CIVIL GOVERN- } II. The RELIGION of  
MENT of ATHENS. } GREECE.

— *Antiquam exquirite Matrem.* Virgil.  
— *Vos exemplaria Græca*  
*Nocturna versate manu, versate diurna.* Horat.

L O N D O N :

Printed by SAM. PALMER, for J. KNAPTON, R. KNAPLOCK,  
J. and B. SPRINT, D. MIDWINTER, R. ROBINSON, W. TAY-  
LOR, W. and J. INNYS, J. OSBORN, W. MEARS, A. WARD,  
and J. BATEMAN,

M DCC XXII.



Till twenty, Men shall remain within *Attica* to be ready in Arms, after that they shall serve in the Army without *Attica*<sup>f</sup>. See Book III. Chap. ii.

He shall be *Ατιμω*, who offers to serve in the *Horse*, before he has undergone the accustom'd Probation<sup>t</sup>. See Book III. Chap. iii.

The *Chivalry* shall be detach'd out of the most puissant and wealthy *Athenians*<sup>u</sup>.

*Soldiers* shall not observe the Punctilios of Spruceness and Foppery, in their Hair, &c.<sup>w</sup>. This Law was enacted by Cincas and Phrynus. See Book III. Chap. viii.

None shall pawn their *Arms*<sup>x</sup>.

He shall suffer Death, who hath betray'd a *Garrison, Ship, or Army*.

All *Revolters* to the *Enemy* shall undergo the same Penalty. See Book III. Chap. xiii.

There shall be no *marching* before the seventh of the Month<sup>y</sup>. See Book III. Chap. vii.

The Ceremony for *proclaiming* of *War* shall be by putting a Lamb into the *Enemy's Territories*<sup>z</sup>. See as before.

The *Polemarch* shall lead up the right Wing of the *Army*<sup>a</sup>. See Book III. Chap. iv.

All publick *Revenue-keepers*, and *Dancers* at the *Διονυσια*, shall be exempted from serving in the *Army*<sup>b</sup>. See Book III. Chap. ii.

### Of Military Punishments and Rewards.

**T**HEY, who have maintain'd their Post with Courage, shall be *advanc'd*, and others *degraded*<sup>c</sup>. See Book III. Chap. xiii.

All Refusers to go into the *Army*, Cowards, and Run-aways, shall be expell'd the *Forum*, shall not be crown'd, or go to the publick Temples; he, who offends against this Law, shall be put into Bonds by the *Eleven*, and carry'd before the *Heliasta*, where any one impower'd may accuse him; if he is prov'd guilty, the *Heliasta* shall pronounce Sentence, and inflict upon him, as the Nature of his Crime requires, a Mulct, or corporal Penance; if the former, he shall lie in Goal till he pays it<sup>d</sup>. See as before, and in the Laws following.

Let him be *Ατιμω*, who casts away his *Arms*<sup>e</sup>.

He, who during the *War* by Sea, runs away from his Ship; and he, who being prest doth not go, shall be *Ατιμω*<sup>f</sup>. See Book III. Chap. xx.

All disabled and wounded *Soldiers* shall be maintain'd out of the publick Fame<sup>g</sup>. This was enacted by Pisistratus.

Their Parents, and Children shall be taken care for, that are cut off in *War*; if Parents are kill'd, their Children shall be put to School at the publick Charge; and when come to Maturity of Age, shall be presented with a whole Suit of Armour, settled every one in his respective

<sup>f</sup> Ulpianus in *Olinthiac*. III.    <sup>t</sup> *Lyfias* in *Alcibiadem*.    <sup>u</sup> *Xenophon Hipparchico*.  
<sup>w</sup> *Aristophanis Scholiastes* ad *Equites*.    <sup>x</sup> *Idem* ad *Plutum*.    <sup>y</sup> *Zenobius*, Cent. II. Prov. LXXIX.    <sup>z</sup> *Diogenianus* Cent. II. Prov. XCVI.    <sup>a</sup> *Herodotus Erato*.    <sup>b</sup> *Demosthenes* in *Neeram*, & in *Mediam*.  
<sup>c</sup> *Xenophon Hipparchico*.    <sup>d</sup> *Demosthenes* in *Timocratem*, *Aeschines* in *Ctesiphontem*.  
<sup>e</sup> *Lyfias Orat.* I. in *Theomnestum*.    <sup>f</sup> *Plutarchus Solone*.    <sup>g</sup> *Laertius Solone*.



Calling, and honour'd with first Seats in all publick Places<sup>h</sup>. One of Solon's Laws.

### Miscellany Laws.

**T**HEY shall be prosecuted for Ingratitude, who do not retaliate Kindnesses<sup>i</sup>.

The Borough, and Name of every one's Father shall be written down in all Deeds, Compacts, Suits, and other Concerns<sup>k</sup>.

A Discoverer, who alledges Truth, shall be secure; but if Falshood, shall suffer Death<sup>l</sup>.

He shall be *Ατιμῶς*, who stands Neuter in any publick Sedition<sup>m</sup>. This Law was enacted by Solon, to oblige every Athenian to promote the Welfare of the Commonwealth to his utmost.

He shall die, who leaves the City for Residence in the Piraeus<sup>n</sup>. This Law was enacted by Solon to prevent Discord amongst the Athenians.

He shall be fin'd, who is seen to walk the City-streets with a Sword by his Side, or having about him other Armour, unless in case of Exigency<sup>o</sup>. One of Solon's Laws. See Book III. Chap. iv.

He shall be denied Burial within Attica, and his Goods expos'd to Sale, who hath been convicted of perfidious Behaviour towards the State, or of Sacrilege<sup>p</sup>. See Book I. Chap. iv.

He that hath betray'd his Country, shall not enter into Attica's Borders; if he do, he shall expiate his Crime by the same Law, as they who, tho' condemn'd by the *Areopagites* to Banishment, return<sup>q</sup>.

Those Compacts shall stand good, which have been approv'd of by the Judges<sup>r</sup>.

Let there be an Amnesty of all former Dissensions, and no one be liable to be call'd in Question, or reproach'd for any thing done formerly<sup>s</sup>.

This Law was made after the thirty Tyrant's Expulsion, to reconcile all former Quarrels, and was sworn to by the Archons, Senate of five hundred, and all the Commonalty of Athens.

When any Person is accus'd contrary to this Oath, use may be made of the Plea call'd *ᾠδύσεια*; the Archons shall have Cognizance of this Matter, and he that makes the Plea, shall make his Defence first; the Party that is cast, shall have the Fine call'd *Ἐπώελλια* impos'd upon him<sup>t</sup>. This Law was enacted by Archinus, as a Security to the former.

No Stranger shall be wrong'd or injur'd<sup>u</sup>.

Put the bewildred Traveller in his Way, and be hospitable to Strangers<sup>w</sup>.

No Seller of Rings shall keep by him the Signature of a Ring, when sold<sup>x</sup>. One of Solon's Laws.

<sup>p</sup> Lucianus Abdicato, Valerius Maximus, lib. V. cap. 3. <sup>i</sup> Demosth. in Baetren.  
<sup>k</sup> Andocides de Mysteriis. <sup>l</sup> Plutarchus Solone. <sup>m</sup> Suidas. <sup>n</sup> Lucian Anacharside.  
<sup>o</sup> Xenophon *Ἑλληνικῶν*, lib. I. <sup>p</sup> Dinarchus in Demosthen. <sup>q</sup> Demosthenes Halones.  
<sup>r</sup> Cicero, Philip. I. <sup>s</sup> Lyfias in Ctesiphontem. <sup>t</sup> Andocides de Mysteriis.  
<sup>u</sup> Xenophon *Ἀπομνημ.*, lib. II. <sup>w</sup> Cicero de Offic. lib. III.  
<sup>x</sup> Laertius Solone.



AE

17804

# WORKS

17804

OF

THE HONOURABLE

## JAMES WILSON, L. L. D.

LATE ONE OF THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES, AND PROFESSOR OF LAW IN THE COLLEGE OF PHILADELPHIA.

PUBLISHED UNDER THE DIRECTION

OF

### BIRD WILSON, ESQUIRE.



LEX FUNDAMENTUM EST LIBERTATIS, QUA FRUIMUR. LEGES OMNES SERVI SUMUS, UT LIBERI ESSE POSSIMUS.

CIC.

VOL. III.



PHILADELPHIA :

AT THE LORENZO PRESS, PRINTED FOR BRONSON AND CHAUNCEY.

1804.

revengeful, or rude, or insolent manner, as by touching him in any manner, or by spitting in his face, is a battery in the eye of the law.<sup>c</sup> In that eye, the person of every man is sacred: between the different degrees of violence it is impossible to draw a line: with great propriety, therefore, its very first degree is prohibited.<sup>d</sup>

Wounding is a dangerous hurt given to another; and is an aggravated species of battery.<sup>e</sup>

These offences may unquestionably be considered as private injuries, for which compensation ought to be decreed to those who suffer them. But viewed in a publick light, they are breaches of the publick peace: as such they may be prosecuted; and as such they may be punished. The punishment is fine, or fine and imprisonment.<sup>f</sup>

A battery or an assault, violence or an offer of violence, is susceptible of deep criminality from the atrocious intention, with which it is sometimes offered or done. An assault with a design to murder, to perpetrate the last outrage upon the honour of the fair sex, or to commit the crime which ought not to be even named—these are instances of what I mention: in these instances, to a heavy fine and imprisonment, it is usual to add the judgment of the pillory.<sup>g</sup>

Assaults, batteries, and woundings may be sometimes excused, and sometimes justified. The particular cases in which this may be done, will be explained with more

<sup>c</sup> 1. Haw. 134.

<sup>d</sup> 3. Bl. Com. 120.

<sup>e</sup> Id. 121.

<sup>f</sup> 1. Haw. 134. 4. Bl. Com. 217.

<sup>g</sup> 4. Bl. Com. 217.



propriety, when we come to consider them as private injuries, and not as publick offences.

Affrays are crimes against the personal safety of the citizens ; for in their personal safety, their personal security and peace are undoubtedly comprehended. An affray is a fighting of persons in a publick place, to the terrour of the citizens. They are considered as common nuisances. They may, and ought to be suppressed by every person present ; and the law, as it gives authority, so it gives protection, to those who obey its authority in suppressing them, and in apprehending such as are engaged in them ; if by every person present ; then still more strongly by the officers of peace and justice. <sup>b</sup> In some cases, there may be an affray, where there is no actual violence ; as where a man arms himself with dangerous and unusual weapons, in such a manner, as will naturally diffuse a terrour among the people. <sup>i</sup>

To challenge another, by word or letter, to fight a duel, or to be the messenger of such a challenge, or to provoke, or even to endeavour to provoke, another to send such a challenge, is a crime of a very high nature, and is severely reprehended by the law : <sup>j</sup> duels are direct and insolent contempts of the justice of the state. <sup>k</sup>

Affrays are punished by fine and imprisonment, the measure of which must be regulated by the circumstances of the case. <sup>l</sup> For sending a challenge, the offenders have been adjudged to pay a fine, to be imprisoned, to

<sup>a</sup> 3. Ins. 158. 4. Bl. Com. 145.

<sup>j</sup> 1. Haw. 135.

<sup>l</sup> 3. Ins. 158. 1. Haw. 135.

<sup>k</sup> 1. Haw. 128.

<sup>i</sup> Id. *ibid.*

make a publick acknowledgment of their offence, and to be bound to their good behaviour.

It cannot have escaped your observation, with what a judicious mixture of poignant contempt the common law seasons its indignation against those, who are so lost to true sentiment as to deem it honourable to insult the justice of their country. They are not treated as criminals of dignity: they are considered in the very degraded view of common nuisances: the putrid offals of the shambles are viewed, as we shall see, in the same light.

Neither can it have escaped your observation, with what a deep knowledge of human nature, the common law traces and pursues duels to what is frequently their cowardly as well as their cruel source. Many are vain and base enough to wish and aspire at that importance, which, in their perverted notions, arises from being even the second in a quarrel of this nature, who have not spirit enough to face that danger, which arises from being the first. Hence, often the officious and the insidious offers of friendship, as it is called, on these occasions, by those who, with hearts pusillanimous and malignant, inflame, instead of endeavouring, as those possessed of bravery and humanity would endeavour, to extinguish an unhappy dispute—a dispute, perhaps, unpremeditated as well as unhappy—regretted as well as unintended by the immediate parties—and to rescue them from the consequences of which, without any violation of the rules of true honour, and even without any departure from the rules of false honour, which every one has not the calm courage to violate, nothing is wanting but a conduct diametrically opposite to that of these pretended friends—a conduct which will prevent extremities, without wounding a senti-



THE WORKS OF  
THOMAS JEFFERSON,

PUBLISHED BY ORDER OF CONGRESS  
FROM THE ORIGINAL MANUSCRIPTS DEPOSITED IN THE  
DEPARTMENT OF STATE.

EDITED BY  
H. A. WASHINGTON.

---

VOL. I.

---

NEW YORK:  
TOWNSEND MAC COUN.  
1884.

## CORRESPONDENCE.

395

ence than the most conspicuously wretched individual of the whole United States. I beg your pardon for getting into politics. I will add only one sentiment more of that character, that is, nourish peace with their persons, but war against their manners. Every step we take towards the adoption of their manners is a step to perfect misery. I pray you to write to me often. Do not you turn politician too; but write me all the small news—the news about persons and about states; tell me who dies, that I may meet these disagreeable events in detail, and not all at once when I return; who marry, who hang themselves because they cannot marry, &c. Present me in the most friendly terms to Mrs. House and Browse, and be assured of the sincerity with which I am, dear Madam,

Your affectionate friend and servant.

---

TO PETER CARR.

PARIS, August 19, 1786.

DEAR PETER,—I received, by Mr. Mazzei, your letter of April the 20th. I am much mortified to hear that you have lost so much time; and that, when you arrived in Williamsburg, you were not at all advanced from what you were when you left Monticello. Time now begins to be precious to you. Every day you lose will retard a day your entrance on that public stage whereon you may begin to be useful to yourself. However, the way to repair the loss is to improve the future time. I trust, that with your dispositions, even the acquisition of science is a pleasing employment. I can assure you, that the possession of it is, what (next to an honest heart) will above all things render you dear to your friends, and give you fame and promotion in your own country. When your mind shall be well improved with science, nothing will be necessary to place you in the highest points of view, but to pursue the interests of your country, the interests of your friends, and your own interests



also, with the purest integrity, the most chaste honor. The defect of these virtues can never be made up by all the other acquirements of body and mind. Make these, then, your first object. Give up money, give up fame, give up science, give the earth itself and all it contains, rather than do an immoral act. And never suppose, that in any possible situation, or under any circumstances, it is best for you to do a dishonorable thing, however slightly so it may appear to you. Whenever you are to do a thing, though it can never be known but to yourself, ask yourself how you would act were all the world looking at you, and act accordingly. Encourage all your virtuous dispositions, and exercise them whenever an opportunity arises; being assured that they will gain strength by exercise, as a limb of the body does, and that exercise will make them habitual. From the practice of the purest virtue, you may be assured you will derive the most sublime comforts in every moment of life, and in the moment of death. If ever you find yourself environed with difficulties and perplexing circumstances, out of which you are at a loss how to extricate yourself, do what is right, and be assured that that will extricate you the best out of the worst situations. Though you cannot see, when you take one step, what will be the next, yet follow truth, justice, and plain dealing, and never fear their leading you out of the labyrinth, in the easiest manner possible. The knot which you thought a Gordian one, will untie itself before you. Nothing is so mistaken as the supposition, that a person is to extricate himself from a difficulty, by intrigue, by chicanery, by dissimulation, by trimming, by an untruth, by an injustice. This increases the difficulties tenfold; and those, who pursue these methods, get themselves so involved at length, that they can turn no way but their infamy becomes more exposed. It is of great importance to set a resolution, not to be shaken, never to tell an untruth. There is no vice so mean, so pitiful, so contemptible; and he who permits himself to tell a lie once, finds it much easier to do it a second and third time, till at length it becomes habitual; he tells lies without attending to it, and truths without the world's believing

## CORRESPONDENCE.

397

him. This falsehood of the tongue leads to that of the heart, and in time depraves all its good dispositions.

An honest heart being the first blessing, a knowing head is the second. It is time for you now to begin to be choice in your reading ; to begin to pursue a regular course in it ; and not to suffer yourself to be turned to the right or left by reading anything out of that course. I have long ago digested a plan for you, suited to the circumstances in which you will be placed. This I will detail to you, from time to time, as you advance. For the present, I advise you to begin a course of ancient history, reading everything in the original and not in translations. First read Goldsmith's history of Greece. This will give you a digested view of that field. Then take up ancient history in the detail, reading the following books, in the following order : Herodotus, Thucydides, Xenophontis Anabasis, Arrian, Quintus Curtius, Diodorus Siculus, Justin. This shall form the first stage of your historical reading, and is all I need mention to you now. The next will be of Roman history.\* From that, we will come down to modern history. In Greek and Latin poetry, you have read or will read at school, Virgil, Terence, Horace, Anacreon, Theocritus, Homer, Euripides, Sophocles. Read also Milton's Paradise Lost, Shakspeare, Ossian, Pope's and Swift's works, in order to form your style in your own language. In morality, read Epictetus, Xenophontis Memorabilia, Plato's Socratic dialogues, Cicero's philosophies, Antoninus, and Seneca. In order to assure a certain progress in this reading, consider what hours you have free from the school and the exercises of the school. Give about two of them, every day, to exercise ; for health must not be sacrificed to learning. A strong body makes the mind strong. As to the species of exercise, I advise the gun. While this gives a moderate exercise to the body, it gives boldness, enterprise, and independence to the mind. Games played with the ball, and others of that nature, are too violent for the body, and stamp no character on the

\* Livy, Sallust, Cæsar, Cicero's epistles, Suetonius, Tacitus, Gibbon.



mind. Let your gun, therefore, be the constant companion of your walks. Never think of taking a book with you. The object of walking is to relax the mind. You should therefore not permit yourself even to think while you walk; but divert yourself by the objects surrounding you. Walking is the best possible exercise. Habituate yourself to walk very far. The Europeans value themselves on having subdued the horse to the uses of man; but I doubt whether we have not lost more than we have gained, by the use of this animal. No one has occasioned so much the degeneracy of the human body. An Indian goes on foot nearly as far in a day, for a long journey, as an enfeebled white does on his horse; and he will tire the best horses. There is no habit you will value so much as that of walking far without fatigue. I would advise you to take your exercise in the afternoon: not because it is the best time for exercise, for certainly it is not; but because it is the best time to spare from your studies; and habit will soon reconcile it to health, and render it nearly as useful as if you gave to that the more precious hours of the day. A little walk of half an hour, in the morning, when you first rise, is advisable also. It shakes off sleep, and produces other good effects in the animal economy. Rise at a fixed and an early hour, and go to bed at a fixed and early hour also. Sitting up late at night is injurious to the health, and not useful to the mind. Having ascribed proper hours to exercise, divide what remain (I mean of your vacant hours) into three portions. Give the principal to History, the other two, which should be shorter, to Philosophy and Poetry. Write to me once every month or two, and let me know the progress you make. Tell me in what manner you employ every hour in the day. The plan I have proposed for you is adapted to your present situation only. When that is changed, I shall propose a corresponding change of plan. I have ordered the following books to be sent to you from London, to the care of Mr. Madison: Herodotus, Thucydides, Xenophon's Hellenics, Anabasis and Memorabilia, Cicero's works, Baretti's Spanish and English Dictionary, Martin's Philo-

## CORRESPONDENCE.

399

sophical Grammar, and Martin's *Philosophia Britannica*. I will send you the following from hence: Bezout's *Mathematics*, De la Lande's *Astronomy*, Muschenbrock's *Physics*, *Quintus Curtius*, *Justin*, a Spanish Grammar, and some Spanish books. You will observe that Martin, Bezout, De la Lande, and Muschenbrock, are not in the preceding plan. They are not to be opened till you go to the University. You are now, I expect, learning French. You must push this; because the books which will be put into your hands when you advance into *Mathematics*, *Natural philosophy*, *Natural history*, &c., will be mostly French, these sciences being better treated by the French than the English writers. Our future connection with Spain renders that the most necessary of the modern languages, after the French. When you become a public man, you may have occasion for it, and the circumstance of your possessing that language, may give you a preference over other candidates. I have nothing further to add for the present, but husband well your time, cherish your instructors, strive to make everybody your friend; and be assured that nothing will be so pleasing as your success to, Dear Peter,

Yours affectionately.

---

TO JOHN PAGE.

PARIS, August 20, 1785.

DEAR PAGE,—I received your friendly letter of April the 28th, by Mr. Mazzei, on the 22d of July. That of the month before, by Monsieur le Croix, has not come to hand. This correspondence is grateful to some of my warmest feelings, as the friendships of my youth are those which adhere closest to me, and in which I most confide. My principal happiness is now in the retrospect of life.

I thank you for your notes of your operations on the Pennsylvania boundary. I am in hopes that from yourself, Madison,



# Boston Semi Weekly Courier.

VOLUME XXIX.

MONDAY MORNING, MARCH 7, 1853.

NUMBER 3926.

## City Intelligence.

FRIDAY March 4.

**THE CHARLESTOWN EXCITEMENT.** The following is a list of the persons arrested at Charlestown on Wednesday night:—

William Robinson Neal of Boston—charged with resisting a policeman and refusing to leave the scene of riot when ordered off.

David Maxon of East Boston—charged with throwing a brick at a policeman.

James Stack and Henry Page of Boston—creating a false alarm of fire.

—Governor of Boston—charged with having refused to leave when ordered so to do by the police.

George W. Ransom of South Boston—charged with carrying a concealed weapon. A loaded pistol was found upon him.

Edward Dearborn of Boston—for refusing to leave Richmond street when requested so to do by the officers.

Samuel McBerrv of East Boston—for refusing to leave.

Timothy Conner, John Scott, James Cawley, William Garrett, of Boston; Wm. Bragg, Roger Alden, John Bright and Patrick Gohan of Roxbury; Patrick Geyer of Brookline; Joshua Fuller, and Frederick T. Krautz and son, of Charlestown, severally for disturbing the peace by loud outcries.

Yesterday afternoon, before Justice Warren, Frederick T. Krautz, James Stack and Edward Dearborn, were discharged upon their own recognizance to keep the peace. John Bright, Roger Alden, Patrick Geyer and John Scott, were convicted of riotous conduct and were fined \$5 and costs each, and William Garrett was fined \$3 and costs.

The Journal states that the Boston regiment, after stopping at the Charlestown City Hall for a short time, marched to the National House, where Mayor Frothingham bid them welcome in a brief speech, in which he returned his thanks to the officers and men for the promptness and decision they had manifested in answering his call for their aid. He congratulated them upon the success with which the efforts of the municipal authorities were crowned, and paid a high compliment to the citizen soldiery. Col. Holbrook replied in a very few words. He regretted the circumstances that had called them out, but if there had been any necessity for their interference, their actions would have spoken louder than their words. At Faneuil Hall, before dismissing the company, Col. Holbrook thanked the men for their unanimity in turning out at such extremely short notice, and he hoped that they would hold themselves in readiness to assemble again at a moment's warning in case of necessity.

Last night a large police force was on patrol in the neighborhood of the Catholic church; but everything was quiet.

# Richmond Whig and Public Advertiser.

VOLUME 37.

RICHMOND, VA., TUESDAY, SEPTEMBER 25, 1860.

NUMBER 77.

## CITY ITEMS.

**TO OVERTAKE.**—Edward Doetsch (pronounced Dutch, here) was yesterday arraigned to answer the charge against him of menacing Augustus Kuck, and carrying a dirk, concealed about his person, for the special benefit of said Kuck. This feeling of hostility towards a fellow countryman and citizen was created by the circulation of a little slander concerning Doetsch in regard to his pecuniary condition, and his disposition to pay his debts, under he traced to Kuck. As one party violated the law by carrying a concealed weapon, and the other acted in a spirit of vindictiveness, the Mayor required both to give security for their good behavior in future.



**DAILY GAZETTE.**

**A. J. SHAKESPEARE,**  
Editor and Proprietor.

The GAZETTE is entered at the post-office  
Kalamazoo as second-class matter.

FRIDAY.....JANUARY 18, 1889

**CRIMES OF A YEAR.**

Nearly 300 Cases Disposed of by the Re-  
corder in 1888.

During the year 1888 there were 207  
cases heard by Recorder's Burke and  
Pack. The offenses and disposition  
made of them were as follows:

Assault and battery 77; 14 tried and  
acquitted, 30 dismissed, 23 fined, 10 im-  
prisoned.

Disorderly, 34; 21 imprisoned, 1 ac-  
quitted, 10 dismissed, 2 nolle pros'd.

Drunk, 75; 39 imprisoned, 25 fined, 2  
acquitted, 9 nolle pros'd.

Petty larceny, 41; 10 sent to Ionin 90  
days each, 8 jail 90 days, 4 jail 30 days,  
2 jail 60 days, 2 jail 20 days, 3 reform  
school, 3 acquitted, 9 nolle pros'd.

Grand larceny 7; 4 bound over to cir-  
cuit court, 2 nolle pros'd; 1 discharged.

Disturbing religious meeting 2; 1  
convicted, 1 nolle pros'd.

False pretenses 2; 1 discharged, 1  
nolle pros'd.

Carrying concealed weapon 1; 30 days  
in jail.

Truant disorderly 10; 3 boys sent to  
reform school, 4 girls to Adrian reform-  
atory, 3 nolle pros'd.

Slander 2; 1 acquitted, 1 nolle pros'd.

Malevolent injury to property 2; dis-  
charged.

Malevolent injury to dwelling house 1;  
nolle pros'd.

Assault with intent to do great bodily  
harm 6; 2 discharged, 2 bound over to  
the circuit, 2 nolle pros'd.

Bastardy 1; nolle pros'd.

Violation of liquor law 14; 9 bound  
over to circuit court, 5 nolle pros'd.

Adultery 2; discharged.

Jumping board bill 1; nolle pros'd.

Violation game and fish law 1; nolle  
pros'd.

Robbery 3; bound over to circuit  
court.

Keeping houses of ill-fame 4; bound  
over to circuit court.

Larceny from dwelling houses in day  
time 2; bound over to circuit court.

Embezzlement 1; discharged.

Felonious assault 1; bound over to  
circuit court.

Perjury 1; discharged.

Burglary 3; bound over to circuit  
court.

Forgery 3; bound over to circuit  
court.

In number the cases of assault and  
battery lead the list, with 77 cases. The  
drunks follow closely with 75 cases.



LOCAL MATTERS.

Duties of Justices of the Peace—A Timely Letter from Mayor Keiley.

Having been repeatedly called on by justices of the peace for opinions respecting the scope of their authority, I have thought I might render some service by an epitome of the law as it respects their powers and duties, and calling attention to some errors into which some have, no doubt, innocently fallen.

The Legislature, at its first session under the present constitution, enacted a law (acts 1869-70, p. 281) declaring in general terms that the jurisdiction, powers, &c., of justices should remain as heretofore, so far as not in conflict with the constitution or any law passed in pursuance thereof. The code of 1860 might, therefore, be looked to to furnish a guide for these officers generally throughout the State. But the charter of the city of Richmond—a law passed in pursuance of the constitution—limited in very important respects the authority of these officers in the city. That charter, after prescribing the number, term of office, &c., of the justices, proceeds as follows:

"The said justices of the peace shall be conservators of the peace within the limits of the corporation of Richmond, and shall have the same powers and duties within said limits as are prescribed by law in respect to justices of the peace in counties of this State in their respective counties, except that nothing herein contained shall be construed as vesting in said justices any portion of the jurisdiction given by this act to the Police Justice."—Charter; section, 107.

We have already seen what is the authority of justices in the counties. Now, what is "the jurisdiction given to the Police Justice by the charter?" Section 106 defines that jurisdiction as extending to all cases arising within the jurisdictional limits of the city, of which a justice of the peace may take cognizance under the laws of the State, and to all cases arising under the charter of ordinances of the city, or where there is a claim against the city or a person therein, if it does not exceed one hundred dollars exclusive of interest.

He shall have such other powers and jurisdiction as may be conferred on him by the City Council not in conflict with the constitution and laws of the United States and of the State of Virginia." The word "jurisdiction" in this act must at the least be construed to embrace "the power to hear and determine" the power to try a case. It is therefore plain that a justice of the peace in Richmond has no authority to try any cause, however trifling, civil or criminal, and whether arising at common law or under a statute or city ordinance. I am aware that the uniform practice is otherwise, but I am satisfied that it is without the slightest warrant of law, and no one is bound by it. The Legislature indicated unmistakably its purpose in this respect when it passed, March 30, 1871, an act giving justices authority to try petit larcenies and cases of assault by providing that none of this authority should be exercised by justices in cities having a police justice. (Acts '70-'71, p. 352.)

What, then, may a Richmond justice do? Without protracting this communication to unreasonable lengths, I may, by example, illustrate the nature and scope of his authority.

I. As a Conservator of the Peace.—He may issue a warrant to stop an apprehended duel, and may bind the parties to keep the peace. He may require bonds for their good behavior for one year from persons not of good fame. He may issue a warrant for the arrest of a party charged with intent to commit an offence punishable by law against the person or property of another, and may require security for his good behavior, and on default commit him to jail. He may issue a warrant for the arrest of any party going armed with a deadly or dangerous weapon. He may, without process or oath, bind over to keep the peace any person making an affray, using threatening words, or otherwise disturbing the peace in his presence.

II. As a Criminal Officer.—He may issue search warrants—may issue a warrant for a person charged with a crime committed—may let to bail any person properly brought before him, charged with misdemeanor or with felony, if in the latter case the suspicion of guilt is slight—may bail a prisoner committed in default of bail, but never in a less sum than was first required—may discharge from jail or from his recognizance any prisoner charged with misdemeanor, for which a civil action also lies, providing that the aggrieved party in writing declares that he has received satisfaction, unless the case falls within certain exceptions mentioned in the Code, page 826.

III. As a Civil Officer.—He may administer and certify any oath not of such a nature that it must be taken in court; may take depositions; may take and certify acknowledgments of deeds; may inquire into insanity; may issue warrants for small claims and subpoenas for the witnesses; may issue distress warrants; may issue process of attachment in case of a debtor removing or intending to remove his effects.

Whenever a justice issues a warrant for trial, or commits for trial, or bails for trial, the process, or the order, or the recognizance must be returnable, or be sent to the police justice, to be by him disposed of.

I would not acquit myself of the duty I have assumed in this matter if I did not call the attention of the justices to some grave abuses which have grown up among them, and which will lead to serious consequences unless corrected.

1. It is a frequent practice to issue warrants for the arrest of an indefinite number of persons, without name or description. A

warrant for the arrest of A. B. and others, authorized only the arrest of A. B. The Bill of Rights of perhaps every State prohibits this abuse, and opposition to it is one of the most memorable traditions of liberty. During the year ending September 1st, 1872, 2,951 parties were arrested in this city on 2,033 warrants—the excess, in a large majority of cases, arising from this illegality. So, also, it is unlawful and a gross abuse to issue a warrant with a blank to be filled up afterwards by the policeman or any other party.

2. As a magistrate has no right to try a cause, he has no right to discharge a party arrested under a warrant of a brother justice and by him committed, except on such bail as such justice demanded, and of course has no right to discharge any prisoner committed without bail.

3. A justice has no right to assume an act to be a violation of law. The records of the warrants issued during the past two years in Richmond discloses some curious statements of offences—not found in the tables of any law.

4. A magistrate is not bound to issue a warrant whenever applied for, though an offence be charged. It is his duty by such examination of the complaint as he can give to ascertain whether it is proper to issue the process.

5. The duty of a magistrate is not to encourage but to prevent and repress strife. The facility with which some justices grant warrants, and the advice they give to complainants to "get a warrant," and the defendant "to get out a cross-warrant," is a most reprehensible practice. More dissensions have been caused, especially among the colored people, by this practice, than have sprung from any other source of late years. When a single justice issues more than a hundred criminal warrants a month it may be pretty fairly assumed that he is not discharging his duty with as much discretion as profit. 1979 negroes were arrested on criminal warrants during the past year, and of these more than twenty-five per cent. were dismissed on examination—oftentimes dismissed by the justice who secured a half a dollar for issuing the process—a significant commentary on the recklessness with which the function is exercised.

Hoping that what I have written will tend to secure lawfulness and uniformity in the execution of this important office, and sincerely desirous that the magistracy of the city may prove a useful adjunct to the cause of order and the administration of justice, which they are designed to be, I am their obedient servant,

A. M. KEILEY, Mayor.  
Richmond, September 14, 1872.



# Ebening Star.

VOL. VIII.

WASHINGTON, D. C., WEDNESDAY, NOVEMBER 26, 1856.

NO. 1,185.

## LOCAL INTELLIGENCE.

**CARRYING CONCEALED WEAPONS.** — Last night, officer Cooper arrested James Barnes and Jeremiah Sims, colored, for having loaded pistols with them at a fair held by colored persons in the Fourth Ward. The weapons were confiscated, and this morning the men were ordered to give security to keep the peace and pay the costs.

**MUNDER'S FIRST SOIREE** for the season comes off to-night. Don your pumps and take your partners for a quadrille.

**CONUNDRUM** — Why is Hopkins' Bazaar like the National Hotel?

**WATCH RETURNS.** — Michael Rusley, colored, drunk and disorderly; workhouse 60 days. J. Barnes, colored, carrying concealed weapons; security and costs. Jeremiah Sims, carrying concealed weapons; security and costs. Ann Botho and Ellen Hall, out after hours; fine \$3 and costs each.

# DAILY DISPATCH.

VOL. XIX.--NO. 126.

RICHMOND, VA., SATURDAY, JUNE 1, 1861.

PRICE ONE CENT.

## **LOCAL MATTERS.**

*Using Unlawful Weapons.*—Mathew Eagan, an old frequenter of the Mayor's Court, was brought up again yesterday, and held to bail in the sum \$150 for striking Morris Lee with a bar of iron, and habitually going armed.— He gave the bail.



# The Massachusetts Spy: Worcester, Friday, January 14, 1870.



*The Spy should have the eye of Argus: 'tis honorable if he do but look to the welfare of the commonwealth.*

**WORCESTER.**

**FRIDAY, JAN. 14. 1870.**

**MUNICIPAL COURT.**—In the municipal court, Tuesday, John Kelley was fined \$10 and costs for keeping liquor. He pleaded not guilty, appealed, and recognized in the sum of \$100.

The time of the court was occupied, in the forenoon and afternoon session, with the examination of Thomas J. Hilton, for larceny of \$1600, also for carrying concealed weapons. On the former charge he was bound over to the superior court in the sum of \$2000, and on the latter he was put under \$100 to keep the peace; committed.

Levi Johnson of Clinton paid a fine of \$10 and costs for keeping liquor.

# Morning



# Oregonian.

VOL. VII

PORTLAND, OREGON: TUESDAY MORNING, AUGUST 6, 1867.

NO 1

**RECORDER'S COURT.**—The following cases were disposed of in the Recorder's Court yesterday;

Sevier Latour, tried for an assault and battery on Albert Johnson, was acquitted.

City vs. Wm. Briskel; carrying a concealed weapon; fined \$14 and to have two days in jail.

City vs. ——— Lonley; drunk and lying on the sidewalk on Front street; having been in jail since Saturday, was let off.



## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29(a)(4)(G) and Fed. R. App. P. 32(g)(1), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i) and Fed. R. App. P. 29(a)(5).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(f), the brief contains 6,494 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman font. As permitted by Fed. R. App. P. 32(g), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

/s/ Mark C. Fleming  
MARK C. FLEMING  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
60 State Street  
Boston, MA 02109  
(617) 526-6000  
Mark.Fleming@wilmerhale.com

June 13, 2018

## CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing Brief for *Amicus Curiae* Everytown For Gun Safety with the Clerk of the United States Court of Appeals for the First Circuit via the CM/ECF system this 13th day of June, 2018 to be served on the following counsel of record via ECF:

DEEPAK GUPTA  
JONATHAN TAYLOR  
GUPTA WESSLER PLLC  
1900 L Street, NW, Suite 312  
Washington DC 20036  
(202) 888-1741

TIMOTHY J. CASEY  
OFFICE OF THE ATTORNEY GENERAL  
OF MASSACHUSETTS  
1 Ashburton Place, 20th Floor  
Boston, MA 02108  
(617) 963-2043

JOHN J. BUCHHEIT  
JONATHAN E. SIMPSON  
TOWN OF BROOKLINE  
OFFICE OF TOWN COUNSEL  
333 Washington Street, 6th Floor  
Brookline, MA 02445  
(617) 730-2190

*Counsel for Defendant-Appellee  
Commonwealth of Massachusetts*

*Counsel for Defendant-Appellee  
Mark Morgan*

DAVID H. THOMPSON  
PETER A. PATTERSON  
JOHN D. OHLENDORF  
COOPER & KIRK, PLLC  
1523 New Hampshire Ave., NW  
Washington, D.C. 20036  
(202) 220-9600

MATTHEW M. MCGARRY  
ASSISTANT CORPORATION COUNSEL  
CITY OF BOSTON LAW DEPARTMENT  
One City Hall Square, Room 615  
Boston, MA 02201  
(617) 635-4042

DAVID D. JENSEN  
DAVID JENSEN PLLC  
111 John Street, Suite 420  
New York, NY 10038  
(212) 380-6615

*Counsel for Plaintiffs-Appellants*



Peter M. Geraghty  
Assistant Corporation Counsel  
Office of the Legal Advisor  
Boston Police Department  
One Schroeder Plaza  
Boston, MA 02120  
(617) 635-4550

*Counsel for Plaintiff-Appellee  
William B. Evans*

/s/ Mark C. Fleming  
MARK C. FLEMING  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
60 State Street  
Boston, MA 02109  
(617) 526-6000  
Mark.Fleming@wilmerhale.com

June 13, 2018