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#### 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,

ν.

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

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### 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.

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#### INTEREST OF AMICUS CURIAE<sup>1</sup>

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

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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.<sup>2</sup>

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

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).<sup>3</sup>

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* 

<sup>&</sup>lt;sup>3</sup> 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

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 "terrour 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[aol].").

## 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." 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.").

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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 terrour 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 ass[au]lt 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. 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.* 

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.<sup>7</sup>

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

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*.

<sup>&</sup>lt;sup>8</sup> 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,

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June 13, 2018

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## **ADDENDUM**

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THE

## GRANTS, CONCESSIONS,

AND

#### ORIGINAL CONSTITUTIONS

OF THE PROVINCE OF

## NEW JERSEY

THE

## ACTS

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

The Instrument of Surrender, and her formal Acceptance thereof

Lord Cornbury's Commission and Instructions Consequent 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 principal 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.



# LAWS

PASSED

UNDER THE

## GOVERNMENT

OF THE

Twenty Four PROPRIETORS,

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,

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## Laws passed in 1686.

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

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I



A C T S and L A W S Paffed by the Great and General Court or Affembly 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.

12'1. Confirmed 11 Aug. 1695.



HEREAS great Defolations and Ruins have fundry 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 fuch Accidents for the future, and Damage and Lofs thereby, Be it Ordained and Enacted by the Governor, Council, and Representatives,

convened in General Court or Affembly; and it is Enacted by the Authority of the fame, That henceforth no Dwelling-house, Shop, Ware-house, Barn, Buildings in Stable, or any other Housing, of more than Eight Feet in Length, or Breadth, Brick or Stone, and Seven Feet in Heighth, thall be erected and set up in Boston, but of Stone and covered with Slate. or Brick, and covered with Slate or Tyle, unless in particular Cases, where Necessity requires; being to judged and fignified in Writing under the Hands of the Justices and Select-men of the faid Town, or major part of both, the Governor, with the Advice and Confent of the Council, shall fee Cause to Governor and grant Licence unto any Person to build with Timber, or cover with Shingle : grant Licence And if any Person shall presume to erect, or cause to be erected, any Frame to build with Timber in or Building contrary hereto, upon Conviction thereof before Two Juftices of Care. Peace (Quorum Cam) fuch Building shall be deemed a Common Nusance, and the Owner of fuch Frame or Building shall enter into a Recognizance to demolish the same; and in Default of entring into such Recognizance, shall penalty for be committed to Passen until he do cause the same to be demolished; or else than Att. fuch Building shall be demolished by Order of the Quarter-Sessions of the Peace within the find County, and the Charges thereof to be levied by Diffreds and Sale of fuch Orienders Goods, by Warrant from the Court of Quarter-Sellion.

A 1 2 14 Case: 17-2202 Document: 00117305304 Page: 46 Date Filed: 06/21/2018 Entry ID: 6178985

#### Anno Regni Quarto Gulielmi & Marix.

One Half of the Fines and Porfedimento by unto Their

Majeflies, and

to the Informer.

01

A so further it is Enacted by the Authority aforefaid, That all Fines, Penalties, and Forfeitures arifing 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 Cu'ler of Fift. BE it further Enacted by the Authority aforefaid, That there be a Measurer of Salt, and Culler of Fish in every Sea-port Town within this Province, to be appointed, as aforefaid, who being likewife 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 Hogshead of Salt by him so measured; to be paid, the one Half by the Buyer, the other Half by the Seller; and One Peny per Quintal for every Quintal of merchantable Fish by him culled to be paid, one Half by the Buyer, and the other Half by the Seller.

### TERREEN TREEN TREEN TREEN TO THE TREEN T

An Act for the Punishing of Criminal Offenders.

12 6. Contine 1 12 deg. 1541.

Carling and Skearing,

Poor of Shilling to the S prophar

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 Ossender shall fortest and pay unto the Use of the Poor of the Town where the Ossender shall be committed, the Sum of Five Shillings; and if the Ossender 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.

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

Deathentes.

FURTHER it is Enacted by the Authority aforefaid, That every Person convicted of Drunkenness by View of any Justice of Peace, Consession 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 where 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 Surecies in the Sum of Ten Pounds, with Condition for the good Behaviour; and for want of such Surecies, 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,

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#### Anno Regni Quarto Gulielmi & Maria.

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

IT is further Enacted and Ordained by the Authority aforefaid, That who-Then. foever shall steal or purloin any Money, Goods, or Chattels, being thereof convicted by Confession, or sufficient Witness upon Oath, every such Offender shall forfeit treble the Value of the Money, Goods, or Chattels so stoln or purloined, unto the Owner or Owners thereof; and be further punished, by Fine or Whipping, at the Discretion of the Court or Justices that have Cognizance of fuch Offence, not exceeding the Sum of Five Pounds, or Twenty Stripes: And if any fuch Offender be unable to make Restitution, or pay fuch Threefold Damages, fuch Offender shall be enjoyeed to make Satisfaction by Service; and the Profecutor shall be, and hereby is impowered to dispose of the faid Offender in Service to any of Their Majesties Subjects, for such Term as shall be assigned by the Court or Justices before whom the Profecution 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 ex-by breaking up any Dwelling-house, Ware-house, Shop, Mill, Malt-house, Barn, Out-houle, 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 fecond Conviction, shall be fet 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 feverely Whipt, not exceeding Thirty nine Stripes; and upon a third Conviction of the like Offence, shall futter the Pains of Death, as being Incorrigible; and shall likewise, upon the first and second Convictions, pay treble Damages to the Party injured, as is provided in case of Thest.

AND it is further Enacted by the Authority aforefaid, That if any Man Fornication commit Fornication with any lingle 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 Report Fre Child, begotten of her Body, the continuing constant in such Accusation, being there a Baexamined upon Oath, and put upon the Discovery of the Truth in the time of her Trivail, shall be adjudged the Reputed Father of such Child, notwithstanding his Denial, and stand charged with the Maintenance thereof, with the Athillance of the Mother, as the Justices in the Quarter-Sellions shall order; and give Security to perform the faid Order, and to fave the Town or Place where fuch Child is born, free from Charge for its Maintenauce; and may be committed to Prilon until he find Sureties for the fame, unless the Pleas and Proofs made and produced on the behalf of the Man accused, and other Circumflances, be fuch 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-Sellions 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

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

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

and Desem to

Breach of the

Page.

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Cries after Runaway Servants, Thieves, and other Criminals.

Ining and Li-

AND it is further Enacted by the Authority aforelaid, That if any Person or Perfons of the Age of Difcretion ( 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 Perlon, make or firead any falle News or Reports, with Intent to abuse and deceive others, every fuch 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 faid Fine, then to be fet in the Stocks, not exceeding Three Hours, or be corporally punished by Whippin!, at the Diferetion of the Juffice or Juffices Lefore whom the Conviction shall be, according as the Circumstances or Nature of the Offence shall be; and the faid Juffice or Juffices may reftrain and commit the Offender until he pay the faid Fine, and find Sureties for the good Behaviour, or may cause the Fine to be levied by Diffress and Sale of the Offender's Goods; and the Party or Parties grieved or injured by reason of any of the Offences aforefaid, shall or may take his or their Suit against any such Offender or Offenders in any Court of Record.

Ewzerj.

IT is further Enacted by the Authority aforefaid, That if any Perfon or Perfons, upon his or their own Head or Imagination, or by falle Conspiracy and Fraud with others, shall wittingly, subtilly, and falfely forge or make, or subtilly caule, or wittingly affent to be forged or made, any falle Deed, Conveyance, or Writing fealed, 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 aforefaid, forge, make, or cause or assent to be made or forged, any Obligation, or Bill Obligatory, Letter of Attorney, or any Acquittance, Releafe, or other Discharge of any Debt, Account, Action, Suit, Demand, or other Thing Personal; or if any Person or Persons shall pronounce, publish, or thew forth in Evidence, any fuch false and forged Deed, Conveyance, Writing, Obligation, Bill Obligatory, Letter of Attorney, Acquittance, Releafe, 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 falle 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 fuch Offender shall pay unto the Party grieved his double Costs and Damages, to be found and affessed in such Court where the said Conviction shall be; and also shall be fet 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

#### Anno Regni Quarto Gulielmi & Maria.

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

PROVIDED always, and it is Enacted by the Authority aforefaid, That this Act, or any thing therein contained, shall not extend to charge any Judge of Probate, or Register, with any the Offences aforefaid, for putting their Sail of Office to any Will to be exhibited unto them, not knowing the fame to be false or forged, for writing of the faid 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 lame, nor knowing the same to be falle or forged; any thing in this Act

to the contrary notwithstanding.

AND it is further Enacted and Ordained by the Authority aforefaid, If any wifathering, Perfon or Perfons, either by the Subornation, unlawful Procurement, Reward, finister Perswasion, or Means of any other, or by their own Act, Consent, or Agreement, thall 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 memorium, that then every Person and Persons so offending, and being thereof duly convict, or attainted by Law, shall, for his or their Offence, lofe and forfeit Twenty Pounds; the one Moiety thereof unto Their Majesties, and the other Moiety to such Person or Persons as shall be grieved, hindred, or molefted by reason of any such Offence, that shall sue for the same by Action of Debt, Bill, Plaint, Information, or otherwife, 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 fuch Person or Persons so offending, not to be received in any Court of Record, until fuch time as the Judgment given against the said Person or Persons shall be reversed by Attaint, or otherwife; 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 faid Judgment, to reverted, to be given against them, or any of them, by Action or Actions upon his or their Cafe or Cafes, according to the Course of the Common Law: And if it happen the faid Offender or Offenders, so offending, not to have any Goods or Chattels to the Value of Twenty Pounds, that then he or they be fet on the Pillory, by the Space of One whole Hour, in some Market-Town where the Offence was committed, or next adjoyning 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 fuch 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 finister 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 testifie In perpetuam rei memoriam; every fuch Offender, being thereof duly convict, or attainted by Law, shall, for his or their Offence, be proceeded against, and suffer the like Pains, Penalties, Forfeitures, and Difability, in all Respects, as above mentioned.

AND it is further Enacted by the Authority aforefaid, That all the aforefaid Forfeitures and Sums of Money, arifing 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 Pro-

vince, and the incident Charges thereof.

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## 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.

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### LAWS OF NEW HAMPSHIRE.

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

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

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

That every justice of the peace in this province, is hereby au- Justices power thorized and impower'd, to take cognizance of, hear, try, and de-by virtue of a termine, any criminal offence against any penal law not exceeding paragraph of an act passed 4th of the sum of forty shillings, and to issue all necessary process, and award execution thereon with legal cost; as well as in all other mean process, cases where he is, or shall be so authorized by particular laws. 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 Appeal granted.
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 Proviso. 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 Justices power to be stayed and arrested, all affrayers, rioters, disturbers or breaktostayed and arrested, all affrayers, rioters, disturbers or breaktostayed ers of the peace, or any other who shall go armed offensively, or to put his Majesty's subjects in fear, by menaces or threatning of a paragraph speeches: And upon view of such justice, confession of the in an act past

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#### LAWS OF THE PROVINCE

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

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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

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.

Direction of

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,

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

writs by 4th of G.

1. prescribing forms. To be served 7 days before the time of trial.

before any issuable plea is given.

Judgment may be given on de-fault of appear-

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 appealing.

#### OF NEW HAMPSHIRE.

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

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 of the said act of 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 impower'd to hear and determine all matters relating to the continues of the several courts. servation of the peace, and punishment of offenders, appeals from of justice, &c. 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.

And any person aggrieved at the sentence of the justices, in the Liberty to appeal court of general sessions of the peace, may appeal from such sen-assite, by virue tence, the matter being originally heard and tried in the said court, said act of the of unto the next court of assize and general goal delivery, in said 6, 10, relating to sureties upon province, there to be finally issued. — Provided that no appeal mean process, shall be granted unless it be claimed at the time of declaring the &c. 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 Time and conditions of granting for his personal appearance at the court appealed to, and prosecu-said appeal. tion 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.

And such appellant shall, at his or her own cost, take out and How the appellant shall bring present unto the court appealed to, an attested copy of the sen-forward his ap-tence, and of all the evidences, upon which the same was grounded: peal. 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.

And be it further Enacted, That there shall be held and kept at Interior court essaid Portsmouth, at four terms, an inferior court of common pleas, said act of the by four justices, to be appointed and commissionated thereto, by 11th of W. 3d. the Governor or Commander in chief for the time being, any Time of the bethere of whom to make a quorum: The said terms to begin on ginning of each the first Tuesdays of March, June, September, and December, 31st of G. 2. annually. Which said inferior court shall have cognizance of, Actions of 40s. 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, at for regulating triable by them as aforesaid — Excepting that no action for the trials in civil causes, past 11th value of forty shillings, and under, shall be commenced at the said of W. 3.

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#### LAWS OF THE PROVINCE

inferior court, unless the title of land, or any real estate, is con-

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

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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 Execution stayed 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 The time when it court, at any time within seven days, next after the judgment given, if the appeal is claimed in court. But if the security for In default there prosecuting such appeal, shall not be so given, the clerk of said court may issue execution as he may do, where no appeal is

Security to be given to prose-cute, &c.

of execution may issue.

Appellant to pro-duce a copy of the case.

claimed. 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 evi-

What shall be done if the ap-pellant 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

beginning of each term now stated by the said act of 3rst

Superior court of judicature, court of assize, &c. so called by several acts viz. Joth Ann against for gring the bills of credit; the 4th of Geo. 18th relating to sure-ties, &c. another of the 4th of Geo. 18th relating to sure-ties, &c. another of the 4th of Geo. 18th relating to the 6ffice & duty of a coroner, &c. The court shall have cognizance of all pleas, real, personal, or mixt, or beginning of any civil action or cause, as well between his Majesty and any of 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 The power of the original process, according to law. And generally all other matters, as fully and amply to all intents and purposes whatsoever, as

#### OF NEW HAMPSHIRE.

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 Liberty of appeal superior court, in any civil action, may appeal from the same, and Council as a unto the Governor and Council, as a court of appeals, to hear and for £100 sterling. 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.

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And in civil actions tried at the said superior court, if the mat-Liberty to appeal ter in controversy exceeds the true value of the sum of three from the superior court to the King hundred pounds sterling, either party to the suit, may appeal from in council for 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 security to be given by the appellant, as the court shall direct, to the appellee, given. to answer such cost and damage as shall be sustain'd by the

appeal, in case the judgment appealed from shall be affirm'd.

And be it further Enacted, That all original writs, or writs of Original write review, for bringing any civil actions or suits to trial, in the said what sort to be. inferior court of common pleas, or superior court of judicature, shall be summons, capias or attachment, and shall be issued in Writs how issued the form directed in and by an act of this province, entituled "An Pass'd 4th of act prescribing forms of writs in civil causes"; and shall be under 6.1. 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.

And the justices of the several courts aforesaid, are hereby cours power to authorized to make necessary rules, for the more orderly practice, make rules with W. s. 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.

And also as often as they shall judge it necessary and proper, And to chuse to chuse and appoint a clerk, to officiate in such court, and to do their clerk, is officiate in such court, and to do their clerk, is official with W. 1. all things belonging to that office, who shall be under oath, well and truly to execute and discharge the same.

And be it further Enacted, That in all cases that are or shall courts power of be brought for trial in the said superior court of judicature, or chancery. 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

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the said courts respectively where the trial is had, are hereby impowered, and authorized, to moderate the rigour of the law, and in consideration of such cases, according to equity and good conscience, 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 execution for the same accordingly.

Justices of each EWOLD.

Oath.

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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 entering upon the execution of their respective offices, take the following oath, to be administred by the Governor or Commander in chief for the time being, or such as shall be by him thereunto

appointed.

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 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 Representatives, convened in general assembly, and by the authority of the same:

Actions for more than 40s. to be commenced at

That all actions triable at the common law, for any matter or demand above forty shillings value, as also titles of land, shall be commenced at the inferior court, first brought to the inferior court of common pleas, (excepting suresping causes wherein the King only actions or causes relating to the Crown, which may be tried is concern'd, which may be at either the inferior court of common pleas, or the superior court. All process to be in English. Not to sabate for circums at a court of judicature.) And that all writs, processes, declarations, indictments, pleas, answers, replications, and entries, in the sabate for circums several courts of justice within this province, shall be in the English tongue, and no other. And that no summons, process, 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 circumstantial 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-

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

terpolition 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 enacled by the General Affembly, That no man shall be compelled to frequent now shall be enforced pelled to freor 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 All men free argument to maintain, their opinions in matters of religion, and that the same shall in no by argument wife diminish, enlarge, or affect their civil capacities.

III. AND though we well know that this Atlembly 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 afferted, are of the natural rights of mankind, and that if any Act shall rights of mankind. be hereafter passed to repeal the present, or to narrow its operation, such Act will be an

to maintain their religious

Declaration



infringement of natural right.

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.]

E it enacted by the General Assembly, That no man, great nor small, of what condition punishment of 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 affisting them, courts of Justice, or in executing of their office, and such as be in their company affisting 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 might nor by day, in fairs or markets, or in other places, in terror of the Country, upon pain of the Country of being arrested and committed to prison by any Justice on his own view, or proof by others, there to abide for fo long a time as a Jury, to be fivorn 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.

#### C H A P. XXII.

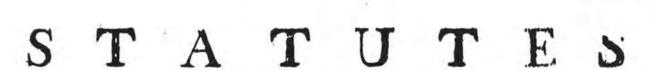
An AEt against Conspirators.

[Passed the 27th of November, 1786.]

E it declared and enacted by the General Affembly, That Conspirators be they that do confederate and bind themselves by oath, covenant, or other alliance, that every of them
fpirators. shall aid and bear the other falfely 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 fuit of the Commonwealth, shall be punished by imprisonment and amercement, at the diferetion of a Jury.

COLLECTIO

OFTHE



OF THE PARLIAMENT O.

ENGLAND.

IN FORCE IN THE STATE OF "

## NORTH-CAROLINA.

By FRANCOIS-XAVIER MAK V, Esq.

NEWBERN:

1792.

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#### C H A P. VIII.

## Nothing Shall be taken for Beaupleader.

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

### C H A P. XIV.

#### None Shall commit Maintenance.

TEM, Because the King desireth that common right be administered to all persons, as well poor as rich, he commandeth and desendeth, that none of his Countellors, 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 Palchae, in the Second Year of the Reign of Edward the Third, and in the Year of our Lord 1328.

#### CHAP. I.

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

[Unnecessary to be inferted.]

#### C H A P. III,

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

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

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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 forseit their arms r 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 ettles 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.

#### CHAP. V.

### The Manner how Writs Shall be delivered to the Sheriff to be enecuted.

TEM where it was ordained by the statute of Westminster the second, that they which will deliver their writs to the Sheriff shall deliver them in the sull 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 resule 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.

#### Juflices Shall have Power to punift 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.

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#### In the Year of our LORD, 1795.

Common Field in Norfolk.

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## 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 Wednesday, the Fourteenth Day of January, 1795.

## С И А Р. I.

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

HEREAS the proprietors of a certain tract of meadow land, lying partly in Dechlam, and partly in Sharon, in the county of Preamble.

Norfolk, are desirous to have the same incorporated into a Common Field:

BE it emasted 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 country of Norfolk, and included in thebounds following, viz:—Beginning at Trap-hole Brook, so called, intheland of Nathaniel Sumner, Esq. where the sence now stands which Boundaries divides said Sumner's upland from his meadow, and running southerly

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#### In the Year of our LORD, 1795.

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#### Criminal Offenders.

on faid fence, till it comes to the land improved by George Summer; then through faid land nearly the fame course, till it comes to the fouth-west corner of said George Summer'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 fouth end of Benjamin Hawes's meadow; then in the line between said Hawes's meadow, and the land of William Richards; then in the line between said Richards's home lot, and the meadow lots, till it comes to Cumming's brook, so called; thence on said brook, till it comes to the line between Stoughton and Sharen; thence on said line till it comes to Trapbole brook; thence on said brook, till it comes to Trapbole 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.

A f repealed.

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

Juffices of the Peace empowered. And be it further enacted by the authority aforefaid, That every Juftice of the Peace, within the county for which he may be commiffioned, may cause to be staid and arrested, all assrayers, 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 ossender to sind 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 surther 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.]

CHAP.

### ACTS

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

TWENTY FIRST DAY OF SEPTEMBER, ONE THOUSAND EIGHT HUNDRED AND ONE.

## CHAPTER I.

Au ACT to amend an act, entitled, " An all for the better establishment and regulation of the militia in this ftute." (PASSED NOV. 14, 1801. Eit enacted by the General Assembly of the State of Tennissee, D That each regiment of militia in this flate shall be divided into two battalions, by the regimental court martial at their next litting after the palling of this act, having due respect to the convenieney of the different companies, without regard to bounds or number; and the officers of each battalion shall have the privilege of chusing their muster ground, except where the regiment has been previously divided by law, and in that onfe the division shall continue as heretolore, or be discontinued at the discretion of the court martial. The first batvalion in each regiment shall hold a battalion muster on the first Thursday in April; the second battalion on the third Thursday in April annually; and a court martial shall be held in each battalion on the day fucceeding the battalion multer; fuch multers and courts martial to be conducted under the same rules, regulations and restrictions as regimental multers and courts martial, referving 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 required to perform at regimental musters and courts martial, and be allowed 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 fenior officer prefent to prefide; and if he should be absent, the officer next in rank shall perform the duties of the major at such mutter 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 county, who shall hold their regimental muster at the place heretofore provided 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 rotationas heshall think proper, not inconsistent with this act, for the purpose of reviewing such regiment, & making such regulations as may appear to him necessary not otherwise inconsistent with this law. Provided,

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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 aft final be in force until the end of the next flated fession of the general assembly.

CHAP. XXI.

An ACT to amend an all, entitled, "An act to afcertain the boundaries of land, and for perpetuating testimony.—Passed november 6, 1801. Beit 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 Hollton, 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.

CHAP. 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 Affembly of the State of Tonneffee, That any perion or persons who have no apparent means of sublishence, 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 sound, on due proof made, to iffue his warrant for fuch effending perion, and cause him to be brought before said justice, who is hereby empowered, on conviction, to demand fecurity for his good behaviour, and in case of relusal 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 fet 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 fubjed 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 faid offender, and if found guilty by a verdict of a jury of good and lawful men, faid court may proceed to hire the offender for any space of time not exceeding fix months, to make fatisfaction for all cofts, but if fuch person or persons so offending, be of ill fam:, so that he or they cannot be hired for the costs, nor give tusticient security for the same and his future good behaviour, in that case it thall and may be lawful for the faid court to cause the offender to recive not exceeding thirty nine lathes, on his bare back, after which he shall be fer at liberty, and the colls grilling thereon thall become a county charge; which punishment may

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be in 1 Aed as often as the person may be guilty, allowing thirty days be-

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 fome justice of the peace of faid county or captain of his company, letting forth his intention in removing, whether to lettle in fairl county, or if travelling, to fet forth his bufiness and destination, and if such traveller should be desirous to stay in any county longer than ten day, he shall first apoly to some justice of faid county for I ave, and obtain a certificate for that purpole, fetting forth the time of his permission, and if such person shall be found soitering in said county after the expiration of his permit, or fail to obtain the fame a. greeable to the true intent and meaning of this aft, such person or perfons to offending, may be apprehended by any perfon or perfons, and carried before firme justice of the peace, who may enquire into his charafter and hufiness; and fine him at his discretion, not exceeding ten dollars : but if faid traveller shall be found on examination, to be a person of ill same, and there is reason to suspect he is loitering in said county for evil purpose, attempting to acquire a living by gambling, or other had practices, fuch judice shall have power to commit any person of like charader, until he shall find good and sufficient security for his good behaviour, for any time not exceeding ten days, and said justice of the scace or court of the county thall proceed against fuch offender, in the fame manner as is heretofore preferihed for vagrants.

Sec. 3 Be it inacted, 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 fare bank, or of any other gaming cloth table, or bank of the fame, or like kind, under any denomination whatever, that 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 dee stroyed; 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, solitering 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 prowided, he or they shall neglect or resule so to do, it shall be deemed a misdemeanor in office, for which he or they shall be impeachable, and on convision he removed from office.

See 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 sear or terror of any person, it shall be an duty of any judge or justice, on his

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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 to to offend, he or they shall not only forfeit their recognizance, but be liable to an indistment, and be punished as for a breach of the peace, or riot at common law.

Sec 7. Beit enacted. That if any person or persons shall unlawfully eut 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 main, wound or dissignire in any of the manners before mentioned, such person or persons so offending their counsellors, aiders and abettors, knowing of, and prive to the offence, shall be and are hereby declared to be felous, and shall suffer as in case of felony: Provided nevertheless, he or they shall be entitled to benefit of clergy, and be surther liable to an assion 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 enafted. That all laws and parts of laws, which come within the meaning and purview of this act, are hereby repealed.

#### CHAP. XXIII.

AN ACT to authorife the feveral county courts of pleas and quarter lessions to remit and mitigate fines and forfeitures on recognizances as therein mentioned — (PASSED OCT. BER 12.18.1)

Section 1. By it enacted by the General Affimbly of the State of Tennessee, That the several courts of pleas and quarter softions in this state, shall have power to remit or mitigate all fines by them inslicted, and all for seitures on recognizances, previous to entering final judgment thereon: Provided, a majority, or any number and less than nine of the judices of said county he present when such renittance or mitigation shall be made.

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

#### CHAP. XX.V.

An ACT concerning administrations granted on the estates of persons . dying intesting the therein mentioned .- (PASSED NOVEMBER 10. 1801.)

WHEREAS heretotore the courts of pleas and quarter fellions, 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,

That all administrations granted by any of the faid 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 conformis

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### LAWS

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.

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1830.

#### POWER OF JUSTICES.

#### CHAPTER LXXVI.

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

Sec. 1. E it enacted by the Senate and House of Representatives, in Legislature assembled, That it shall be within the General jurispower, and be the duty of every Justice of the Peace within diction of Jushis county, to punish by fine not exceeding five dollars, all Peace, and assaults and batteries that are not of a high and aggravated criminal cases, nature, and to examine into all homicides, murders, treasons, in arresting, and felonies done and committed in his county, and commit trying, recog-to prison all persons guilty, or suspected to be guilty of man-committing of slaughter, 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.

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

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

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#### POWER OF JUSTICES.

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Justices may command assistance of sheriff, deputies and conaffrays, &c.

Justices may, on their own view, (in absence of sheriff, stables,) require any person to appre-

fusing to obey such Justice.

If the Justice be known or his office not admissible.

Justices may grant subpoecases:

But not on behalf of the consent of Attorney Gener-al, or County Attorney, ex-cept before himself.

all fines, &cc. Penalty for neglect.

Failing to pros- 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 en- fault to be noted upon their record. And the said Court may Court may or- order the same case to be laid before the Grand Jury, or may der such case to issue an attachment against the body of such appellant, and Grand Jury, or cause him thereby to be brought before them, and when he arrest appel- is so in Court, shall affirm the sentence of the Justice against lant, and affirm 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 stables at riots, 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 deputies or con- 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 perhend offenders. sons to apprehend and bring before him such offender or offenders. And every person so required, who shall refuse or Penalty for re-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 declared-plea Justice, to whom he shall be known, or declare himself to be of ignorance of 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 aunas for witness. thorized and empowered to grant subpænas for witnesses in ses in criminal 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 subpœnas for witnesses to appear in any Court, State without 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 Justices to ac-Peace shall account annually with the Treasurer of the State, to State, Coun- the Treasurer of their respective counties, and the town Treasty and Town urer, 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.

Sec. 8. Be it further enacted, That all civil actions, where-Justice's Jurisin the debt or damage does not exceed twenty dollars, (and actions, (where wherein the title of real estate is not in question, and special-title to real esly pleaded by the defendant,) shall, and may be heard, tried, question.) to adjudged and determined by any Justice of the Peace within extend to 20 his county; and the Justices are severally empowered to grant Justices may issummons, capias and attachment, at the request of any per-sue summons, son applying for the same, directed to some proper officer capias, attachwithin the same county, empowered by law to execute the ment, &c. same. And such sommons or capias and attachment shall be -to be served duly served by such officer, seven days at the least before the seven days beday therein set for trial, otherwise the party sued shall not be held to answer thereon; and if after such process shall be Proceedings duly served, the party sued, after being duly called, shall not before Justice. appear to answer to the same suit, the charge against him in the declaration shall be taken to be true, and the Justice shall Judgment, &c. give judgment against him for such damages as he shall find vall. the plaintiff to have sustained, with costs; and if the person sued shall appear to defend the suit or oppose the same, the Justice shall award such damages as he shall find the plaintiff 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 dolally 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 prevail. reasonable costs, taxed as the law directs. And upon all 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 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, domnum does provided the ad damnum, or damage is not laid or stated to dollars. exceed twenty dollars.

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

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#### POWER OF JUSTICES.

ward the action according tiff to have his damages.

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

In action of trespass when defendant pleads title to real estatemode of pro-Justice.

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

General issue may be plead in all actions fendant.

Justices may grant subpoenas in all civil actions.

May adjourn proclamation:

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 eeeding before 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 before Justices pleading the title of himself or any other person under whom matter given in he claims in justification of the trespass or trespasses allegevidence except where title ed to be committed on real estate; the defendant shall be to real estate is entitled to all evidence, under the general issue, which by relied on by de- 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 subpænas 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 their Courts by of the Peace shall have power by public proclamation to adjourn the trial of any action brought before him, from No Justice to time to time, when equity may require it; but he shall not be of counsel to either party, or undertake to advise or assist any party in suit before him.

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Sec. 14. Be it further enacted, That when an executor or In case of administrator shall be guilty of committing waste, whereby waste by exeche is rendered unable to pay the judgment recovered before istrator, Justice any Justice of the Peace, against the goods and estate of may proceed as the deceased in his hands, out of the same, the Justice may may in such proceed against the proper goods and estate of such execu-cases. tor or administrator, in the same manner as the Circuit Court

of Common Pleas are empowered to do.

SEC. 15. Be it further enacted, That each Justice of the Justice to keep Peace shall keep a fair record of all his proceedings; and record of his when any Justice of the Peace shall die before a judgment When Justice given by him is paid and satisfied, it shall be in the power of shall die before any Justice of the Peace in the same county to grant a scire a judgment facias upon the same judgment, to the party against whom satisfied, what such judgment was rendered up, for him to show cause if any proceedings to 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 Appeal allowas in other personal actions, where judgment is given by a ed to either Justice of the Peace. And every Justice of the Peace who party. shall have complaint made to him, that a judgment given by Justice to whom a Justice of the same county then deceased, remains unsat-complaint is made in such isfied, shall issue his summons to the person in whose posses- cases, may sumsion the record of the same judgment is, directing him to mon the person bring and to produce to him the same record; and if such record to properson shall contemptuously refuse to produce the same re-duce it. cord, or shall refuse to be examined respecting the same, Punishment for upon oath, the Justice may punish the contempt by impris-refusal so to do. onment, until he shall produce the same, or until he submits Duty of the to be examined as aforesaid; and when the Justice is pos-Justice when sessed of such record, he shall transcribe the same upon his the record is own book of records, before he shall issue his scire facias; transcribe it and shall deliver the original back again to the person who into his own shall have produced it, and a copy of such transcription, Copy of such attested by the transcribing Justice, shall be allowed in evi-transcript to be dence in all cases, where an authenticated copy of the original might be received.

Sec. 16. Be it further enacted, That all Justices of the Justices, whose Peace before whom actions may be commenced under for-commissions mer commissions, and such commissions shall expire before judgment or judgment shall be rendered thereon, or judgment being ren-satisfaction, may proceed, dered, the same remains in whole or in part unsatisfied, such under a new Justices of the Peace who shall hereafter have their said seasonably obcommissions seasonably renewed, and being duly qualified tained, to renagreeably to the Constitution of this State, to act under such der judgment, commissions, be and they hereby are authorized and empowered to render judgment, and issue execution on all such

possessing the

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RECOVERY OF DEBTS.

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Form of execu-

HOIL.

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.

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

Know all men, that I, A. B. of , in the County of Form of recog-, the sum of do owe unto C. D. of , to be paid to the nizance. said C. D. on the ; and if I shall fail of day 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.

ss. Acknowledged the day and year last abovesaid.

Before E. F. Justice of the Peace.

SEC. 2. Be it further enacted, That every Justice of the Tobe recorded by the Justice. Peace taking any such recognizance, shall immediately record the same at large in a book to be kept by him for that Execution may 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 ty, or either of the Constables of the town of the Sheriff of the County, or his depty, or either of the Constables of the town of the Sheriff of the County of the County, or his depty, in said Greeting.

Because A. B. of , in the County of , on the , 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 sum of which he ought to have paid county of , and on the day of 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

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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 PREFILED.

### 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.

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Снар. 134. Sect. 1.

PART IV.

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

### CHAPTER 134.

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

#### SECTION

- 1. Officers, authorized to keep the peace.
- 2. Complaint, how made.
- 3. Arrest.
- 4. Trial-Recognizance to keep the peace.
- 5. Party, when to be discharged.
- 6. Refusing to recognize, to be committed.
- 7. Complainant, when to pay costs:
- 8. Payment of costs in other cases.
- 9. Appeal allowed.
- 10. On appeal, witnesses to recognize.
- 11. Proceedings upon an appeal.
- 12. Recognizance, when to remain in force.

### SECTION

- Persons committed for not recognizing, how discharged.
- Recognizances to be transmitted to the court.
- "when to be required, on view of the court or magistrate.
- Persons who go armed, may be required to find sureties for the peace, &c.
- 17. Court may remit part of penalty for-
- Surety may surrender his principal, who may recognize anew.

Officers' authorized to keep the tices of the court of common pleas, justices of police courts, in vacapeace.

#### Снар. 134. Sect. 2-9. TITLE II.

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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 magis- Complaint, how trate, 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.

SECT. 3. If, upon examination, it shall appear that there is just Arrest. 1794, 26, § 2. 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.

SECT. 4. When the party complained of is brought before the Trial. magistrate, he shall be heard in his defence, and he may be required Recognizance to enter into a recognizance, with sufficient sureties, in such sum as to keep the peace towards all the people 4 Mass. 497.

of this Commonwealth, and especially towards the person requiring 2 B. & A. 278. such security, for such term as the magistrate may order, not exceed- 1833, 63, §§ 1, ing six months, but shall not be bound over to the next court, unless & 2. he is also charged with some other offence, for which he ought to be held to answer at such court.

SECT. 5. Upon complying with the order of the magistrate, the Party, when to

party complained of shall be discharged.

SECT. 6. If the person, so ordered to recognize, shall refuse or Refusing to reneglect to comply with such order, the magistrate shall commit him committed. to the county jail, house of correction, or house of industry, during 1833, 63, § 1. 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.

SECT. 7. If, upon examination, it shall not appear that there is Complainant just cause to fear that any such offence will be committed by the par- costs. ty 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.

When no order respecting the costs is made by the Payment of magistrate, they shall be allowed and paid, in the same manner as costs costs in other before justices in criminal prosecutions; but in all cases, where a per- 1824, 122, § 2. son is required to give security for the peace, or for his good be- 1834, 151, § 4. havior, 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.

SECT. 9. Any person aggrieved by the order of any justice of Appeal allowthe peace, or of a police court, requiring him to recognize as afore- 1833, 63, 61.

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#### Снар. 134. SECT. 10-18.

PART IV.

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.

The magistrate, from whose order an appeal is so SECT. 10. 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.

The court, before which such appeal is prosecuted, SECT. 11. 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,

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

Recognizances to be transmitted to the court.

Every recognizance, taken pursuant to the foregoing SECT. 14. 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 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 assualt 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

#### CHAP. 135. SECT. 1-2. TITLE II.

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to take and surrender his principal, as if he had been bail for him in principal, who a civil cause, and upon such surrender shall be discharged, and ex-may recognize empt 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 135.

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

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

#### SECTION

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

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

SECT. 2. Upon complaint, made to any such magistrate, that a Complaints, criminal offence has been committed, he shall examine on oath the warrants, and complainant, and any witnesses produced by him, and shall reduce witnesses. 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-

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## 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.

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#### 378 STATUTES OF WISCONSIN.

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.

Scotence in certain ca-

\( \mathbb{S} \) 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.

\$2. Every court before whom any person shall be convicted upon peace when an indictment for any offence not punishable with death, or by imrequired. prisonment in the state prison prisonment 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

S 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 when exe-

§ 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.

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### STATUTES OF WISCONSIN.

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§ 7. When any person shall be convicted of any crime for which Proceedings sentence of death shall be awarded against him, the clerk of the court, tion for capias soon as may be, shall make out and deliver to the sheriff of the lal offence. 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.

§ 8. If it shall appear to the satisfaction of the governor that any 16. when convict who is under sentence of death has become insane, the war-sane or rant for his execution may be delayed, or if such warrant has been quick with 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.

viction and sentence.

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

\$ 10. Whenever the punishment of death shall be inflicted upon sheriff preany convict, in obedience to a warrant from the governor, the sheriff sent at 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 To return with a statement under his hand of his doings therein, as soon as warrant. 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 con-

### AN ACT to prevent the commission of crimes.

§ 1. That the justices of the supreme court and district courts in officers auvacation, as well as in open court, and all justices of the peace, shall there the have power to cause all laws made for the preservation of the public peace. 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.

\$ 2. Whenever complaint shall be made to any such magistrate, complaint that any person has threatened to commit an offence against the per-how loade. son 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.

§ 3. If, upon examination, it shall appear that there is just cause Arrest. to fear that any such offence may be committed, the magistrate shall

Add. 41

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### STATUTES OF WISCONSIN.

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 re-

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§ 4. When the party complained of is brought before the magiscognizance. trate, 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

§ 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

§ 7. If, upon examination, it shall not appear that there is just when to pay 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 al-lowed.

§ 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

S 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.

Recogni-§ 12. If any party appealing shall fail to prosecute his appeal, his zance, when to remain in recognizance shall remain in full force and effect as to any breach of Case: 17-2202 Document: 00117305304 Date Filed: 06/21/2018 Page: 83 Entry ID: 6178985

### STATUTES OF WISCONSIN.

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 appel-

\$ 13. Any person committed for not finding sureties, or refusing Not recogto recognize as required by the court or magistrate, may be discharg-discharged. ed by any judge or justice of the peace on giving such security as was

\$ 14. Every recognizance taken in pursuance of the foregoing Recogniprovisions shall be transmitted by the magistrate to the district court mitted to for the county on or before the first day of the next term, and shall court.

be there filed of record by the clerk.

§ 15. Any person who shall, in the presence of any magistrate When rementioned in the first section of this statute, or before any court of view of record, make an affray, or threaten to kill or beat another, or to com-court, &c. mit 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.

§ 16. If any person shall go armed with a dirk, dagger, sword, pis-Persons gotol or pistols, or other offensive and dangerous weapon, without rea-give security, &c. sonable 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.

§ 17. Whenever, upon a suit brought on any such recognizance, Part of pethe penalty thereof shall be adjudged forfeited, the court may remit ted. such portion of the penalty on the petition of any defendant, as the

circumstances of the case shall render just and reasonable. § 18. Any surety in a recognizance to keep the peace or for good surety may behavior or both, shall have the same authority and right to take and principal. 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.

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

§ 1. That every person who shall be aiding in the commission of Accessory any offence, which shall be a felony either at common law or by any to felony be-statute now made, or which shall be hereafter made, or who shall be how punish-accessory thereto before the fact, by counselling hiring or otherwise. 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.

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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 &  $c_0$ , printers to the state. 1841.

TITLE XII.1

SENTENCE AND EXECUTION.

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

### CHAPTER 169.

### OF PROCEEDINGS FOR PREVENTION OF CRIMES.

- SECT. 1. Of the commencement of criminal | SECT. 9. When party, complained of, shall proceedings.
  - 2. Magistrates may require sureties for the peace and good behavior.
    - 3. Of the examination of the complainant.
    - 4. When a warrant may issue.
    - 5. In certain cases sureties required, for keeping the peace, &c. without binding to appear at any court.
    - 6. Party to be discharged, on complying.
    - 7. On refusal, to be committed to the county jail; but still entitled to a hearing on his appeal.
    - a. Proceedings, if the complaint be not sustained. Costs, if malicious or frivolous.

- pay costs.
  - 10. Appeal to the next district court.
  - 11. Proceedings upon the appeal.
  - 12. Consequences, if the appellant fail to prosecute.
  - 13. Recognizance may be taken, after commitment.
  - 14. Return of such recognizance.
  - 15. When magistrate may require sureties, without a formal complaint.
  - 16. Persons going armed, without reasonable cause.
  - 17. Power of court, to remit the penalty of a recognizance.
  - 18. Sureties on recognizances may surrender their principals, as in case of bail in civil actions.

SECTION 1. No person shall be held to answer in any court for Of the coman alleged crime or offence, other than contempt of court, unless mencement of upon an indictment by a grand jury, except in the following cases: 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 dis- Magistrates trict court, justices of municipal courts and police courts in vaca- may require tion, as well as in open court, and justices of the peace, in their peace and good respective counties, shall have power to cause all laws made for the behavior. 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.

Any such magistrate, on complaint made to him, that Of the examin-SECT. 3. any person has threatened to commit an offence against the person ation of the 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.

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

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PREVENTION OF CRIMES.

[TITLE XII.

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.

When the person, complained of, is brought before SECT. 5. 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. On refusal, to be committed to the county jail, but still entitled to a hearing on his ap-1821, 76, § 1.

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

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 The magistrate shall also return a copy of the warrant to required. 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 prose-] cute.

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

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PREVENTION OF CRIMES.

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

SECT. 14. Every recognizance, taken pursuant to the foregoing Return of such provisions, shall be transmitted to the district court, on or before the recognizance. 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, men- When magistioned in the second section of this chapter, or before any court of trate may rerecord, shall make any affray or threaten to kill or beat another, or without a forcommit any violence against his person or property, or shall con- &c. tend, 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, Persons going sword, pistol, or other offensive and dangerous weapon, without a armed, without reasonable reasonable cause to fear an assault on himself, or any of his family cause. 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 Power of court, case, if a forfeiture is found or confessed, the court, on petition, penalty of a remay remit the penalty, or such part of it as they may think proper, cognizance. 1621, 50, § 4. on such terms as they may think right.

SECT. 18. Any surety in a recognizance may surrender the Sureties on reprincipal in the same manner, as if he had been his bail in a civil cognizances may surrender cause, and, on such surrender, shall be discharged from all liability their principals for any act of the principal after such surrender, which would be a as in case of bail in civil acbreach of the recognizance; and, upon such surrender, the princi-tions. pal 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.

### CHAPTER 170.

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

SECT. 1. Justices may require aid, on view, SECT. 6. Duty of justices, as to arrests, and without a warrant.

- 2. Their jurisdiction.
- 3. When a justice shall issue his war-
- 4. Examination, on trial, of the party accused.
- 5. Of commitment or binding over to a higher court.
- examinations into treasons, felonies, &c.
- 7. Trial and sentence within their jurisdiction.
- 8. Respondent may appeal; but required to recognize.
- 9. To carry up copies of the case.

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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.

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### 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.

this state, and especially towards the person requiring such security, TITLE XXXI. 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.

Sec. 5. Upon complying with the order of the magistrate, the par- Party, when disty complained of shall be discharged.

Sec. 6. If the person so ordered to recognize, shall refuse or neg- Refusing to relect to comply with such order, the magistrate shall commit him to committed. 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.

SEC. 7. If, upon examination, it shall not appear that there is just Complainant, cause to fear that any such offence will be committed by the party com- when to pay plained of, he shall be forthwith discharged; and if the magistrate shall costs. 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.

SEC. 8. When no order respecting the costs is made by the magis- Payment of cost trate, they shall be allowed and paid in the same manner as costs be-in other cases. fore 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, un-

til such costs are paid, or he is otherwise legally discharged.

SEC. 9. Any person aggrieved by the order of any justice of the Appeal allowed. 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.

Sec. 10. The justice from whose order an appeal is taken, shall witnesses torerequire such witnesses as he may think necessary to support the com- cognize. plaint, to recognize for their appearance at the court to which the appeal is made.

Sec. 11. The court before which such appeal is prosecuted, may Court may affirm the order of the justice, or discharge the appellant, or may re-or discharge eports of the justice, or discharge eports. quire the appellant to enter into a new recognizance, with sufficient pellant, &c. 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.

SEC. 12. If any party appealing shall fail to prosecute his appeal, Recognizance. his recognizance shall remain in full force and effect, as to any breach when to remain in force. 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.

Sec. 13. Any person committed for not finding sureties, or refusing Person committo recognize, as required by the court or magistrate, may be discharg- ged. ed by any judge, circuit court commissioner or justice of the peace, on giving such security as was required.

SEC. 14. Every recognizance, taken pursuant to the foregoing pro-Recognizance to visions, shall be transmitted by the magistrate to the clerk of the circlerk of court. cuit 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.

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### ARREST &c. OF OFFENDERS.

TITLE XXXI. CHAPTER 163.

Breach of peace in presence of magietrate, &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 sureties for the pence.

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 surrender 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

Section 1. For the apprehension of persons charged with offences, may issue pro- excepting such offences as are cognizable by justices of the peace, the cess for the arrest justices of the supreme court, judges of the county courts, circiuit of offenders, &c. excepting such offences as are cognizable by justices of the peace, the 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.

Sec. 2. Whenever complaint shall be made to any such magistrate, Complainant, &c. 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

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# ACTS

OF THE

# GENERAL ASSEMBLY

O F

# 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.

# 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
- Of criminal proceedings against slaves, free negroes and mulattoes.

### CHAP. XIV.

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

### SECTION

- 1. Officers authorized to keep the peace.
- 2. Complaint, how made.
- 3. Arrest.
- 4. Trial. Recognizance to keep the
- 5. Party, when discharged.
- Refusing to recognize, to be committed.
- 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.

SECTION

- Recognizance, when to remain in force.
- Persons committed for not recognizing, how discharged.
- Recognizances to be transmitted to court.
- Recognizances, when to be required on view of the court or magistrate.
- Persons who go armed may be required to find surelies of the peace, &c.
- Persons not of good fame to give surety for good behaviour.

1. The judges of the supreme court of appeals, the judges of the officers authogeneral court throughout the commonwealth, all justices of the peace rized to keep the 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 re-Power to require quire persons to give security to keep the peace, or for their good be-viour. haviour, or both, in the manner hereinafter provided.

2. Whenever complaint shall be made to any such magistrate that Complaint how 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.

3. If upon examination, it shall appear that there is just cause to Anest. 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.

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### Prevention of Crimes.

128 Trial.

Recognizance to keep peace.

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.

I'ntly whon discharged.

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

Refusing to re-cognize, to be committed.

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

Defendant when discharged.

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 may order the complainant to pay the costs of the prosecution, and thereupon award execution against him for the same,

Payment of costs in other cases.

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

Appeal against

9. Any person aggricved by the order of any justice of the peace order to recognize requiring him to recognize as aforesaid, may, on giving the security required, appeal to the county or corporation court next to be holden for the said county or corporation.

On appeal, witnesses to rocngnizo.

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.

Procoedings on appeal.

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

Costs.

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 magis trate, 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 to appeal prosecu-

13. Any person committed for not finding securities, or refusing to ted for not recog- 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.

Persons commitnizing, how discharged.

Recognizances returned to court.

 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.

15. Every person who shall, in the presence of any magistrate, accognizances mentioned in the first section of this act, or before any court of re-funces in precord, make an affray, or threaten to kill or beat another, or to com- sence of magis-mit 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.

16. If any person shall go armed with any offensive or dangerous Persons armed, weapon, without reasonable cause to fear an assault or other injury, suratles. 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. Appeal allowed.

17. Such persons as are not of good fame may be required to give Persons not of sufficient surety of their good behaviour for such term, not exceed-good fame to give

ing twelve months, as the magistrate requiring it may order.

### CHAP. XV.

### OF ARREST AND COMMITMENT.

SECTION SECTION 17. When prisoner to be discharged. 1. Officers empowered to act. 2. Complaints, warrants and sum-18. When to be bailed or committed. 19. If party entitled to examination, &c. monses. 3. Offence committed in another 20. If not so entitled, and triable on county. 4. In what county warrant may be indictment, &c. 21. If party charged be free negro, &c. 22. Duty of magistrate, &c. executed. 5. Prisoner, when to be brought be-23. Witnesses to recognize. fore magistrate on arrest. 21. G. Magistrate, if he take bail, to re-Witnesses, when to recognize with turn recognizance, &c. surcties. 25. Recognizances of minors, &c. 7. Officer, how to proceed if prisoner not bailed. 26. Witnesses refusing to recognize. 27. Magistrate may associate others. 8. Prisoner, when to be carried to 28. Prisoner by whom let to bail. county whence warrant issued. 9. Same subject. 29. Recognizances, &c. to be returned. Commitments, &c. when to be 30. 10. Magistrate may adjourn examinadischarged. tion. 31. Orders therefor, how to be filed &c. 11. In case of default, recognizance to 39. be certified. 33. Proceedings on forfeited recogni-12. Proceedings when party fails to 34. recognize. 35. 13. Manner of conducting examina-36. Right of surety to surrender prin-15. Stion. 16. Testimony to be reduced to wricipal. 37. To whom to be surrendered. 38. When to the court.

1. For the apprehension of persons charged with offences, the Process to arrest judges of the general court, and all justices of the peace in vacation for offences, by as well as in term time, are authorized to issue process to carry into effect the provisions of this act.

2. Upon complaint made to any such magistrate that a criminal Examination on offence has been committed, he shall examine on oath the complain-complaint. ant 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-

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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 SU-PERVISION OF M. S. WILKINSON.

SAINT PAUL:

JAMES M. GOODHUE, TERRITORIAL PRINTER.

1851

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### 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 com-

Forfeiture of recognizance.

When discharged.

May be delivered on warrant of executive, &c.

Complainant liable

for costs, &c.

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

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
- 2. Proceedings when complaint is made to magistrate.

#### SECTION

- 3. Magistrate when to issue warrant.
- 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
- 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
- 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.

Whenever complaint shall be made to any such magistrate, SEC. 2. 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.

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.

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.

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.

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 recog nize 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,

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

SEC. 9. If, upon examination, it shall not appear that there is just Defendant when to 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

What officers to

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Proceedings when to magistrate.

Magistrate when to

Proceedings upon examination before

Defendant may

Defendant when to enter luto recogni-

Defendant when to be discharged.

Defendant when to

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### 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 rails 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 courtSEC. 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 magistate, 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 wespons 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.

Sult brought on recognizance, six months, with the right of appealing as before provided.

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 Surety may take good behavior, or both, shall have the same authority and right to take and surrender principal in recogniand surrender his principal, as if he had been bail for him in a civil case, zance. 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.

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### CHAPTER 113.

### OF ARRESTS.

#### SECTION

- 1. Arrest defined.
- 2. Arrest how and by whom made.
- 3. Every person must aid officer in making ar-
- 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 datendant that he acts under authority.
- 8. Officer may use necessary force.
- 9. Officer may break outer door to make ar-
- 10. Officer may break outer door to make ar-
- 11. When officer may arrest person without

#### SECTION

- 12. Officer may break open door.
- 13. Arrest may be made at night.
- 14. Officer must inform person of the cause of
- 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
- 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 Arrest defined. be held to answer for a public offence.

SEC. 2. An arrest may be either,

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

3. By a private person.

- SEC. 3. Every person must aid an officer in the execution of a war-rant, if the officer require his aid, and be present and acting in its exe-king arrest.
- SEC. 4. If the offence charged be a felony, the arrest may be made arrest for felony or any day and at any time of the day or night; if it be a misdemean-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.

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

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

Arrest how and by

misdemeanor how

Defendant how to be restrained.

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# 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.

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### LAWS OF THE

### TITLE RIFTEENTH.

### Of Justices of the Peace.

- CHAPTER 97. General powers, duties and jurisdiction of justices in criminal cases.
  - 98. Jurisdiction in bastardy cases.
  - Justices' jurisdiction in civil cases of debt.
  - Justices' jurisdiction in trespass cases.
  - 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.

- SEC. 1. Number in the several counties.
- 2. Power to issue process.
  3. To keep records. Adjournments.
  4. To issue subpoenns.

  - 5. To administer oaths.
    6. To punish contempts.
    7. To arrest without warrant. To commit or bind to appear. Form of commitment.
  - Form of commitment.
    Form of binding to KEEP THE PEACE.

    8. Power to punish assaults and batteries.
    Form of binding to ANSWER CHARGE.
    Binding witnesses to appear.

    9. To permit parties to settle cases of assault and battery.

  - 10. Not to receive fine or costs,
    To put it in charge of a constable.
    11. To certify fines to the auditor. Penalty.

  - 12. Power to bind over for threats, 13. To cause arrests of peace breakers, &c.,

  - To fine drunkards and swearers.
     To punish those who resist authority.
     Mode of proceeding in criminal cases.

  - 17. After arrest. 18. The examination.
  - 19. The commitment or binding to appear.
  - Binding witnesses.

    20. To deliver recognizances to clerk of the peace. Fee.

- Sec. 21. To indorse the names of witnesses.

  22. To arrest persons complained against.

  23. Warrant may be executed in any county.
  - 24. Bail for appearance; how taken; by whom.
  - Commitment in default of bail.

    25. How discharged from prison on bail.

    26. Capital cases; when bail may be taken

    37. Rail in other cases; how determined.

    28. How taken by sheriff. &c.

  - 29. SEARCH WARRANTS, When and how to be issued. Complaint must be in writing.
  - Warrant; how directed. When it may be executed at night. 30. Power of justice to try certain offences
  - by slaves.

    31. Power of two justices to try slaves.

  - Power of two justices to try slaves.
     Order on master to pay restitution, &c
     Service of notice on master; verification.
     Power to punish Sabbath breaking.
     Duty of representatives of a deceased justice to deliver records; penalty.
     Duty of justice to give transcripts, copies, &c.; penalty.
     Originals may be required by the court.
     Duty to attend elections; penalty.

### Number.

2003 Number.

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.

New Cas-

Kent. Sussex.

### 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.

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 goods.

judicial proceedings in criminal as well as civil cases.

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

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

Sec. 5. He may administer oaths in all cases where an oath is Oaths.

required by law.

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

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SEC. 7. Every justice of the peace may, as a conservator of the Power to arpeace, upon view of any affray, riot, assault, or battery, within his rest without warrant. 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.

A commitment may be in this form:

- County, ss. The State of Delaware: To A. B., constable, and to the keeper of the jail of said county: this is to command you the said constable forthwith to convey and deliver into the custody of the keeper of said jail the body of C. D. charged, before E. F. a justice of the peace for said county, on oath by G. H. with (here state the ofsence), 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.

 $\{\widetilde{L.S.}\}\$  Given under my hand and seal this — day of J.

Binding to keep the peace and for appearance at court may be in

- 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 one the State of Delaware the - dollars, to be levied on their goods and chattels, lands and tenements respectively, for the use of the said State: Upon con-DITION, 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 Case: 17-2202 Document: 00117305304 Page: 104 Date Filed: 06/21/2018 Entry ID: 6178985

### LAWS OF THE

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.

2013 Power to punish assaults and batteries.

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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:—

2015 Binding a witness to appear.

2017 Not to receive fines. 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.

Sec. 9. In every case of assault and battery the justice may persettle asmit the parties to settle the matter; and either discontinue the prosaults and batteries. ceedings or annul any recognizance, on payment of costs.

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.

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 To cerufy of accounts, by mail, on the first Tuesday of April and October in fines to auditor. 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: Petalty. and the court shall, on conviction of such justice, transmit a copy of the record to the general assembly.

SEC. 12. Whoever shall threaten to kill, or wound, another, or to injure him in person, or estate, shall, on proof of such threats, be-bind over fore a justice of the peace, either by the oath of the party threat-for THELATS ened, 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.

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

SEC. 14. He may also cause to be arrested any drunken person, Drunkards: or any person who, in his hearing, shall profanely swear by the name swearers. 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.

SEC. 15. If any person, arrested by warrant, or order, of any To punish court of justice, magistrate, or justice of the peace, shall use abusive, those who railing, or threatening speeches against such court, magistrate, or thority. 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

SEC. 16. When complaint is made in due form to a justice, alleging that an offence has been committed, the justice shall carefully ings in criexamine the complainant on oath, or affirmation, and if he considers complaint. there is probable ground for the accusation, he shall issue his war-

A warrant of arrest may be in this form:

Warrant of

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

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

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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 -? ..... S day of \_\_\_\_\_ A. D. 18\_.

20:25 How directed. 2025 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.

SEC. 18. He shall examine the party accused, taking his voluntary declarations, without threats, or promises, and shall also ex-

declarations amine the witnesses in the presence of the accused. 2028

If the offence is a felony, he shall reduce the examination of the to be in wri- accused to writing, and read it to him, and offer it for his signature.

The justice shall sign it.

2020 Testimony in writing.

Examina-

tion. Voluntary

In felonies

ting.

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 Commitment: 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.

Guding the witnesses.

2002

[2014, &c.]

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.

Such binding of the accused, and of the witnesses, shall be by re-

cognizance, as provided in section 8.

2033 To deliver

Fcc.

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.

2034 SEC. 21. He shall indorse on the recognizance the names of the Names of witnesses to material witnesses, and the clerk shall issue subpoenas for their, ap-

### STATE OF DELAWARE.

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 com- puty to arplaint, all persons found within his county charged with any offence; rest persons complained and all persons who, after committing any offence in such county, against.

shall escape out of the same.

SEC. 23. A warrant of arrest, issued by a justice in one county. Warrant, may be executed in any county of the State; and the constable, or where exeofficer, having it in hand, may command aid as in his own county; cuted. 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.

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

SEC. 25. A person, so committed, shall be discharged upon giving How dissufficient bail, or security; and any judge, or justice, may require charged.

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

per witnesses. SEC. 27. When a person arrested by virtue of process issued upon an indictment, or presentment, except for a capital crime, and ex-East in other cept 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 How detersum 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.

SEC. 28. Bail shall be taken by the sheriff, or officer to whom the How taken process is directed, by a joint and several bond executed, by the ac-by sheriff. cused 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.

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2042 Search warand how to be issued.

SEC. 29. Any justice of the peace, or other magistrate authorized rants, when 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:

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.

How direct-

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

2045 When it 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 tor costs.

2047 Power of to try offences by SLAVES.

SEC. 31. Any two justices of the peace for the county shall have two justices 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,

[1577.]

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

## STATE OF DELAWARE.

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

The trial shall not proceed, without the appearance of the master, To be veriuntil the return of the service of such copy is duly verified.

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

own view, or on other competent evidence.

SEC. 33. Upon the death of a justice, or expiration of his term of Duty of exoffice, and the appointment of another, it shall be the duty of such ecutors of a justice, or his executors, or administrators, to deliver all his dockets respect to 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 Penalty. Court may name the justice to whom the delivery shall be made, and enforce an order for such delivery by fine and imprisonment.

SEC. 34. It is the duty of a justice of the peace, upon request not payment, or tender, of the legal fee, to make and certify, untice to give der his hand and seal, a true transcript of all the docket entries TRANSCRIPT. 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, or full process and papers in or touching such cause; and such transcript, or copy, shall be received in evidence in any court.

Upon an appeal, a transcript shall be sufficient, unless a full copy on appeals be specially requested. Upon a certiorari, the justice shall make a on certiora-

full copy of the entire record and proceedings.

If any justice of the peace shall, upon such request and payment, penalties 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

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

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

If any justice shall refuse, or wilfully neglect, to perform this constitute, 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.

aggrieved in double damages.

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THE

# STATUTES

OREGON,

ENACTED AND CONTINUED IN FORCE BY THE

# LEGISLATIVE ASSEMBLY,

AT THE SESSION COMMENCING

5th December, 1853.

OREGON

ASAHEL BUSH, PUBLIC PRINTER.

1854.

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PROCEEDINGS TO PREVENT COMMISSION OF CRIMES.

CHAP. 16.

## CHAPTER XVI.

## PROCEEDINGS TO PREVENT COMMISSION OF CRIMES.

Sec. 1. Certain officers conservators of the public peaco.

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.

Recepting the 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.

SEC. 2. Whenever complaint shall be made to any such magistles may be trate, that any person has threatened to commit an offence against required. 17 the person or property of another, the magistrate shall examine the 23 do. 639. 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

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.

Recogniz-

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

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complained of, he shall be required to enter into recognizance with CHAP. 16. 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.

SEC. 7. If the person so ordered to recognize, shall refuse or ne- When to be glect to comply with such order, the magistrate shall commit him 23 Wen. 639. 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.

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

SEC. 9. When no order respecting the costs is made by the maccosts. gistrate, 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.

SEC. 10. Any person aggrieved by the order of any justice of the Appeal. 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

SEC. 11. The magistrate, from whose order an appeal is to be Witnesses taken, shall require such witnesses as he may deem necessary to cognize. support the complaint, to recognize for their appearance at the court to which appeal is made.

SEC. 12. The court before which such appeal is prosecuted, may Power of apaffirm 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.

SEC. 13. If any party appealing, shall fail to prosecute his appeal, Failing his recognizance shall remain in full force and effect, as to any appeal. 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.

SEC. 14. Any person committed for not finding sureties, or refus- Discharge of ing to recognise as required by the court or magistrate, may be dis-mitted.

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CHAP. 17. charged by any judge or justice of the peace, on giving such security as was required.

Sec. 15. Every recognizance taken in pursuance of the foreces when to be trans- going provisions, shall be transmitted by the magistrate to the dismitted.

trict court for the county on or before the first day of the next. trict 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 with out warrant. trate 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 perrequired 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 pro-

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.

Surcty may 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.

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

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# A DIGEST

OF THE

# LAWS OF PENNSYLVANIA,

PROM 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.

# Erimes.—Eriminal Procedure.

Acts of as192. In all cases where a remedy is provided, or duty enjoined, or anything directed sembly to be to be done by any act or acts of assembly of this commonwealth, the directions of the strictly pure said acts shall be strictly acts shal 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.

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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.

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- 16. Manner of laying property of counties, cities, townships, &c.

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- 40. Of folonious striking or poisoning in one county, and death in another.

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  61. Persons tried for misdemeanor not to be sequitted if the offence turn out to be folony.

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- the county.

### A. PROCEEDINGS TO DETECT THE COMMISSION OF CRIMES.

1. The judges of the supreme court, of the court of over and terminer and jail Warrants of 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 subpoenas 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 subposnas, by attachment or otherwise, and under such pains and

192. Act 31 March 1860, 3 183. P. L. 426.

I. Act 31 March 1860, § 1. P. L. 429. 193, 1bid, 6 184,

system by the 13th section of the act of 22d April 1794, 3 Sm. 190; it will size be found in the punishments provided by the act of 23d April 1829, 10 Sm. 430. Report on the Penal

(a) This section is taken from the 13th section of the act of 21st March 1806, 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, I R. 457. 5 R. 64. I Ash. 40. 7 Am. L. R. (20. (b) This section explains the meanings of general terms which have been used for the sake of brevity. Report on the Penal Code 39.

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penalties as other writs or subpœnus 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, subpoona or attachments, to be executed by the sheriff of the county in which the same is awarded, which said writ, precept, summ is or subpoena, shall be the sufficient warrant of such sheriff for executing the same unroughout 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 Expenses. 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

2. Where any person charged with having committed any felony,(b) in any city or Escapes into county of this commonweath, shall go or escape into any other county thereof, it shall another 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 con-

ducted.(c) In case any person against whom a warrant may be issued by any judge or Backing war. alderman of any city, or justice of the peace of any county in this commonwealth, for rante. 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 indersed. And in case the offence Ball. 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 cours 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 Removal. 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, Magistrates shall be brought, sued, commenced, exhibited or prosecuted by any person, against the backing such alderman, justice or justices, who shall indorse such warrant, for or by reason of his or be indemaltheir indorsing the same, but such person shall be at liberty to bring or prosecute his or fied. 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 affirma-Disposition 2. Act 31 March 15d0, § 2. P. L. 629. 3. Ibid. b 3. 4. Ibid. § 4. 5. Ibld. § 5.

(a) This section is composed of the 8th section of the act of 22d May 1722. I 8m. 138; of the 14th section of the act of 23d September 1791, 3 8m. 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 Ponal Code 39. The county is not liable for the expenses incurred in an unsuccessful attempt to arrest a fagility from justice, who has taken refuge in another state. 8 C. 549.

(b) This does not extend to misdemennors; a fugitive charged with having committed a misdemeanor in another county can when the section of the succeeding section. Grant 218.

(c) This section is taken from the 3d section of the act of 4th of April 1807, 4 8m. 393. Report on the Penal Code 39.

(d) A warrant issued 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.

(c) This section is taken from the 3d section of the act of 4th of April 1807, 4 8m. 393. Report on the Penal Code 39.

(d) A warrant issued by a justice of another county, charging a misdemeanor to have been committed in the county whence the warrant was indorsed. Grant 218.

(e) This section is taken from the 3d section of the act of 4th of April 1807, 4 8m. 393. Report on the Penal Code 39.

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supposed to tion, of the crime of burglary, robbery or larceny, and the said magistrate shall have be stolen, issued his warrant to apprehend such person or persons, or to search for such goods as possession of have been described, on oath or affirmation, to have been stolen goods, if any shall be ons accused 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

Notice.

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 Bestitution 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 ful. 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,

When to be county com-

Disposition

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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) Surety of the 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 be 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 afore-

the said claimant shall be entitled to recover, and receive from the said commissioners,

said.(c)

7. In all cases the party accused, on oath or affirmation, of any crime or misdemeanor against the laws, shall be admitted to bail by one or more sufficient sureties, to be taken before any judge, justice, mayor, recorder or alderman where the offence charged has been committed, except such persons as are precluded from being bailed by the constitution of this commonwealth: (g) Provided also, That persons accused as aforesaid, of

6. Act 31 March 1800, § 6. P. L. 432.

7. 1bid. 5 7.

Ash. 40. 2 Y. 493.

(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

(a) This section is taken from the 10th section of the act 23d September 1791, 3 Sm. 42. Report on the Penal Code 39.
(b) Surety of the peace is demandable of right by any individual who will make the necessary oath. 1 B. 102, n. See 1 Ash. 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 personer, in such sun, and for such length of time, as the public sefety requires. 2 Y. 437. 10 Barr

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murder or manslaughter, shall only be admitted to bail by the supreme court or one of the judges thereof, or a president or associate law judge of a court of common pleas: persons accused, as aforesaid, of arson, rape, mayhem, sodomy, buggery, robbery or burglary, shall only be bailable by the supreme court, the court of common pleas, or any of the judges thereof, or a mayor or recorder of a city.(a)

8. All sureties, mainpernors, and bail in criminal cases, whether bound in recogni-Surrends of sances for a particular matter or for all charges whatsoever, shall be entitled to have a bail. 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 recog-Settlement nisance to appear, or shall, for want of security, be committed, or shall be indicted for of criminal an assault and battery or other misdemeanor, to the injury and damage of the party cases. 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 misdemeauor, 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 Grand jurors empowered to administer the requisite oaths or affirmations to any witness whose name may administer oaths. 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 Form of charges the crime substantially in the language of the act of the assembly prohibiting indictments. 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. Formal ob-Every objection to any indictment for any formal defect, apparent on the face thereof, jections to 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 Amend-taken for any formal defeat, mention to the sworn, and not afterward; and every court, before whom any such objection shall be Amend-taken for any formal defeat, mention taken for any formal defect, may, if it be thought necessary, cause the indictment to be ments on forthwish amonded in such particular by the clark or other officer of the court of demurrer, forthwith amended in such particular, by the clerk or other officer of the court, and &c. thercupon the trial shall proceed as if no such defect appeared.(g)

8. Act 31 March 1860, § 8. P. L. 432.

9. 1bid. & 9.

10. Ibid. 6 10. 11. Ibid. 6 11.

act of 1705, 1 Sm. 50; and the first section of the act of 30th April 1832. P. L. 393. Iteport on the Penul Code 39.

(b) See 1 T. & H. Pr. 303-10.

act of 1705, 1 Sm. 59; and the first section of the act of 30th April 1832. P. L. 398. Iteport on the Penal Code 39.

(b) See 1 T. & H. Pr. 303-10.

(c) This section is taken from the 3d section of the act of 10th April 1848, P. L. 449. Report on the Penal Code 40.

(d) This section is an extension of the existing law of the 17th March 1800, 4 Sm. 318. Report on the Penal Code 40.

(e) This is taken from the 1st section of the act 5th April 1820, 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 har; at most, it is only ground for a motion to quash. Tilhard a 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 crintinal 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 humano 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 off-nders escaped by the easy car given to exceptions to indictments, than by the manifestations of their innocence, and that the grossest crimes had gone unpunished, by reason of these unscendy dioties." The reason for recognising these subtilities by the common law, no doubt nrose 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 cosation of these technical niceties has ceased, and with the cosati

8. Act 31 March 1800, § 8. P. L. 432.

(a) This section is a consolidation of the first clause of the act of 1706, 1 Sm. 50; and the first section of the act of 30th April 1832. P. L. 348. Heport 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 1834. P. L. 440. Report on the Penal Code 49.

(d) This section is a nextension of the existing law of the color of the existing law of the 1845. P. L. 440. Report on the Penal Code 49.

(d) This section is a nextension of the existing law of the 1845. P. L. 440. Report on the Penal Code 49.

(e) This is taken from the 1st section of the next 6th April 1820. Sun. 136. That witnesses, whose names had not been marked by the district attorney on the bill of indictment, were worn and examined by the foreman of the grand jury. is not pleasiable in hart, at most, it is only ground for a motion to go and examined by the foreman of the grand jury. is not pleasiable in hart, at most, it is only ground for a motion to go and examined by the foreman of the grand jury. is not indictant in the proposed ameniments of our penal system. The history of criminal administration abounds with instances in which, the guilty have escaped by reason of these unscently indicties. The reason filled, one of the best, and most homean of English judges, long since remarked, that such infection thereof; that more off-nders escaped by the eavy car given to exceptions to indictance, than by the manifestations of the experiments the indictance of the parallal proposed ameniments of the experiment of the parallal news and thought of the judges, whe, in administration abounds with the case of the proposed ameniments of our penal system. The little that the grossest crimes had gone unput and the proposed ameniments of the proposed ameniments of our penal system. The little the defendant to an acquitation of the best, and most human of English judges, and place described in the indictance, and indictance, the reson of these unscently

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Variances between written inas produced and laid in indictment emendable.

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 vari ances 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.

Immaterial variances botween indictment and proof amendable.

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,

manuer of Joint own-

14. In order to remove the difficulty of describing the ownership of property, in awing the case of partners and joint owners, in any indictment for any felony or misdemeanor property in committed on or with respect to any money, chattels, bond, bill, note or other valuable senses of parts curity or effects belonging to or in the possession of any partners or joint owners, it shall be need to aver that the particular subject to aver the subject to aver that the particular subject to aver the subject to sufficient to aver that the particular subject-matter on which or with respect to which any such offence shall have been committed, to be the property of some one or more of the partners or joint owners named in the indictment, and of other persons being partners or joint owners with him or them, without stating any of the names of such other persons; and in any indictment for any felony or misdemeanor, committed on or with respect to any house or building whatsoever, belonging to or in the possession of any partners or joint owners, or for any felony or misdemeanor committed on or with

12. Act 31 March 1860, § 12. P. L. 433.

13. fbld. § 13.

which he is charged with having committed a felony or misdomeaner. 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 pleuler to simplify hereafter the forms of indictments in forzery, and facilitate him in averring instruments necessary to be recited in any other indictment. The 12th and 18th sections contemplate the amendment of indictments, framed as certing 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 pleuder the option to prepare his indictment in such a way as to avoid, slotogether, such difficulties; which can be done with ordinary care and caution. The 19th section contemplates avoiding the necessity of specifically describing the parties intended to be defrauded, and the embarrassing the proofs, in any case, with a question not really material to the issue. In forgeries, uttering and passing forged money, and in cheating by false pretences (the crimes contemplated what committed with an Intent to defraud; an indictinent containing that averment, chould be sufficient, without requiring the pleuder to go into the description of who was the party intended to be defrauded; a mistike 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 canded consequences of these offences, require that a somewhat detailed explanation of the reasons which have led to their introduction should be given. By the common law, in an indictment of providing for indictment of 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 indicte

death had not been truly stated, and the prisoner was discharged. So, in lex v. Martin, 5 C. & P. 128, where the indictment charged the wound to have been indicted by a blow with a fammer, 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, rootuced 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 pixel leaded with a leaden build; on the trial, no evidence was produced to actually prove that the pixel was loaded with a leaden build, none having been found either in the wound, or in the room where the wound was indicted; the surgeon, examined in the exac, testified that the wadding, if ramened light, night have produced the effect without any ball; in this state of the syldence, the court ruled, that the indictment was not sufficiently proved, and the defendant was sequitted. It is true, that the court have drawn a distinction, which rendered their rulings in indictments for homicide, as to the manner and cause of the death, more reconclude 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 langer or knife, proof is sufficient which establishes the wound to have been inflicted with a langer or knife, proof is sufficient which establishes the wound to have been inflicted with a langer or knife, proof is sufficient which establishes the wound to have been inflicted with a langer or knife, proof is sufficient which establishes the wound to have been inflicted with a langer or knife, proof is sufficient which establishes the wound to have been inflicted with a langer or knife, proof is sufficient which the cases cited show only ten

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respect to any property being in any such house or building, it shall be sufficient to aver that the particular house or building on or with respect to which, or on or with respect to the property being in which, any such offence shall have been committed, is the property of some one or more of the partners or joint owners named in the indictment, and of other persons being partners or joint owners with him or them, without stating any of the names of such other persons.

15. With regard to frauds committed against partners and joint owners, it shall be Manner of sufficient in any indictment for any felony or misdemeanor committed with intent to charging defraud any partners or joint owners, to allege that the act was committed with intent fraula to defraud any one or more of the partners or joint owners named in the indictment, ners and and other persons being partners or joint owners with him or them, without stating any ors.

of the names of such other persons.

16. With respect to property belonging to counties, cities, townships and districts, it Manner of shall be sufficient in any indictment for any felony or misdemeanor committed on or laying prowith respect to any goods, chattels, furniture, provisions, clothes, tools, utensils, mate-counties, etrials or things whatsoever, which have been or at any time shall be provided for or at ties, town-the expense of any county, city, township or district, to be used in any court, jail, house ships, &c. 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.

17. In any indictment for forgery, uttering, stealing, embezzling, destroying or con-rorms of incealing, or obtaining by false pretences, any instrument, it shall be sufficient to describe dictment in such instrument by any name or designation by which the same may be usually known, ing, stealing or by the purport thereof, without setting out any copy or fac-simile thereof, or otherwise embezzling,

describing the same or the value thereof.

18. In all other cases whatsoever in which it shall be necessary to make any averment Forms in in any indictment, as to any instrument, whether the same consists wholly or in part of other cases. 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.

19. It shall be sufficient in any indictment for forging, uttering, offering, disposing Intent to de of, or putting off any instrument whatsoever, or for obtaining or attempting to obtain fraud particular property by false pretences, to allege that the defendant did the act with intent to sons, need defraud, without alleging the intent of the defendant to be to defraud any particular not be alleged or property to prove any intent on the part of the defendant to defraud any particular role leged or property to prove any intent on the part of the defendant to defraud any particular role and on the trial of any of the offences in this section mentioned, it shall not be ven in cernecessary to prove any intent on the part of the defendant to defraud any particular tain cases. person, but it shall be sufficient to prove that the defendant did the act charged with an intent to defraud.

20. In any indictment for murder or manslaughter, it shall not be necessary to set Indictments forth the manner in which, or the means by which the death of the deceased was caused, for murder and manbut it shall be sufficient in every indictment for murder, to charge that the defendant slaughter. 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 defend-

ant did feloniously kill and slay the deceased.(a)

21. In every indictment for wilful and corrupt perjury, it shall be sufficient to set Requisites of forth the substance of the offence charged, and in what court, or before whom the oath indictment for perjury. 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

tracting with others to committed.

22. In every indictment for subornation of perjury, or for corrupt bargaining, or con-Requisites of tracting with others to commit wilful and corrupt perjury, it shall be sufficient to set indictment forth the substance of the offence, without serting forth the information, indictment, tion of perdeclaration or part of any record or proceedings, and without setting forth the commission. sion or authority of the court, or person or body before whom the perjury was committed,

or was agreed or promised to be committed.

23. In cases arising under the laws of this commonwealth for the restraint of the Indictment horrid practice of duelling, it shall be sufficient to form an indictment generally, against for duelling. either of the principals for challenging another to fight at deadly weapons, and notwith-standing 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)

15. Act 31 March 1860, § 15. P. L. 434. 16, Itid. § 16. 17. Ibid. § 17.

21. lbid. § 21. 22. lbid. § 22. 23. lbid. § 22.

(a) An indictment drawn in conformity with the provisions of this section is not in conflict with the constitutional proviso, that win all criminal prosecutions, the accused shall have a right to be informed of the nature and cause of the accusation.

(b) This section is taken from the 2d section of the act of 31st March 1830, 4 Sm. 354. Report on the Penal Cade 43.

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# Eriminal Procedure.

Counts for stealing and receiving, may bo

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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

Issue and trial in cri-minal cases.

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)

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 he guilty or not guilty of the crime charged against him and no note. And 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 plen 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) 27. No person shall be required to answer to any indictment for any offence whatsometry.

Prosecutor's name to be indered on

ever, unless the prosecutor's name, if any there be, is indersed 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 indersed on such indictment.(e)

Distinct acts

28. It shall be lawful in cases of embezzlement by clerks, servants or other persons in of embezzle-the employ of another, to charge in the indictment, and proceed against an offender for tharged in 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 he 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, cither before or after bill found, without the assent of the proper court in writing first had and obtained.(h)

Plea of autrefois convict, or autrefols acquit.

30. In any plea of autrefois acquit, or autrefois convict, it shall be sufficient for any defendant to state, that he has been lawfully convicted or acquitted, as the case may be, of the offence charged in the indictment.(i)

24. Act 31 March 1860, § 24. P. L. 438, 25. 1510, § 25.

26, 151d. 4 26, 27 151d. 6 27.

29. Ibid. 5 28.

judgment, he cannot subsequently assign for error any matters appertaining to the precept venire, drawing, summening and returning of jurors, e.g., such case is within the 53d section of this act. 5 Wh. 67, 78.

(d) This section is taken from the 5th section of the act of 23d.

80. Ibid. § 30.

(a) This section is new, and is intended to remety difficulties arising from the common law doctrines in relation to the joinder of offences and joint offenders. At common law, a relong and a misdemensor, such as burging and receiving stolen goods, could not be regularly joined; in lirecary, counts for receiving were sometimes added, but the practice was regarded as of doubtful leg-lifty, antil in the cases of liex r. Gallowny, 1 Mood. Cro. Cas. 234, and of flex v. Madden, 1 Mood. Cro. Cas. 277, it was decided to be erroneous. In Pennsylvania, the uniform practice has been to units counts for larceny and receiving, but in no other kind of folonious taking has such jointlet been permitted. Bo, 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 absonce of the other, and afterwards delivered to blim, will not sufflee. Rex v. Messingham. I 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 februlous taking, and authorizes the conviction of one or more of several persons, jointly indicted, for februlous taking or receiving, of ther 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 pravail in some of our criminal courts, following the ancient practice of the common law. Report on the Penal Code 43.

(c) Where a pica of "not guilty" is entered under this section, for a prisoner who stands mute, and there is a trial and

tion, for a prisoner who stands mute, and there is a trial and

(d) This section is taken from the 5th section of the act of 221 September 1791, 3 Sm. 40. Report on the Panal Code 41.

(c) This rection is taken from one of the clauses of the act of 1705. 1 Sm. 50. 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 manu to be indorsed on the indictment. Report on the Penal Code 31. If there he no proof of a prosecutor, the defendant must plend without such indorsement. I D. 5.

(g) The provisions of this section are necessary for preventing the difficulties that may be hereafter experienced in the prosecution of the surfous 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 (itt. "Crimes" 107), against such embezzlement by clerks, servants and other persons in the employ of others Report on the Penal Code 44.

(h) This section is taken from the provise to the let section

Report on the Penal Code 44.

(h) This section is taken from the provise to the 1st section of the act of 3d May 1850, P. L. 654. Report on the Penal Code 44. See tit. "District Attorneys." 10, note a.

(i) This section proposes in favor of the accused, to simplify the pleas of heretofore acquitted, and heretofore convicted, and thus relieve them from all technical embarrassments: It is new. Report on the Panal Code 44.

**Add. 81** 

# Eriminal Brocedure.

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C. COURTS OF CRIMINAL JURISDICTION.

31. The courts of over and terminer and general jail delivery shall have power—(a) Courts of I. To inquire by the oaths and affirmations of good and lawful men of the county, of all over and tar 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 maybem, 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, burghar, 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 Quarte 🗻

the respective counties-

I. To inquire, by the oaths or affirmations of good and lawful men of the .ounty, 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 over and terminor 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

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 When cannot or offence not triable therein, it shall be the duty of said court to certify the same into to be certificated by the same into the court of the same into the court of the same into the court of the same into th the court of over and terminer next to be holden in such county, there to be heard and end terminer determined in due course of law.

The judges of the county courts of over and terminer and quarter sessions, and every powers of of them, shall have power to direct their writs or precepts to all or any of the sheriffs the courts. 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

81. Act 31 March 1960, 4,31. P. L. 437.

(c) The 31st and 32d sections are transcripts from the 14th, 15th, 16th, 17th, 18th, 20th, 21st and 22d sections of the act of 16th Jone 1856, P. L. 760. It has been thought proper, although left unrepealed to introduce them here, in order to render these bills a complete causolidation of our statute laws relating to crimes, puni-luments and criminal procedure. As questions of furbiliction frequent'y 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 organ-lantion of the courts of justice," passed April 14, 1834, P. L. 335; these have not been interfered with. Report on the Penal Code 44.

(b) see 8 l'ittsburgh Leg. J. 200.

# Eriminal Brocedure.

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.

Write of error and cer-tiorari.

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33. Every person indicted in any court of quarter sessions, or in any county court of oyer and terminer and general jail delivery, may remove the indictment, and all proceedings thereon, or a transcript thereof, into the supreme court by a writ of certiorari, or a writ of error, as the case may require: Provided, That no such writ of certiorari, or writ of error shall issue, or be available, to remove the said indictment and proceeding thereupon, or a transcript thereof, or to stay execution of the judgment thereupon rendered, unless the same shall be specially allowed(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 conseat shall be in writing, and certified on the said writ.(c)

### D. OF THE TRIAL.

Persons un-der ball not

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 to be placed within the prisoner's bar to plead to such indictment, or be confined therein during his nat bar. trial; and all persons shall have an opportunity of a full and free communication with their counsel.(d)

Persons Indicted for tremon to

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, treason to have copy of mentioning the names and places of abode of such jurors and witnesses, delivered to indictment him three whole days before the trial (g) Perential 36. On the trial of any indictment for treason or misprision of treason, murder, man-

challenges.

shughter, concealing the death of a bastard child, rape, robbery, burglary, sodomy, malicious maining 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

Challenges by the commonwealth. liberty to challenge, perceptorily, four of the jurors.(h)

37. The commonwealth shall have the right, in all cases, to challenge, perceptorily, four persons,(i) and every perceptory 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 chal-

38. All challenges in criminal proceedings shall be conducted as follows, to wit: the lenges are to commonwealth shall challenge one person, and then the defendant shall challenge one be conduct 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.

39. When a challenge for a cause assigned shall be made in any criminal proceeding,

How to be determined.

the truth of such cause shall be inquired of and determined by the court.(k) Trist of por- 40. In all cases in which two or more persons are jointly indicted for any offence, it sons jointly shall be in the discretion of the court to try them jointly or severally, except that in joint chalcases of felonious homicide, the parties charged shall have the right to demand separate trials; (1) and in all cases of joint trials, the accused shall have the right to the same

33. Accol March 1860, § 33. P. L. 439, 34. 1616, § 34.

86. Ibid. 9 35.

87. 1bid. 9 37. 38. 1bid. 9 38.

(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 llarr 244. 3 S. & R. 319. 3 Y. 39. 6 B. 303. 4 B. 424. 1 Wh. 525. There must be strong ground to believe that if the case he not removed, some important principle of law, or the plain justice of the case, will be violated. 4 Pittsburgh Log. J. 508.

(c) This section is taken from the 7th section of the act of 16th June 1630, 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 partion 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. 292. This section is taken from the 29th section of the act of congress of 30th April 1700. Brightly's U.S. Dig. 221.

(a) The 30th, 37th, 38th and 30th sections are intended to supply the 1624, 1534. 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 30th section of this ret the number of challenges allowed the accused in treason, is twenty, whereas by the 1524 section of the act work of 1834, the commonwealth is interdicted from challenging, without cause, in any case of felony, whereas by the 57th section of the present act, the commonwealth is only interdicted from challenging perempt-rily in the cases enumerated in the 30th section, to wit: treason, misprision of treason, murder, manchallenging percentificing in the cases enumerated in the 50th section, to wit: treason, misprision of treason, murder, man-slaughter, concealing the death of a bastand child, rape, robery, burglary, sodemy, molicinus marming and arron; and in all other folion and market in the sum numerical content of the child memories is allowed the same numerated to the sum numerous contents.

ber of challenges as the defendant, to wit: four. The object of thus extending to the commonwealth the right of challenge ing, in the minor felonies, the same number of jarons as the defendant, arises from the fact, that by the present cade a large number of offences, which were misdemensors 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 hor of the right of challenge. In the practical administration of criminal justice, the right of the commonwealth to challenge four jurers personally is of the deepest importance; it is not an uncommon thing to find in a panel of jurers, one or more persons pledged to the defendant by personal or social sympathics, or influenced in his favor by worse motives; the right to personalorily challenge four jurers, 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. Pepert on the Penal Code 45.

(f) This provision is not in conditic with the chause in the constitution, which provides "that trial by jury shall be as hereofore, and the right thereof shall remain inviolate." I Wr.

48. (b) The power to chadeing for cause may be exercised at any time before the early is tembered to the jury. 11 B. 12. It is good cause of challeinge that the juror has conscientious scripped on the subject of capital punishment. 17 S. & K. 155. Or that he has formed and expressed an opinion upon the evidence in the cause. 14 S. & R. 252. See 2 W. & S. 252. 1 Cranch C. C. 452. Or that the juror has been supprensed as a witness by the prisoner. 7 W. 555. Or that he is a beaut of one of the parties. 8 W. 364. Or that he had greesly misbehaved biniself on a former occasion, declaring that he had tried to acquit any one the judge desired to have convicted; and that he was "a Ton Paine may, and would as the swear on a specifing book as on the B 45c." 11 H. 12. (f) See 14 C. 255.

(l) See 17 C. 205

# Eriminal Brocedure.

number of peremptory challenges to which either would be entitled if separately tried,

41. All courts of criminal jurisdiction of this commonwealth shall be and are hereby How takes authorized and required, when occasion shall render the same necessary, (b) to order a may be tales de circumstantibus, either for the grand or petit jury, (c) and all talesmen shall be and juries liable to the same challenges, fines and penalties as the principal jurors: Provided, summoned. 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)

42. No alien shall, in any criminal case whatsoever, be entitled to a jury de mediciale or juries de

linguæ, or partly of strangers.(e)

43. The trial of all treason against the commonwealth, committed out of the jurisdic-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 for treason. he shall first be brought.(g)

44. If any person shall become an accessory before the fact, to any felony, whether of accessory the same be a felony at common law, or by virtue of any act of assembly now in force rise before or hereafter to be in force, such person may be indicted, tried, convicted and punished the fact. in all respects as if he were a principal felon. (h)

45. If any person shall become an accessory after the fact, to any felony, whether the of accessors same be a felony at common law, or by virtue of any act of assembly now in force, or ries after the 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

41. Act 31 March 1800, § 41. P. L. 440. 42. Ibid. § 42.

43. Ibid. 5 43.

41. Act 31 Narch 1800, § 41. P. L. 440.

(a) This section is new, and is introduced to settle aquestion 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 embarras-ments 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 justised upon their right of several challenges. This sottled the question that prisoners, jointly indicted, could, against their wishes, be tried separately; but whether pris mers, jointly indicted, could demand a separate trial, presented another question; some insisting that they possess such a right; others contonding that such severance is a matter of sound discretion, to be exercised by the court, with that due regard and tanderness 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 iss

Code 45.

(c) This section is taken from the 149th section of the act of 14th April 1834, P. L. 368; which has also been left unrepealed for the same reason. Report on the Penal Code 46, (p) 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.

the Penal Code 40.

(b) The principle of this section, which prescribes the same punishment against ac esseries before the fact in felony, under the various synonymes of adders, abetters, counsellors, comfacters, &c., as against principals, is facultar to our criminal legislation; it is found in the 7th section of the act of 1718. I. Sm. 113; in the 2d, 3d and 5th sections of the act of 5th April 1780, I Sm. 493; in the 2d, 3d and 5th section of the act of 5th April 1799, 2 Sm. 531; and in the 4th section of the act of 23d April 1829, 10 Sm. 3dl. 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 blint to punishment for his crime, without postponing it until the conviction of the actual perpetrator; or more precisely speaking, which abolishes in felonies the technical distinction now existing between accesso-

ries before the fact and principal offenders. This was always the law as regards misdemeanors in which there are no accessories, all being regarded by law as principals; in felony, however, except in certain cases about to be noticed, an accessory cannot be tried before the conviction or outlawry of his principal, unless tried with him. In felonies of frequent occurrence, this was found a great and serious evil, which called for and received partial legislative correction; as early as the act of the 31st May 1718, 1 Sm. 105, it was provided that persons harboring, concealing or receiving robbers, burglars, felons or thieves, or receiving or buying any goods or chattels that should have been felomiously taken or stolen by any such robbers, &c., knowing the same to be stolen, might be proceeded against as is therein directed; and that if any such principal felon cald 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 institute afterwards by the set of 232 September 1271 3.

such principal folon knowing the same to be stoben, although the principal folon should not be convicted of the felony. This, however, embraced only one class of accessories, to wit, receivers of stolan goods, in cases where the principal was not amenable to justice; afterwards, by the act of 234 September 1791, 3 Sm. 41, it was provided "in all cases of felonies of death, rothery and burglary, it shall be lawful to punish receivers of such feions, robbers and burglars, by a fine and imprisonment aithough the principal felons, robbers and burglars cannot be taken, so as to be prosecuted and tried for sail offeness; 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 miselemeanor, 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 sonvicted, 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, hefore the conviction of their principal, applie

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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 one county,

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 and death in 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)

striking or

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 poisoning in the state and cause of death at any place out of the jurisdiction of this state, an indictment therefor death out of found by the jurors of the county in which such stroke, poisoning or other cause of the state. 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 com-mitted near

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)

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 ing journeys, 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, § 48, P. L. 441.

47. Ibid. 5 47. 48. Ibid. § 48.

(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 bereafter 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. I 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 (a) This section is only an extension of the existing laws,

Panal Code 48.

(b) This section has been introduced to remove a difficulty which might arise in a case of homicide, where a man had died in one county from an injury, or other cause of death, received in another county. Hawkins, in his Pleas of the Crown, book 2, chap, 25, § 36, says, that "at the common law, if a man had died in one county of a stroke received in another, it seems to have been the more general opinion that, regularly, the homicide was indictable in neither of them, because the offence was not complete in either, and no grand jury could inquire of what happened out of their county." This inconvenience was remedied by 2d & 3d Edward VI., chap, 24, by which it was enacted,

that in such cases the trial should take place in the county

that in such cases the trial should take place in the county where the death happened. This statute is among those reported by the julges of the Supreme Court, as being in force in Pennsylvánia; 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, §2 11, 12. If a mortal injury, or poison is given or administered maliclously 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 folonious homicide, have been perpotrated 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 obviste 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 countes 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 carriazes or vessile of any kind, which have passed through

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 rime has been committed. The sections will be found of real practs at value. Report on the Penal Code 49

# Criminal Procedure.

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 party indict appear to the jury upon the evidence, that the defendant did not complete the offence of for felony charged, but was guilty only of an attempt to commit the same, such person shall not by meanor may reason thereof be entitled to be acquitted, but the jury shall be at liberty to return, as be found their verdict, that the defendant is not guilty of the felony or misdemeanor charged, but fully of atis guilty of an attempt to commit the same; and thereupon such person shall be liable commit the to be punished in the same manner as if he had been convicted upon an indictment for sume. attempting to commit the particular felony or misdemeanor charged in the indictment; and no person so tried as herein lastly mentioned, shall be liable to be afterward prosecuted for an attempt to commit the felony or misdemeanor for which he was so tried. (a)

51. If upon the trial of any person for any misdemeanor, it shall appear that the Personstried facts given in evidence amount in law to a felony, such person shall not by reason for missistence of be entitled to be acquitted of such inisdemeanor; and no person tried for such income missistence or shall be liable to be afterwards prosecuted for felony on the same facts, ted if the ofunless the court before whom such trial may be had shall think fit, in its discretion, to fence turn out to be fedischarge the jury from giving any verdict upon such trial, and direct such person to be lony, indicted for felony; in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanor.

52. No person shall be deemed and adjudged an incompetent witness on the trial of Witnesses any indictment, for or by reason of such person being entitled, in the event of the con-entitled to viction of the defendant, to a restitution of his property feloniously taken, or the value to be compethereof, or if fraudulently obtained, to a pecuniary remuneration or compensation there-tout for, or for or by reason of such witness being liable and subject to the payment of the costs of prosecution.(b)

53. No verdict in any criminal court shall be set aside, nor shall any judgment be cure of dearrested or reversed, nor sentence delayed, for any defect or error in the precept issued forts in jury from any court, or in the venire issued for the summoning and returning of jurors, or verdict. 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( $\epsilon$ ) in any case, shall be a waiver of all errors and defects in, or relative

50. Act 31 March 1860, § 50. P. L. 442.

82. Thid. 6 52.

(a) The 50th and 51st sections are new, and intended to facilitate the conviction of offenders, and avoid unnecessary delay in the administration of criminal justice. By the law as it now stands, if on the trial of an indictment for felony, it appears that some circumstance is wanted to establish the complete technical offence, the prisoner must be acquitted, although the proofs are perfect of an attempt to commit the crime; and on the other hand, where the indictment charges an attempt to commit a crime, and the proof establishes that the crime has actually been committed, the American courts have generally held that the prisoner must be acquitted, because the misdemeanor charged, is merged in the felony proved. The operation of the first of these dectrines is best exemplified by decided cases. Lord Hale, in his Pleas of the Crown, vol. 1, p. 50s, thus recites one of these cases: "A. bath 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; it was ruled that this was no felouy, for the keys and purse strings ruled that this was no felouy, for the keys and purse strings ruled that this was no felouy 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, orpit num asportavit. So, where a thief went into a shop, took up some goods, intonding 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 cerd; 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, vis.: 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 § 504. 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, f 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

Penal Code 50.

(b) This section is taken from the act of 20th 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) Sec 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. 420. 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. Sec 4 P. L. J. 521.

(c) If the prisoner stands mute, and the plea of not guilty is entered by the court, it is within the act. 5 Wh. 67. Sec 2 Ash. 90.

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

Of the trial of prisoners

54. If any person shall be committed for treason or felony, or other indictable offence, and shall not be indicted and tried some time in the next term, session of over and terminer, general jail delivery, or other court where the offence is properly cognizable, 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:  $(\epsilon)$  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 cither 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

Witnesse

56. No witness in any case who enters his or her recognisance, in such sum as the not to be im-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 outh 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 absend, clope 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.(h)

Bills of exwriteoferror

57. Upon the trial of any indictment for murder or voluntary manelaughter, (1) 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.(0)

54. Act 31 March 1800, § 54. 1. L. 443.

55. Ibid. 6 55.

57. Ibid. § 57

(a) This section is a transcript of the act of 21st February 1914, 6 Sm. 111. The original act has been left unrepealed, and has been introduced here in order to give relative completeness to the code of criminal procedure. Report on the benal 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 wiffind elsey on the part of the commonwealth. 16 S. & R. 305. 7 W. 306. Not where the trial is delayed by the prisoner. 3 Y, 260. 16 S. & R. 304. 2 Wh. 501. 7 W, 306. 10 S. & R. 305. 7 W. 306. Not where the trial is delayed by the prisoner. 3 Y, 260. 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.

(d) The act was designed to prevent wrongful restraints of fiberty growing out of the malice and processionation 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 lases 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 provise of this section is the substitution of the words, "the constitution of the United States," for the words, "the constitution of the United States,

(f) 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.

(b) This section is taken from the act of 22d April 1856, P. L. 506. Report on the Penal Code 52.

(c) This section is taken from the act of 22d April 1856, P. L. 506. Report on the Penal Code 52.

(d) 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 manshaughter, is mot the subject of consideration on a writ of error, although the bilt may have been scaled by the court below. 2 W. 255.

(a) 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 legired; it is not sufficient that an abstract or technical error has taken place. 5 C. 429.

(a) The supreme court is limited to a review of the points so noted and filed of record by the court below. 5 C. 429. I Wr 198. The act does not antiborize an exception to the charge of the court. Com. c. Jacoby, 6 litt-durch Leg. J. 178.

(a) Sections 57 to 61 are taken from the 1st, 2d, 3d, 4th and 5th sections of the act of 6th November 1850, P. L. 705. The changes made therein, consist in striking out the whole of the provise to the 1st section, and so much of the 4th section as provides for the oath or afficuation required, being filed in the provise to the 1st section, and so much of the 4th section as provides for the oath or afficuation required, being filed in the protonotary's office of the proper district. The effect of the proposed amendment will be, to superseds the necessity of a party convicted of nurder or manshaughter, making an oath that his application for a writ of error is not for the purpose of delay, and to correct the manifast inconsistency in the provious langiture, to onter ball to appear and abide the sentence of the court, when by the pravious part of the section, no writ of error can

## Erlminal Procedure.

58. If during the trial upon any indictment for murder or voluntary manslaughter, Written optthe court shall be required by the defendant or defendants to give an opinion upon any float be 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)

59. No such writ shall be allowed, unless special application be made therefor, and Granting of cause shown within thirty days after sentence pronounced; and if the supreme court be witsoferrer sitting in bane 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.

60. The writ of error shall issue from the prothonotary's office of the proper district, whence a and all orders, decrees and judgments in the case shall also be entered of record there; with of error but the application and final hearing may be made and had before the said supreme to issue. court while sitting in any other district.

61. Upon the affirmance of the supreme court of the judgment in any case, the same proceedings shall be enforced pursuant to the directions of the judgment so affirmed, and the said after affirm court may make any further order requisite for carrying the same into effect; and if the ance or resupreme court shall reverse any judgment, they shall remand the record, with their judgment, opinion, setting forth the causes of reversal, to the proper court for further proceeding.

## E. of costs.

62. In all prosecutions, eases of felony excepted, if the bill of indictment shall be Power of returned "ignoramus," the grand jury returning the same shall decide and certify on grand and such bill whether the county or the prosecutor shall pay the costs of prosecution; and over costs 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)
63. In all prosecutions where the petit jury trying the same shall acquit the orthodeserdefendant, and shall determine, by the verdict, that the prosecutor shall pay the costs (h) dunt's costs. 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)

64. The costs of prosecution accruing on all bills of indictments charging a party Payment of with felony, returned "ignoramus" by the grand jury, shall be paid by the county; and costs gene-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

59. Ac; 31 March 1860, § 58. P. L. 444.

62. Ibid. | 62.

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68. Ac; 3! March 1800, § 58. P. L. 444.

69. Ibid. § 60.

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 manulaughter, of entering bail to appear to ablie by the sentence of the court, is atterly 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 provisa, 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 recorded, would be to suppose that the legislature intended, in case of conviction and sentence for voluntary manulaughter, 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 feton, there seems no good reason that it should be exclusively extended to felonious homicide; as has been heretefore remarked, the line between murder and voluntary manulaughter is often so nicely characterized, that it requires much technical accumen 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 unrepeated. We ought not, in our anxiety to guard the rights of the offender, to forget those of the community, an error which seems gradually inshuanting itself into penal legislation and administration; the reasoning on this subject night be extended, but the commissioners think they have said enough to recommoud their proposed modification of this act to l

(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, 539. Nor where on

an indictment for a felony, a count for a misdemeanor is joined. 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 verifict of acquittal, so far as it imposes costs on the prosecutor. 2 Gr. 60.

aside a vertice 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 maned 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 Fessions, 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. 1nt. 58; and hence, in a prosecution for keeping a disorderly house, the jury cannot impose the costs on the constable who made the return. Com. v. Barr. Quarter Sessions, Lancaster. January 1848. MS.

(g) See 2 P. R. 240. 13 S. & R. 303. This section is taken from the 1st and 2d sections of the act of 8th December 1804. 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. Report on the Penal Code 53.

(k) 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 63.

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the county.(a) and in all cases of conviction(b) of any crime, all costs(c) shall be paid by the party convicted; but where such party shall have been discharged, according to law,(d) without payment of costs, the costs of prosecution shall be paid by the county; and in cases of surety of the peace, the costs shall be paid by the prosecutor or the defondant, or jointly between them, or the county, as the court may direct.(e)

65. In all cases where two or more persons have committed an indictable offence, the Costs where separate bills names of all concerned (if a prosecution shall be commenced) shall be contained in one are present bill of indictment, for which no more costs shall be allowed than if the name of one perod against bill of indictment, for which no mod against bill of indictment, for which no mod against therein.(g)

## F. GENERAL PROVISIONS.

saulty.

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forms prisoners.

66. In every case in which it shall be given in evidence upon the trial of any person charged with any crime or misdemennor, that such person was insane at the time of the Jary to find commission of such offence, and he shall be acquitted, the jury shall be required to find the fact of inspecially whether such person was insane at the time of the 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

Defendant to 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 be detained in custody.

feudant la found insane raignment.

such person shall continue to be of unsound mind.(h)
67. The same proceedings may be had, if any person indicted for an offence shall, upon arraignment, be found to be a lunatic, by a jury lawfully impannelled 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

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 impannelled 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.

60. If the kindred or friends of any person who may have been acquitted as aforesaid fendant to be 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.

mento liu pald in such cases.

friends &c.

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 fo-

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)

titution.

72. The imprisonment awarded as part of the punishment of any offender, shall not upon sentences of restatop 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

63. Act 31 March 1860, § 65. P. In 445. 60. 101d. § 66.

67. Ibid. 5 67. 71. Ibid. § 11. 72. Ibid. § 74.

(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 ignoranus, is not within the set; nor that of a defendant acquitted, but ordered to pay the coats by the petit jury; nor where the prosecutor is ordered to pay rosts on an acquittal.
4 S. & R. 541. Nor where the case is determined by noile prosecut. 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. 449.

witness, for contempt. 2 S. & H. 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 15th sections of the act of 23d September 1791, 3 Sm, 43-4; and the 13th section of the act of 28th March 1814, 6 Sm, 229; and the 1st section of the act of 20th March 1814, 6 Sm, 221; and embraces the cases provided for by them. Report on the Penal Code 53.

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

(h) Sections 66 to 70 are taken from the 58th, 59th, 60th, 61st and 624 sections of the act of 13th June 1836, P. L. 603. Report and 624 sections of the set of 13th June 1836, P. L. 603. Report on the Penal Code 54. See 6 C. 522. 10 C. 184.

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

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

## Eriminal Procedure.

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)

tion 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 Outlawry. 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 Certiorari into the supreme court of this common wealth, 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, Capina. 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 afore-Alles capias said, 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 (r) before the return day thereof, to the sheriff of the county where the fact shall be charged to have been committed; and in ease 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 capies shall be returnable before the justices of the same court, (d) on the first day of the second term next after the teste of the said second writ of capias, so that a term shall intervene between the teste of the return days of the same writ or writs, whereby the said sheriff or sheriffs shall be commanded to take the said person so indicted as aforesaid, if he may be found in his or their bailiwicks, and him safely keep, so that he may have his body before the justices of the said supreme court at the day of the return thereof, to answer or prosecute his traverse as aforesaid; but if Proclama he cannot be found in his or their bailiwicks, then to cause public proclamation to be tion. made on three several days(e) in one of the courts of quarter sessions of the peace to be held for the said counties respectively, between the teste and return days of the same writ or writs, that the party so indicted shall appear before the said justices of the said supreme court, at a supreme court to be holden at the time and place contained in the same writs, to answer such indictment or prosecute his traverse thereof, as the case may be, or through default thereof, he will at the return of the same writ or writs be outlawed, and attainted of the crime whereof he was indicted as aforesaid; and the said second writ of capias, directed to the sheriff of the county where the crime hath been, or shall be charged to have been committed, shall contain a further clause commanding the said sheriff, in case the person indicted as aforesaid cannot be found in his bailiwick, Advertise to cause public advertisement to be made in one or more of the public newspapers of ment, this state, once a week, in six succeeding weeks, between the teste and return of the said second writ of capins, specifying therein the coming of the said second writ of capins to his hands, with the teste thereof, and the time and place of return to be made thereof, naming the person indicted as aforesaid, with his addition of degree, mystery (g) and place of abode, (h) as contained in the writ, stating the nature of the offence charged against him, and commanding him to appear before the justices of the said supreme court, at the day and place directed by the said second writ of capias, to answer to the said indictment, or prosecute his traverse thereof, as the case may be, or through default thereof at the return of the said second writ of capias, he will be outlawed and attainted of the crime whereof he shall have been indicted as aforesaid; and if upon the return attained. 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 bimself, 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

15, Act 51 March 1860, § 73, P. L. 447.

(d) 1 D. 88, 92. (e) 1 D. 88, 92. (g) 2 D. 92. (h) 2 D. 92, 1 D. 60.

<sup>(</sup>a) A conveyance made to slude the provisions of this section, would be fraudulent and void at common law. 5 B. 114.
(b) This section is taken from the 30th section of the act of 31st May 1718, 1 Sm. 122. Report on the Penal Code 54.
(c) See 1 D. 88, 92.

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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

Effect of our

plea pleaded in the nature of a writ of error.

How execution to be awarded.

When out-

lawry may be reversed.

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 ease 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 birn, 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,

Conta.

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 seventysecond 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)

Sentences of the property of t 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 fitteenth of February of any year.(r)

Bentences of

75. No person shall be sentenced to imprisonment at labor, by separate or solitary less than one 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.

(a) 1 D. 87, 91.

(b) This section is taken from the lat, 2d and 3d sections of the act of 23d September 1791, 3 Sm. 37, and is nearly a transcript thereof. They form in themselves as good a system of outlawry as can now be suggested and are so skilfully and ably drawn, as to require no amendment of importance. Although proceedings in outlawry have been rarely resorted to in our state, yet they are indispensably necessary in every complete system of criminal jurisprudence. Report on the Penal Code 64.

(c) Whilst the T4th and 75th sections except the provise to

Cole 64.

(c) Whilst the 74th and 75th sections, except the provise to the 74th section, are new in form, no material alteration is made in the haw as it now stands. The 74th section requires that sentences of imprisonment at labor by separate or solitary confluence 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 77th section prohibits sentences of imprisonment at labor by separate or solitary confidence 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 confidencent 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: I. 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, every 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 pentitentary for the proper district, except in the counties in whose prisons convicts of a fixe 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 provise to the 74th section, is capital from the last section of the act of 18th February 1847. P. L. 126. Report on the Penal Cela 54. In New York, a similar law to that contented in this proviso, was held to be merely directory, and a failure to comply with its requirements, not to avoid the sentence. I Parker 374.

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imprisonment shall be substituted in all cases for the separate and solitary confinement at labor required by the "Act to consolidate, revise and amend the penal laws of this commonwealth,"

76. Whenever, hereafter, any person shall be condemned to suffer death by hanging, Execution in for any crime of which he shall have been convicted, the said punishment shall be capital cases. 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 over 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 bereafter be brought or exhibited for any crime or Limitation of misdemeanor, murder and voluntary manslaughter excepted, shall be brought or ex-prosecutions. hibited 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 :(e) 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 misdemennors 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 fines to be decreed to be paid to the commonwealth; but the same shall be collected and received, decreed to be decreed to be paid to the commonwealth; but the said fines shall have been imposed as state, for the aforesaid, as is now directed by law.(e)

76. Act 31 March 1860, 6 76. P. L. 450.

77. Ibid. 6 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 presentment is not sufficient to take the case out of the statute. 1 Cranch C. C. 485. Nor will a former indictment, on which a noise presequi was entered. 3 McLean, 409.

(c) The finitation used not be specially pleaded; it may be taken advantage of on the general leave. 4 C. 259. See 3 Cranch C. C. 442. 5 Cranch C. C. 38, 60, 308.

(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 manelaughter 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 subserve the ends of the accused the ends of the accused to subserve the ends of the accused the a

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 list 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 pravides 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 purporling 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 bisdemeanors of bank or other corporation officers to five years. Report on the Penal Code 56. looked upon with an unfavorable eye by courts and juries, but

(e) This section is a re-enactment of the existing law, and is introduced here for the purpose of giving more completeness to the code. Report on the Penal Code 56.

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THE

# CODE OF WEST VIRGINIA.

COMPRISING

# LEGISLATION TO THE YEAR

1870.

WITH AN APPENDIX, CONTAINING

# LEGISLATION OF THAT YEAR.

PUBLISHED PURSUANT TO LAW.



WHEELING:

JOHN FREW, PUBLIC PRINTER.

1868.

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> PREVENTING THE COMMISSION OF CRIMES. ГСн. 153.

for the like offense, he shall be sentenced to be confined in the penitentiary for one year.

Id. § 28, 1 Va. Cas. 151-2.

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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, å 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.

1. Conservators of the peace; power to bind to good behavior.
2. Duty of, on complaint that a crime is intended. Proceedings when accused appears.

4. Proceedings when accused appears.
5. Right of accused to appeal.
6. Power of court upon such appeal, and when the accused is committed.

8. Person going armed with deadly weapon, when required to give recognizance, etc., 9. Affray, etc., in the presence of constable.

In presence of justice; duty of justice where person brought before him, etc.
 Proceedings where person suspected of unlawful retailing of spirituous liquors.

1. Every justice and constable shall be a conservator of the Code of va., p. 1. Every justice and constable shall be a conservator of the 817, § 1. Const. art. 7, § 9. peace, within his county. As such conservator, every justice shall Acts of 1863, p. 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. 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.

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# CH. 153.] PREVENTING THE COMMISSION OF CRIMES.

- 4. When such person appears, if the justice, on hearing the par- code Va., p. 818, ties, consider that there is not good cause for the complaint, he shall discharge the said person, and may give judgment in his favor against the complainant for his costs. If he consider that there is good cause therefor, he may require a recognizance of the person against whom it is, and give judgment against him for the costs of the prosecution, or any part thereof; and, unless such recognizance be given, he shall commit him to jail, by a warrant, stating the sum and time in and for which the recognizance is directed. The justice giving judgment under this section for costs may issue a writ of fieri facias thereon, if an appeal be not allowed; and proceedings thereupon may be according to the two hundred and twenty-seventh section of chapter fifty.
- 5. A person from whom such recognizance is required may, on Id. § 6. giving it, appeal to the circuit court of the county; and in such case the officer from whose judgment the appeal is taken shall recognize such of the witnesses as he thinks proper.
- 6. The court may dismiss the complaint, or affirm the judgment, Id. 26. and make what order it sees fit as to the costs. If it award costs against the appellant, the recognizance which he may have given shall stand as a security therefor. When there is a failure to prosecute the appeal, such recognizance shall remain in force, although there be no order of affirmance. On any appeal the court may require of the appellant a new recognizance, if it see fit.
- 7. Any person committed to jail under this chapter may be dis- Id. § 7. charged by the circuit court, or the judge thereof in vacation, upon such terms as may be deemed reasonable.
- 8. If any person go armed with a deadly or dangerous weapon, Id. § 8. without reasonable cause to fear violence to his person, family, or property, he may be required to give a recognizance, with the right of appeal, as before provided, and like proceedings shall be had on such appeal.
- 9. If any person shall, in the presence of a constable and within 1d. 29. his county, make an affray, or threaten to beat, wound, or kill Acts of 1863, another, or to commit violence against his person or property; or contend with angry words to the disturbance of the peace; or improperly or indecently expose his person; or appear in a state of gross intoxication in a public place; such constable, as such conservator, may, without warrant or other process, or further proof, arrest such offending person and carry him before some justice of the township in which such offense is committed, who, upon hearing the testimony of such constable and other witnesses, if any are then and there produced, if, in his opinion the offense charged be proved, shall require the offender to give a bond or recognizance, with security, to keep the peace and be of good behavior for a term not exceeding one year.
  - 10. If any offense enumerated in the preceding section be com- 1d. p. 235, ₹ 2.

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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.

11. If any justice suspect any person of selling, by retail, wine, 818, § 10.

Acts of 1865, p. or ardent spirits, or a mixture thereof, contrary to law; or of seliing, 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.

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.

Inquisition. 6. Inquisition, evidence, etc., returned; witnesses recognized.

7. Justice to issue warrant for the arrest of ac-

cused, if not in custody.

8. When deceased a stranger, body to be buried, etc.; costs, how paid.

9. Justice may require physicians to attend inquest. 10. Penalty on justice for neglect of duty.

11. Inquest may be taken on Sunday.

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Penalty.

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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 misapplyed 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 Essoigne 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 Officer 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.

Commissioners appointed to execute Act, to examine upon Oath and receive the Assessments made in pursuance of Act Sess. r. c. 20. and if they find any Person successed 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 Yeare 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 ommitted 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 A&. AND it is hereby further Enacted by the Authoritie aforesaid That an Accompt 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 Levyed and Paid to the Use of Their Majestyes by Vertue of this present Act of Parlyament.

### CHAPTER U.

Rot. Parl. pt. 3.

An Act declareing 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 evill Councellors Judges and Ministers imployed by him did endeavour to subvert and extirpate the Protestant Religion and the Lawes and Liberties of this Kingdome

Dispensing and Suspending Power. By Assumeing and Exerciseing a Power of Dispensing with and Suspending of Lawes and the Execution of Lawes without Consent of Parlyament.

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

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to the said Assumed Power.

By issueing and causeing to be executed a Commission under the Great Seale for Erecting a Court called The

Levying Money.

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

Standing Army.

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.

By raising and keeping a Standing Army within this Kingdome in time of Peace without Consent of Parlyament

Disarming Protestants, &c. and Quartering Soldiers contrary to Law.

By causing severall good Subjects being Protestants to be disarmed at the same time when Papists were both

Protestants, &c.
Violating
Elections.

Armed and Imployed contrary to Law.

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

Elections.
Illegal
Prosecutions,
Juries.

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

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

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And excessive Baile hath beene required of Persons committed in Criminall Cases to elude the Benefitt of the Excessive Bail. Lawes made for the Liberty of the Subjects.

And excessive Fines have beene imposed.

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 levyed.

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 haveing Abdicated the Government and the Throne being thereby Recital that the late Vacant His [Hignesse'] 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 Cityes 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 Yeare 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.

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 takeing into their most serious Consideration the best meanes for attaining the Ends aforesaid Doe in the first place (as their Auncestors in like Case have usually done) for the Vindicating and Asserting their auntient Rights and Liberties, Declare

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

That the pretended Power of Dispensing with Laws or the Execution of Laws by Regall Authoritie as it hath Late dispensing beene assumed and exercised of late is illegall.

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.

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

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

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

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

That Election of Members of Parlyament ought to be free.

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

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

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

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

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

And they doe Claime Demand and Insist upon all and singular the Premises as their undoubted Rights and The said Rights Liberties and that noe Declarations Judgements Doeings or Proceedings to the Prejudice of the People in any of the said Premisses 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. Haveing 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 Limitation of the Crown. Spirituall and Temporall and Commons doe pray the said Prince and (') Princesse to accept the same accordingly.

Grants of Fines, &c. before Conviction,

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

The Subject's Rights.

Freedom of

Tender of the Crown,

Regal Power

Highnesse O.

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New Oaths of Allegiance, &c

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.

Allegiance.

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

AB doe sweare That I doe from my Heart Abhorr, Detest and Abjure as Impious and Hereticall this damnable Doctrine 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

Acceptance of the Crown.

The Two Houses to sit.

Preeminence or Authoritie Ecclesiasticall or Spirituall within this Realme Soe helpe me God. Upon which their said Majestyes did accept the Crowne and Royall Dignitie of the Kingdoms of England

Subjects' Liberties to be allowed.

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

Limitation of

Papists debarred the Crown.

Every King, hall make th Declaration to Car. II.

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 Setlement 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. 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 auntient 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' Persons most happily to Raigne over us upon the Throne of their Auncestors for which they render unto him from the bottome of their Hearts their humblest Thanks and Praises doe truely firmely assuredly and in the Sincerity of their Hearts thinke and doe hereby recognize acknowledge and declare That King James the Second haveing abdicated the Government and their Majestyes haveing accepted the Crowne and Royall Dignity [as '] aforesaid Their said Majestyes did become were are and of right ought to be by the Lawes of this Realme our Soveraigne 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 Jurisdictions 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 preserveing 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 dureing 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 dureing 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 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. And whereas it hath beene found by Experience that it is inconsistent with the Safety and Welfaire 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 uncapeable 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'] 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 succeede in the Imperiall Crowne of this Kingdome shall on the first day of the meeting of the first Parlyament next after his or her

interlined on the Roll.

annexed to the Original Act in a separate Schedule.

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comeing 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 takeing the said Oath (which shall first happen) make subscribe and audibly repeate the Declaration mentioned in the Statute made in the thirtyeth yeare of the Raigne of King Charles the Second Entituled An Act for the more effectuall Preserveing the Kings Person and Government by disableing Papists from sitting in either House of Parlyament But if it shall happen that such King or Queene If under 12 Years upon his or her Succession to the Crowne of this Realme shall be under the Age of twelve yeares then every Attainment thereof. 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

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 Exception. in such Cases as shall be specially provided for by one or more Bill or Bills to be passed dureing this present Session of Parliament.'7

PROVIDED that noe Charter or Grant or Pardon granted before the three and twentyeth Day of October in the yeare 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.

Proviso for Charters, Pardo

#### CHAPTER IIL

An Acr for preventing all Doubts and Questions concerning the Collecting the Publique Revenue

Rot. Parl. pt. 3.

Revenue due and payable in the Painnes of the law King Chairman 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 Setleing 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 Outcomes 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 (Exception) to be During and Charges upon Liquors Manufactures and other things And all and singular the Revenue and Revenues Duties and Charges upon Liquors Manufactures and other things And all and singular the Revenue and Revenues whatsoever (Except the Duties ariseing 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 Levyed Collected Answered and Paid to Their Majestyes untill the Twenty fifth day of December which shall be in the yeare 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 dureing the said Raignes.

until agth Dec

AND that all and singular Acts of Parlyament made dureing the Reigns of either [of ] the said late Kings for the Granting Setleing Raising Levying Collecting Answering and Paying the same or for pventing 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 Applyed 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 of the Commons Parlyament made in the Twelfth yeare 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 Setleing of Officers Fees Dated the Seventeenth day of May One thousand six hundred sixty c. 4. 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

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

made in pursuance of the Rules and Orders annexed to Stat. 12 Car. II.

twentyeth day of December One thousand of the Raigne of the late King James the Second and Granted by the [said\*] late Prince and Princes and Princes

annexed to the Original Act in a separate Schedule.

A.D.1326-7.

## 1° Epw. III. Stat. 2. c. 15-17.

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

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

IIm le Roi comaunde q les viscontes & Baillifs des franchises, & toutz autrs q pnent enditementz a lor tourns, ou ailliours ou enditementz Brount faitz, preignent tieux enditementz p roule endente dount Lune ptie demeorge Vs les enditours, & lautre ptie de Vs cely qi prendra Lenqueste, issint q les enditementz ne soient beseleez come avant ces houres ount este, & issint q un de lenqueste peut monstrer lune ptie de lendenture a la Justice q'nt il vendra p' la delivaunce

Memorand qd ista duo statuta Pcedencia missa fuerunt in Hibn in forma patenti, cum quodam bri inferi9 seqñ.

themselves by Writing, to come to the King with Force 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. to be cancelled.

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

TIEM, 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 Indicaments 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.

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.

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

None shall be bound by Writing to come with

XVI. Keepers of the Peace in each County.

XVII. Indictments shall be taken by Indenture.

## Anno 2º EDWARDI, III. A.D.1328.

Statutu editu apud Rogh't', anno r. B. E. t'cii post conquestu 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.

Ne seign' le Roi Edward, le tierz aps le con-queste, a son plement tenuz a Norht as trois semeins de Pasch, Lan de son regne secund, desiraunt q la pees de sa Pre, & les leis & estatuz avant ces heures ordenez & usez, soient gardez & meintenuz en touz poyntz, Al hon' de dieu & de seinte eglise, & a coe pfit du poeple, p assent des Prelatz, Countes & Barons & autres g'ntz, & tote la coe du roialme, au dit plement somons, ordena & establit en meisme le plement les choses southescrites en la forme q sensuit.

En primes q la g'nte Chartre & la Chartre de la foreste soient tenuz en touz pointz.

Ensement p' ceo q messesours ont este esbauditz de ce q chartres de pdoun ont este si leg ment g'ntees avant ces heures, des homicides, robies, felonies & autres trespas countre la pees; acorde est & establi q tiels chartres ne soient mes gentees fors qun cas ou le Roi le poet faire p son ment, cest assavoir en cas ou home tue autre soi defendant, ou p infortune : Et auxint ont este esbauditz de ceo q Justiceries as delivances des gaoles, & a oier & Pminer, ont estez g'ntees as gentz pourez countre forme de lestatut fait en temps le Roi Edward, ael UR 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 under-

written, in Form following. FIRST, That the Great Charter, and the Charter of

the Forest, be observed in all Points.
ITEM, Whereas Offenders have been greatly encouraged, because [the '] Charters of Pardon have been so raged, because [the'] Charters of Pardon have been so easily granted in times past, of Manslaughters, Robberies, Felonies, and other Trespasses 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,

that Commissions of Gael Delivery and of Oter and Terminer have been granted to Persons procured

The Charters. II. for Felony.

A.D.1328.

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of Assise and Gaol-delivery.

Oyers and

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

17 Ed. I. c. 3. Grandfather to our Lord the King that now is, wherein is contained, that Justices assigned to take Assises, if they be Laymen, shall make Deliverance; and if the one be a Clerk, and the other a Layman, that the Lay Judge, with another of the Country associate to him, shall deliver the Gaols: Wherefore it is enacted, That such [Justices'] shall not be made against the Form of the said Statute; and that the Assises, Attaints, and Certifications be taken before the Justices commonly assigned, which should be good Men and lawful, having Knowledge of the Law, and none other, after the Form of another Statute made in the Time of the said King Edward the First; and that the Oyers and Ter-miners 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 vants 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, por in the presence of the Justices or other Ministers. nor inde armed by night nor by day, in Pairs, 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 College of Boroughs, and Recognity and Boroughs. within the same Cities and Boroughs, and Borough-Holders, Constables, and Wardens of the Peace within 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 caunot be well kept without cond Ministers as Shariff, Building and Hundreley.

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 Lauds 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

that might happen

'Commission

'Commission

'Commission

'Commission

'Commission

'Appended to the state of the state of Peace, and that in Places where such Deads are to be stare,—See Lib. Rub.

Sca.: Westin, 6, 122 b. a. West receiving a Grant of K. Richard I.

'qd Torneassita sint in Angt in v. placias: In P. Sart & Wilton: law Varrewich & Kenelingworth: In Stanford & Warneford: law Bratele & Miseber. In P. Ble & Tyckelist. It as qd pax free nice no infringer, no potestas Justiciaria minorabit. Nee de frestis nice dapnii infecer.'

'of the King

nre Seign' le Roi qore est, en quele est contenuz q les Justices as assises Pndre assignez sils soient lais, facent les delivances; et si lun soit clerc, & lautre lais, q le dit lais, associe a lui un autre du pais, facent la delivance des gaols; p qui acorde est & establi, q tiels Justiceries ne soient mes gentees countre la forme du dit estatut, & q les assises, atteintes, & clifications soient p'ses devant les Justices comunement assignez, q soient bones gentz & loialx & conissantz de la lei, & nemie autres; solone la forme dun autre statut fait en temps meisme le ael; et q les oiers & Pminers ne soient grantees forso, ---- devant les Justices de lun Baunk & de lautre, ou les Justices errantz; & ce p' led & orrible trespas, & de lespeciale g'ce le Roi, solone forme de statut de ce ordene en temps meisme le ael; & nemie autrement.

Ensement acorde est & establi, q nul, g'nt ne petit de quele condicion qil soit, sauve les Sjantz le Roi en la Psence le Roi, & les Ministres le Roi, enfesantz execucion des mandementz le Roi, ou de lour office, & ceux qi sont en lour compaignies, eidantz as ditz ministres, & auxint au cri de fait darmes de pees, & ce en licux ou tielx faitz se ferront, soit si hardi de venir devant les Justices le Roi, ou autres Ministres le Roi enfesant lour office, a force & armes; ne force mesner en affrai de la pees, ne de chivaucher ne daler arme, ne de nuit ne de jour, en faires, marchees, nen Psence des Justices, ne dautres Ministres, ne nule part aillours, sur peine de pdre lour armures au Roi & de lour corps a la prisone a la volunte le Roi. Et q Justices le Roi en lour Psences, viscountes & autres Ministres le Roi en lour baillies, seign's des fraunchises & lour bailliss en yceles, & Meire & Baillifs des Citees & Burghs deinz meismes les Citees & Burghs, Burghaldres, conestables, & gardeins de la pees deinz lour gardes, eient poair affaire execucion de cest acord. Et q les Justices assignez, a lour venu en pais, eient poair denquere coment tielx Ministres & seign's ont use lour office en ce, & de punir ceux gils trovont, qi nount mie fait ce q a lour office appent.

Et p'ce q la pees ne poet mie estre bien garde sauntz bons ministres, come Viscountes, Baillifs, & Hundreders qi deivent faire execucion, auxibien des p'vetez le Roi come dautres choses tochantes le Roi & son poeple, acorde est & establi q lestatut fait en temps le Roi Edward, piere le Roi qure est, a Nicole, contenant q Viscontes, Hundreders & Baillifs soient des gentz eantz Pres en meismes les Countez, ou baillies, soit garde en touz pointz solone la forme dycel, & auxint q les Viscountes & Baillifs de fee, facent garder meismes lour Countez & Baillies p gentz eantz Pres en yceles.

Ensement la ou ordine est, p statut de Westmons? le secund, q ceux q liver volent lour briefs as viscountes, les livent en plein Counte, ou en rerecounte, & q visconte ou southvisconte facent sur ce bille; acorde est & establi q a quele heure ou a queu lieu deinz le Counte home livre a viscountes, ou a southviscontes, briefs, qils les resceivent & facent bille en la forme contenue en le dit estatut, & ce sanz rien Pndre; et sils refusent de faire bille, mettent autres lour sealx qi Bront Psentz; et si le Viscounte ou le Southviscounte ne retorne mie les briefs, soient puniz solone la forme contenue en le dit estatut; & jadumeins eient les Justices as assises Pndre assignez poair denquer de ce a chescuny pleinte & de agarder damages, eant regard au delai, & a les ptes & pils qi p'ront avenir.

The Statute Westminster the Second, 13 Ldw. I. chapter 50, concerning concerning the Delivery

of Writs to the Sheriff, confirmed.

The Statute of Lincoln. of Edw. 11.

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Et q'nt a la garde de la pees en temps avenir, acorde est & establi d les estatuz faites en temps passez, ovesq, lestatut de Wyncestr, soient tenuz & gardez en touz pointz; ajouste au dit estatut de Wyncestr, la ou contenuz 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 & oppssions du poeple, faitz en temps passe; acorde est q nre Seign' le Roi assigne Justices en divs lieux de sa Pre, ove le Baunk le Roi p aillours, come estoit faite en temps de son dit ael, des g'ntz de la Pre qi sont de g'nt poair, ovesqs ascuns des Justices de lun Baunk ou de lautre, ou autres sages de la lei, denquere, auxibien a seute de ptie, come a la seute le Roi, et doier & Pminer totes manes des felonies, robies, homicides, larcins, oppssions, conspiracies, & grevances faitz au poeple, countre la lei, Les estatuz & la custume de la Pre, auxibien p ministres le Roi come p autres, qi qils soient, & ce auxibien dedeinz fraunchises come dehors. Et auxint denquere des Viscontes, Coroners, Southeschetours, Hundreders, Baillifs, Conestables, & touz autres Ministres deinz franchise & dehors, & lour southministres, & doier & Pminer a la seute le Roi & de ptie. Et nre Seign' le Roi & touz les g'ntz du Roialme en plein plement ont empris de meintenir la pees, garder & sauver les Justices le Roi, la ou ils veignent, & deider p eux & les leurs, les juggementz & les execucions ne soient pas arestuz, mes executz, & q le meffesours ne Bront p eux covtz ne meintenuz en p've nen apt : Mes nest pas lentencion du Roi ne de son conseil q p ceste acord Pjudice aveigne a les g'ntz de la Pre, eantz franchises, ne a la Citee de Loundres, ne as autres Citees ne Burghs, ne a les Cynkportz en droit de lour fraunchises.

Ensement acorde est & establi q mande ne soit, p le g'nt seal ne p le petit seal, a destourber ou delayer coe 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 decea & p delaa, ordeinez p les Rois en temps passe, & les peines sur ce ordeinees, cessent ; & q touz marchantz aliens & p'veez peussent aler & venir od lour marchandises en Engletre, solone la tenour de la g'nte Chartre; & q s' eo briefs soient mandez a touz les viscontes Dengle-Pre & as Meires & baillifs des bones villes ou mestier Pra-

Ensement come le Roi Edward, piere le Roi quore est, podona a son poeple amciementz & issues forfaitz, jesqs al vintisme an du regne son piere 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 coe Bank les pleez bien sovent ont demore saunz jour, a g'ntz damage, & en pil de destitance des pluseurs ; acorde est & establi q desore en avant les Justices, avant ce q le Bank se remuera, soient garniz p temps, issint queux peussent ajorner les pties si p temps qeles ne pdent mie lour pces.

Et come touz les Countez Denglerre furent auncienement assis a cteine ferme, & adongs furent touz les Hundredz & les Wapentakes, en les meins des viscountes, aporcionez a cele ferme, et puis furont approwours mandez en divs Contez, les queux encrustrent les fermes dascuns Hundredz & Wapentakes, et puis les Rois en divs temps ont gentez as divs gentz pties des Hundredz & Wapentakes, p' les auncienes fermes tantsoulement, & jatardeis les viscountes 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 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 (') the same Justices shall have Power to punish the Disobeyers and Resisters.

ITEM, As to the Punishment of Felonies, Robberies, Manslauphters. Trespasses, and Oppressions of the

Manslaughters, Trespasses, and Oppressions of the People committed in times past: It is accorded that our Sovereign Lord the King, shall assign Justices in diversible 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 Land, Men in the Land, we of the other, [with 1] other learned Men in the Law, to enquire as well at the Suit of the Party, as at the King's of the other, [with 1] 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, Bailiffs, 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'] 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. the Five Ports in the right of their Franchis

the Five Forts 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

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 Bailiffs 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 Amerciaments, that were forfeit till the twenty year of the Reign of his Father, Grandfather to the King that now is: The King for case of his People, hath pardoned all

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 oftentines abiden without Day, to the great hurt, and peril of Disherison 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 the Hundreds and Wapentakes in the Sheriffs Hands rated to this Ferm; and after were Approvers sent into divers Counties, which did increase the Ferms of some Hundreds and Wapentakes; and after, the Rings at divers Times have grapted to want Mars 1966. divers Times have granted to many Men part of the same Hundreds and Wapentakes for the old Ferins only; and now late the Sheriffs be wholly charged of the

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

VI. The Statute of Wynton, 13 Edw. I.

VII.

Commands shall not be

IX.

Pardon of Fines for Write in

XI. The Common Bench not to

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

add to the said Statur of Winchester, where it is contained at the end therrof
Not in the Original.

\* the effelt of, that
with the King Braid brilds,
to maintain the peace, to keep and awe the King's duriters wheresorver they come, and to aid by themselves, and theirs, that the Judgements

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Increase, which amounteth to a great Sum, to the great hurt of the People, and Disherison 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 Ferms 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. Trespass in the late King's Time.

XIV. Measure and Assise

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

done in the Time of the King that now is.

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 Assisc, 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 Assisc, shall be forfeit to the King, and prised 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 morrrow 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 be published and proclaimed throughout the Realm, so that no Merchant, Privy nor Stranger, shall be surprised by this Statue.

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. Sir Stat. 11 Edw. II. 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. Ir. 2.—some old Printed Copies read marting.

encrees q amount a g'nte sume, a g'nt damage du poeple & deshitance de viscountes & de lour heirs; acorde est & establi q des Hundredz & Wapentakes baillez a ferme p le Roi qore est, soit il a me de vie ou autrement, q auncienement furent annex as fermes des Countez ou les viscontes sont chargez, soient rejointz as Countez, et q de temps passe eient les viscountes ou lour heires allowance; & q desore en avant teux Wapentakes, ne Hundredz ne soient donez ne sevez des Countez.

Ensement est acorde & establi q a tieu pces soit fait des trespas fait en temps le Roi Edward, piere le Roi qore est, come de de trespas fait en temps le Roi qore est. Ensement est acorde & establi p nre Seign' le Roi & son conseil, q de la seint Michel pschein avenir

en avant, touz les draps es lieux ou ils front mis a Pre, soient aunez p le auneour le Roi, en psence des Meire & Baillifs ou Meire y est, ou des baillifs ou meire nyest, de meisme les lieux; cest assavoir la longure de chescun drap de Raye p une corde de sept aunes quatrefoitz mesure p le list, & la laoure de chescun drap de Reye sis q'rters de lee, mesure p laune; et de draps de colour la longure soit mesure p le dos p un corde de sis aunes & demi q'trefoitz mesure; & la laoure sis quarts & demi mesure p laune sanz defoler les draps; et q Meire & Baillifs ou Meire y est, ou Bailliss ou Meire nest pas, des villes ou lieux ou les draps vendront, soient Pstz a lassai faire, quele heure qils soient requis p launeour, saunz rien Pndre des marchauntz; et q touz les draps q Pront trovez de la dite assise, soient nichez auxibien p Meire & Baillifs ou Meire y est, ou p baillifs ou Meire nest pas, come p launeour, et les draps q ne gront pas trovez de lassise avantdite, soient forfaitz au Roi, & p'sez a la Preie value, en Psence des ditz Meire & Baillifs, & demoergent deVs launeour p endenture entre eux faite, a respondre des ditz draps issint forfaitz au Roi; et q les ditz Meire & Bailiffs, les endentures issint faites de tieux draps forfaitz, facent liver chescun an a Lescheur a lendemeyn de Seint Michel, p' charger le dit auneour; & a meisme le temps soit le dit auneour a Leschegr a respondre des dites forsaitures. Et est lentencion de nre dit Seign' le Roi & de son conseil q cest acord se tiegne des draps q vendront en la Pre ap's la dite feste de Seint Michel; & q cest acord soit publie & crie p tout le Roialme, Issint q les Marchauntz ne p'vez nestraunges soient supp's p meisme lacord.

Ensement est acorde & establi q maunde soit a touz les viscountes Dengletre, & p aillours ou mestier Bra, a crier & publier, deinz f'unchises & dehors, q touz les Seign's q feires enount, soit il p' creine ferme ent rendant au Roi, ou autrement, les tiegnent p' le temps gils devont, & nemie outre; cest asavoir ceux gi les ount p chres des Rois p' les temps a cux g'untez p les dites chres; et ceux qi les ount sanz chre p' temps queux ils les deivent tenir de droit. Et q chescun Seign' au comencement de sa feire face crier & pub. lier en ycele come longement sa feire se tendra, Issint q les Marchantz ne seessent es dites feires outre le temps issint publiez, sur peine destre grevement puniz devs le Roi; ne q les ditz Seign's outre les droitz temps les tiegnent, sur peine afendre les feires en la meyn le Roi, a demorer tangils eient fait fin au Roi p' le trespas, ap's ceo q trove sra duement qe les Seign's les ount tenuz plus longement qils de Pont, ou q les marchauntz ount sis outre le temps issint publiez & criez.

Et come en un estatut fait a EVwyk, en temps le piere nre Seign' le Roi forc est, soit contenuz q les enquestes & jurees qe sont & front af ndre, q ne sont mie de g'nt examinement, soient p'ses devant A.D.1328.

#### 2° EDW. III. Stat. Northampt. c. 16, 17.

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un Justice de la place ou la plee est, associe a lui un polhome du pais, Chivaler ou autre, issint q ctein jour soit done en Bank, & ctein jour & lieu en pais en Psence de pties, si le demandant le p'e; & auxint les enquestes & jurees en plee de Pre, qe demandent g'nt examinement, soient p'ses en pais en la forme susdite devant deux Justices du Bank: acorde est & establi q totes tiels enquestes, q sont ou en temps avenir a Pndre Bront, en plee de Pre, soient p'ses auxibien a la p'ere le tenant come le demandant; tout lautre pces acorde en dit estatut, en tieu cas sauve & garde.

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

De Vic Norht, saltm. Quoddam statutū p nos & conciliù nrm in pleno pliamento nro apud Norhampton convocato, ad emendactem stat9 populi regni nri, editū, sigillo nro consignatū tibi mittim9; mandantes qd statutū illud, & omes articulos in eo contentos, in pleno Com tuo & in Civitatibs, Burgis, villis mcatoriis, & aliis locis in balliva tua ubi expedire videris, tam infra libtates q'm ext', legi & publice pclamari & observari fac. T.R. apud Norfit xxii die Junii.

Eodem modo mand est singulis vicecomitibs p Angl. Memorand od istud statutum missum fuit in Hibn in forma patenti cum quodam bri inferius seqn.

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 Paries, 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 uces 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, Creeting. A cer-tain 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 pro-claimed 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.

XVII.

#### Anno 4° EDWARDI, III. A.D.1330.

Statutu editu apud Mestm, anno regni B. E. t'cii 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.

U Parlement somons a Westmostier, le Lundy A Pscheyn aps la feste de Seinte Katine, lan du regne nre Seign' le Roi Edward, tierz aps le Conquest, quart, Si sont les choses soutzescriptes, a la requeste de la Comunalte, assentuz & acordez p nre Seign' le Roi, Prelatz, Countes, Barons, & autres g'ntz de mesme le plement, les queux choses nre Seign' le Roi voet qen touz les Counteez de Englerre soient mandez, a publier & fermement garder.

Adep'mes acorde est q la G'nde Chartre & la Chartre de la Foreste, & les estatuz faitz en temps des pgenitours nie Seign' le Roi, & auxint en son temps demeigne, soient gardez & meyntenuz en touz pointz.

Ensement est acorde q bones gentz & sages, autres q des places si home les puisse trover suffisantz, soient assignez en touz les Counteez Dengletre apindre les assises, jureez & clificacions, & a deliver les gaoles; et q les ditz Justices preignent les assises, jurces, & chincacions, & delivent les gaoles, au meyns troiz foitz p an, & plus sovent si mestier Bra, & soient auxint assignez

T the Parliament, summoned at Westminster, the Monday next after the Feast of Saint Katherine, in 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 Charters and 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 Gools; and that the said Justices shall take the the Peace. 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 " that they be sent

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Pjudiciū, & ipius populi destruccoem & injuriam manifestas, ac cont' justiciam & forma statuti Pdči : Volum9 & firmit Pcipim9 qđ Justič në Hibn qui p tempe fuit, in singulis Com & ptib; p quos t'nsierit, associatis sibi Prelato loci, & aliquo Comite seu alio nobili vel Milite eaadem pciū vicinaa, de Pdčis falsitatibs, extorsionibs, oppssionibs, g'vaminibs, & excessibs, & omibs sup deis p ipos firmarios quomodolibet ppertis, & de ijioa fcis & gestib; in hac pte, tam ad sectam nram q'm alios quoscuq, inde conqueri volenciu tam de tempe Prito q'm futuro inquirat; & Psus eos pcedat, & contemptus, falsitates, extorsiones, oppssiones, g'vamina & excessus, ac alia Pdca audiat & Pminet, necnon delinquentes & culpabiles cum tales inventi füint castiget & puniat, scam legem & consuetudinem

cujus, &c. T. Jk. apud Westin xxv. die Octobr. p ipm Regem & Cons.']

openly, from Time to Time, for good Cause shall certify. In Witness whereof, &c. Witness the King at Westminster, the Twenty-lifth Day of October.

to the manifest Destruction and Injury of the said People, and

against Justice and the Form of the Statute aforesaid t 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 Neighbour-

hood, concerning the aforesaid Deceits, Extortions, Oppres-

sions, Grievances, and Excesses, and all the Matters above-

said 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,

Deceits, Extortions, Oppressions, Grievances, and Excusses.

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 Deceirs, Extortions, Oppressions, and Grievances and other Matters aforesaid, under the Seals of him the said Jus-

tice and of the others associated with him, distinctly and

By the King Himself and Council.

' In cujus rei testimoniŭ lias tras nias fieri fecimo patentes. Teste me ipo apud Westin vicesimo quinto die Octobr, anno regni nëi Angt t'cesimo p'mo, regni vo nëi Franc decimo

Pre nre Hibn antedeas; & nos & consiliú nrm in Angt

de nõib3 sic culpabiliü, ac de falsitatib3, extorsionib3,

oppssionib; & g'vaminib; & aliis pdcis sub sigillis ipius Justie & sibi associatos, distincte & apte de tem-pore in tempus nichilomin9 dificet ex eta causa. [In

Nos autem Ordinacoes Voluntates & Perpta Paca, ac omia Nos autem Ordinacoes Voluntates & perpa potes, o ma alia & singla in tris pleis cotenta rata hentes & grta, ca p nob & heredibi nris quantum in nob est, acceptam" approba-mus, ratificam" & confirmam", put fie plee rationablie testant. In cuj", &c. 'T. R. apd Westim xxy die Junii.

Rot. Pat. 17 Ric. II.

#### Anno 34° EDWARDI, III. A.D. 1360-1.

#### Statutu ft'm in p'liameto tento apud Westm; anno rrriiijto.

In Margine

A.D.1357

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

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 (')

diction over Offenders; Kinters :

Vagabonde;

I key may take Surety for good Behaviour;

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

> taket is to Ly ! All Translations read thus

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

TES sont les choses queles nie Seign' le Roi Prelatz J Seign's & la comune ont ordinez en cest p'sent plement, tenuz a Westmustier le Dymenge Dschein devant la feste de la Convision de Seint Poul, a tenir & publier ovtement pmy le Roialme; Cestassavoir:

Printement q en chescun Countee Denglei re soient assignez, p' la garde de la pees, un Seign', & ovesig lui trois ou quatre des meultz vauez du Countee, ensemblement ove ascuns sages de la ley, & cient poer de restreindre les messesours, riotos, & touz aut's baretto's, & de les p'suir, arester, p'ndre, chastier, selone leur Espas ou mesprision; & de faire emprisoner. & duement punir selone la ley & custumes du Roialme, & selone ce gils Pront mieltz affaire p lo' discrescions & bon avisement; & auxint de eux enformer & denquere de touz ceux qi ont este pilours & robeours es pties de dela, & sont ore revenuz & vont vaganta, & ne voillent t'vailler come ils soleient avant ces hours; & de Padre & arester touz ceux gils p'ront tro? p enditement, on p suspecion & les mettre en prisone & de jondre de touz ceux [qi sont '] de bone fame, ou ils sront trovez, souffisant seurete & meinprise de

' ui ne sont Lib. Seace, Westm. IX: MS. Cott. Nero C. I: and the Old Printed Copies.

A.D.1360-1.

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lo' bon port, de le Roi & son poeple, & les auts duement punir; au fin q le poeple ne soit p tieux rioto's troble nendamage ne la pees enblemy, ne marchantz naues passantz p les hautes chemyns du Roialme destourbez ne abaiez du pil q p'ra avenir de tieux meffesours : & auxint doier & Pminer a la suite le Roi, tote mane de selonies & Pspas faites en meisme le Countee, selonc les leys & custumes avantdites; & q briefs doier & Pminer soient gentes selone les estatuz ent faites, mes q les Justices q enserront assignez soient nomez p la Court, & nemie p la ptie. Et le Roi voet q totes genales enquerres avant ces heures g'ntez deinz seign'ies queconqes p' les meschiefs & oppssions q ont este faites au poeple p tieles enquerres, cessent outriement & soient repellez: Et q fins q sont affaire devant Justices, p' tspas fait p ascune psone, soient resonables & justes, eant regard au q'ntite du tspas & les causes p' queles eles sont faites.

Item acorde est q prises desore ne soient faites p auts q p les p'veours le Roi, ma Dame la Roine & le Prince lour eisne filtz; & q si Purveours des auts facent tieu prises soit fait de cux come des gentz qi fount sanz garaunt, & lour fait jugge come chose faite contre la pees & la ley de la tre; & soient tieux qi se fount p'veours en la mane duement puniz.

Item des p'veances faites al oeps la Royne & du Prince, du polaitt & dautres menuz choses, soit paiement fait en poigne s' la prise; & des aurs grosses p'veances deinz le Mois ou sis simaignes es Countees ou ils front prises; & q le nombre de tieux p'veours soit abregge, en tant come bonement p'ra p' eide & quiete du comune poeple.

Item porce q viscontes & aut's ministres sovent arraient lour panels en tote mane denquestes des gentz peurez & pluis lointifs du Countee, qi nont conissance du fet dount lenqueste sra prise; Acorde est, q tieu paneles soient faites des plus pscheins gentz, qi ne sont pas suspectes, ne peurez; & q les viscontes, Coroners & aut's ministres qi font alencontre soient puniz devant les Justices qi la dite enqueste phdra, selone la q'ntite de leur rspas, sibien devs le Roi come devs la ptie, p' la q'ntite du damage qil ad suffert en tieu mane.

Item est accorde, q ceux qi Bront assignez de garder la pees eient poair denquere des incsures & auxint des pois, selonc lestatut ent fait lan du regne n'e Seign' le Roi vint & quint, en quel est contenu la forme q sensuit. Porce q Psg'nt damage & desceit est fait au poeple p tant q pluseurs Marchantz usent dachater & poiser leines & aut's marchandises p une pois qest appelle Aunsell; Acorde est & establi, q celle pois appelle Aunsell entre achatour & vendour soit de tout ouste, & q chescun vende & achate p balances; issint q les balances soient owels & les leins & aut's marchandises owelement poisez p droit pois, et q le sac de leine ne poise q vint & sis peres, & chescun pere poise quatorze livres, & q lestater de la balance ne encline ne a lune ptie ne al autre, & q le pois soit acordant al estandard del Escheger; et si nul Achatour face al encontre, soit grevousement puny sibien a la suite de ptie come a la suite nie Seign' le Roi.

Item come contenu soit en la g'nt Chre, q une mesure soit use pmy tut Engletre, la quele Chre nad mie este tenue bien en ce point avant ces heures; si est acorde & assentu, q totes les mesures, cest assavoir bussel demy bussel & Peck, galon potel & quart, p tout Engletre 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 Iput in the Peril which may happen '] of such Offenders: And also to hear and determine at the King's Suit all Manner of Felonies and Trespasses done in the same County according to the Laws and Customs aforesaid; and that Writs of Oyer and Determiner be granted according to the Statutes thereof made, and that the Justices which shall be thereto assigned be named by the Court, and not by the Party. And the King will, that all general Inquiries before this Time granted within any Seigniories, for the Mischiefs and Oppressions which have been done to the People by such Inquiries, shall cease utterly and be repealed: and that Fines, which are to be made before Justices for a Trespass done by any Person, be reasonable and just, having Regard to the Quantity of the Trespass, and the Causes for which they may be made.

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.

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.

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 Trespass, as well against the King as against the Party, for the Quantity of the Damage which he hath suffered in such Manner.

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 followerh; "Whereas great Damage and Decicit is done to the People, for that divers Merchants use to buy and weigh Wouls and other Merchandises, by a Weight which is called Auncel; It is accorded and established, That this Weight called Auncel betwixt Buyers and Sellers, shall be wholly put out; and that every Person do sell and buy by the Balance, so that the Balance be even, and the Wools and other Merchandizes evenly weighed by right Weight, so that the Sack of Wool weigh no more but xxvi. Stones, and every Stone to weigh air. I 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."

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

put in fear by peril which might hoppen \*Takings of

and may hear and determine Felonies and Trespasses.

Commissions of general Inquiries shall cease.

Fines for Tresposes shall ne reasonable.

No Purreyance except for the King, the Queen, and the King's eldest Sun.

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

IV.

Panels of Inquests shall be of the Neighbours hood.

V. Justices of the Peace shall inquire of Weights and Measures, according to the Statute 25 E.iw. 111. ttal. 5. cb. 9.

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

Contents of the Quarter. Measures of Corn shall be striked ; Rents of

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 striked 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 striked, and in the same Manner: And that at all Times when need shall be, the King shall as an errain Justice 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, betwist this and the Feast of Easter next coming, to the Intent that they be holden and kept in Justices shall be assigned to

Saving of Franchises.

Proclamation hereof.

the Pains contained in the Statute, made the xxviii.

Set Statute

18 Edw. III.

rhapter 10.

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 Execu-

VII. An Attaint in Ples real. tion against them.

ITEM, It is accorded against the Falshood of Jurors, That every Man against whom they pass, may have Attaint, as well in Pica 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 casy

and without, betweet this and the Peast 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 Paine contained in the Statute made the vevi

Franchises and without, shall be according to the King's

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

ITEM, That in ever 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 Verdich, 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 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 their Damages by the assessment of the large in 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 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.

Imprisonment of Jurors shall not be pardoned for any Fine.

IX.
Labourers
shall not be
punished by
Fine under
the Statute
25 Edw III.
itat. 2. cb. 5;
but only by
Imprisonment;

Penalty on bailing them.

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 Punishnet 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, Jayler, nor other Minister shall not let them to Majories nor Sail and if he do he 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, Jailor, nor other Minister shall take no Fee nor Porterage of Prison, nor at his entering, nor at his going out, upon the same Pain. And that as well Carpetters and Masons be comprised in this Ordinance, as all other Labourers, Ser-vants, 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 aul's lour p'veances p mesmes les me-sures rases & en mesme la mane: & a totes les foitz q mestier Pra le Roi assignera Eteins Justices en cheschune Countee, denquere & doier & Pminer s' les pointz susditz, & de faire s' ce due punissement, selonc chescuny Pspas, sibien a la suite de ptie come a la suite le Roi; issint totesfoitz q tote mane 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 Pschein avenir, au fin geles soient gardez & tenuz en toutz pointz; & q les dites gardeins de la pees enquergent & punissent touz ceux qils trovort qavont fait contre le dit estatut, aps la dite pelamacion faite. Et soit aussint meisme la polamacion faite en Citees, Burghs, & villes enfranchez, q les ditz articles ysoit tenuz et gardez en touz pointz, s' les peines contenues en lestatut fait lan du regne nie f' le Roi vint et oytisme, touchant la Citee de Londres, & aur's Citees & Burghs du Roialme; & sils ne gardent les ditz articles, le Roi en lour defaute ferra mettre meisme lestatut fait de meismes les peines en execucion contre eux.

Item acorde est contre la fauxine des Jurrours q chescun home contre qi ils passent puisse avoir latteint, sibien en plee Reale come psonele; & q latteint soit g'nte as povres qi voillent affier qils nont riens de ent faire fin sauve lour contenance saunz fin, & as touz auts p eise fin.

Item q en chescun plee dount lenqueste ou lassise passe si aucun des pties voudra suir Vs ascuns des Jurro's gil ad pris de son adver ou de lui, p' dire son verdit, soit oy; & eit sa pleinte meintenant p bille devant les Justices devant queux ils jurrerunt, & q le jurrour soit mis a respoundre saunz nul delai; & sils pledent au paiis, q enqueste soit pris maintenant : et si nul home autre q la ptie vodra suyr p' le Roi vs le jurrour, soit oy & timine come dissus est dit; et si le jurro' soit atteint a suite dautre q la ptie & face fin, q la ptie q seust eit la moite du fin; et q les pties au plee recovent lour damages p taxacion de lenquest, & q le Jurro' issint atteint eit la prisone dun an quel emprisonement le Roi g'nte q ne soit pdone p' nul fin. Et si la ptie voudra suier p brief devant aut's Justices eit sa suyte, en la forme avantdite.

Acorde est en ceste psent plement q lestatut des laborers auncienement fait estoise en touz pointz; forspris la penance pecuniere quel desore est acorde q les laborers ne soient pas punitz p fins & raunceons; & 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 & emprisoner p quinze jours, sils ne se voillent justicer, & adonges les maunder au Pscheine gaole illoeges a demorer tang ils se woillent justicer p forme de lestatut; Et q le viscont Gaoler nautre ministre ne lui lesse a nulle mainprise nen baille et sil face qil paie au Roi x. li. & a la ptie C. s. ne q le visconte Gaoler nautre ministre ne pigne nul fee ne portage du prison ne a son entree ne a son issir s' mesme la peine. Et qen ceste ordinance soient comprises, sibien Carpenters & Maceons, come touz aut's laborers svantz & artificers; & 4

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les Carpenters & Maceons Pignent desore salarie p la jo'neie, et nemie p simaigne nen autre mane; et q les chiefs mestres des Carpenters & Maceons pignent le jo' iiij d. & les auts iij. ou ij. d. solone ce qils vaillent : et q totes alliances & covignes des Maceons & Carpenters, & congregacions Chapitres ordinances, & Bementz 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 ovaigne q a lui appent affaire, ov de fraunche pere ou de grosse pere, et aussint chescun Carpent en son degre; mes bien lise a chescun Seign' & autre de bargainer & covenancer de lour ovaignes en grosse ou tiels lahorers & artificers q'nt leur plerra issint qils pfo'nent tielz oPaignes bien & loialment, selonc les bargaine & covenant ove eux ent faitz.

Item des laborers & artificers qi salloignent hors de lo' svices en autre ville ou en autre Countee, q la ptie eit sa suite devant Justices, & q le visconte lui Pigne au Pn jour come est contenu en lestatut, sil soit trove, & face de lui execucion come dessus est dit; et sil reto'ne qil nest mie trove eit lexigende au Pill jour, & ce suy tang, il soit utlaie; & aps la utlagarie soit brief de mesmes les Justices mande a quconq visconte Denglerre q la ptie vodra suir de lui Pndre, & lui mander au visconte du Countee ou il est utlae; et q'nt il Bra 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'me au mane de la tre F, en signe de Fauxine si la ptie greve le vodra suyer; mes soit celle penance de larson mis en respit tanq, al Seint Michel Oschein avenir, & adonques ne soit mie execute sil ne soit p avis des Justices, & demoerge le fer en la garde du viscont. Et q viscont & chescun Baillif de franchise soit entendant au pleintif de mettre ceste ordinance en execucion s' la peine avantdit : et q nul laborer nartificer ne pigne nulle mane de lower le jo' de festes.

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

Item, come la coe se eit pleint des Eschetours, queux p colour de lour office ont seisiz plusours Pres & tenementz come forfaites au Roi p' treson s'mys en psones mortes, q unqs ne furent atteintes en lour vies; le Roi en ad bon regard: Mes porce qil & ses pgenitours ont este seisiez 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 voct continuer de tieux forfait'es escheues en son temps & en temps son piere, en la mane come ad este usee; nientmains de sa g'ee especiale il voet & g'unte q de tieux forfait'es escheues en temps son ael & touz ses pgenito's pdevant a pluistost qenquest ent gra reto'ne en Chancellerie p Eschetour ou autre qi poair ad denquere, q le tenant ne soit pas ouste de sa possession, mes soit garny p Scire fac destre au Etein jour de respoundre a cel Scire fac sil voudra: Et si nulle tiele forfait'e soit ore, ou Bra 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 Fourpence 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 Congregations, 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 Laborriers and Artificers when please them, so that they perform such Works well and lawfully according to the Bargain or Covenant with them thereof made.

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 contained in the Statute, if he be found, and do of him Execution 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 Outlawry 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 Manner of Wages the festival Days.

ITEM, If any Labourer, Servant, or Artificer, absent himself in any City or Borough, and the Party Plaintiff 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.

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 Progenitors 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, 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

" reery Beiliff of " Not in Original. " that MS. Tr. 2.

Wages of Carpenters and Masons

Their Conspiracies annulled.

X. Punishmen of fugitive Labourers

Process of Outlawry 1

Imprisonment; Burning in the Forehead.

No Wages on Festivals.

XI. Mayors and Bailiffs shall deliver up fugitive Labourers.

XII. Seizure of I.ands on Surmise of Tresson in dead Persons.

Forfeitures of Wars reserved to the King.

Process

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

not attainted or judged in their Lives, their Heirs, nor their Land Tenants shall not be impeached nor chal-lenged; nor of any other Forfeiture, except the For-feitures 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.

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

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 betwist 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. openly, and not privily.

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

ITEM, It is accorded, That where Lands or Tenements be seised into the King's Hand by Office of the Escheator, containing that the King's Tenant made thereof Alienation without the King's Lenant the King's Tenant by Knights Service died seised of the Lands and Tenements aforesaid in his Demesne as of Fee and his Heir within Agr. and after the Cause Fee, and his Heir within Age; and after the Cause certified into the Chancery, and he whose Lands be seried onto the Chancery, and he whose Lands be seised 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 seisable; 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 Rioht. and further to do Right.

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

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.

XVI. Nonclaim of Fines shall be no Bar.

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.

XVII. Freedom of Trade in Ireland.

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.

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

ITEM, That the People of England, as well Religious as other, which have their Heritage and Posaessions 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.

XIX. No Custom for Canvas to pack Wool in.

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.

Exportat

I FEM, 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 (1).

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

ITEM, Whereas in the l'arliament 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 Enchesons, Passage was granted of the said

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 forsprises les forfait'es auncienement ajuggez aps la mort des psones p Psentementz en Eyre ou en Baunk le Roi, come des felons de soi & autres.

Item accorde est, q chescun Eschetour Pigne ses enquestes de son office des bones gentz & loialx, q soient enheritez soufficealment & de bone fame, & de mesme le Countee ou lenquerre se ferra; & q les enquestes issint prises soient endentez 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, ovtement & nemie en prive.

Item acorde est, q ou Pres ou tentz soient seisiz 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 gvice de Chivaler morust seisi des Pres & tentz avantditz en son demesne come de fee, & son heir deinz age, & puis la cause Etifie en la Chauncellerie & cellui qi Pres sont scisitz, viegne en Chauncellerie, & voet t'nverser losfice q fut primes pris p mandement du Roi, q les dices Pres ne soient mie seisables, soit [il a ceo receu, & soit le pces mande en Banc le Roi a trier, & outi faire droit.']

Item acorde est, q les alienacions des Pres & tentz 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 estoisent en lour force; sauvant totesfoitz a nee Seign' le Roi sa Progative, du temps son ael, son piere, & 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 acorde 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 Pndre de eux; sauve totesfoitz au Roi ses auncienes custumes & aut's devoirs.

Item, q gentz Denglerre sibien Religiouses come autres, qont lour heritages & possessions en Irlande, puissent mener lo' bledz bestes & vitailles a la dite Pre Dirland, & dilloeges remener lour biens & marchandises en Engletre, franchement & saunz empeschement; paiant lour custumes & aut'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 alloues, sanz ent paier custume ou subside.

Item acorde est 7 passage des bledz soit defendu en touz les Portz Dengletre, siq nulle eit congie ne garaunt de passer tielx bledz en nulle mane, sil ne soit a Calays & Gascoign, ou as aut's lieux especiales, queux il covient q le Roi face garnir des bledz Denglerre, & ce a sa ppre ordinance & congie.

Item come en une plement nadgairs fait, sur lordinance de lestaple en Engletrre, estoit ordine q Marchantz aliens duissent mesner leines & les aut's marchandises de lestaple outre meer, & q nulle Marchant denzein les duisse passer; Et puis, p assent du Roi & de son conseil p aucunes éteines enchesons fuist

Omit this word. 1 other Duties 3 and licence

to be tried MS. Tr. 2.

<sup>·</sup> carry

<sup>.</sup> Writtten on an Erasure.

<sup>\*</sup> Interlined on the Roll.

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g'nte passage des dites marchandises as denzeins, & s' ce oclamacion fait, & maunde a les custumeres es diPses portz de les soeffrir passer, tang a un chein temps, paiant le custume & subside come aliens; Et porce q les dites marchandes denzeins se doutont destre empeschez en temps avenir, p' lour marchandises qils ont issint passez p vue de tiel g'unt & pelamacion, porce qils estoient faites hors du plement; le Roi voillant p'voier p' lour seurte en celle ptie ad ratifie & conferme en ceste Psent plement les passages qu'es ont fait des leines & lo' aul's marchandises as pties outre meer, puis les g'unt & pclamacion avantdites; & les g'unte autiel passage desore saunz chalange ou empeschement de nully; issint totesfoitz qils paient les dites custume & subside tang, al Seint Michel Pschein avenir, & de mesmes la feste tanq, al Seint Michel Pschein suant, come ils ont paiez avant ces heures puis q le dit subside estoit g'nte.

Item ordine est en cest plement q queconq, psone q troeve Faucon, Pselet lanere ou lanet austoure ou autre Faucoun, q soit pdu de lo' Seign', q maintenant il lapporte au viscount du Countee, & q le visconte face pelamacion en toutes les bones villes du Countee qil ad un tiel Faucoun en garde; et si le Seign' qi le pdi, 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 chalenger, qadonqes le visconte eit le Faucon, sesant gree a cellui qi le prist, sil soit simples home; et sil soit gentils home destat davoir Faucoun, q le visconte rebaille al lui le dit Faucoun, pnant de lui resonables coustages p' le temps qil lavoit en garde: & si null eit pris tiel Faucoun, & 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 anns, & rend au Seign' le pris du Faucoun issint concele ou emporte, sil eit de quoi; et si noun, eit pluis longe demoeure en prison.

Merchandises [of'] Denizens, and thereupon Proclama-tion 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 Denisens 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.

that the eaid Subsidy was granted.

ITEM, It is accorded in this present Parliament, That every Person which findeth a Faulcon, Tercelet, 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 I'roclamation 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 making greet 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 attainted, 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

to MS. Tr. 2.

J and from the same feste til to Seynt Mighel then next ensuying, MS Tr. 2.

The Old Translations and MS. Tr. 2. bave 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-

#### Anno 35° EDWARDI, III. A.D. 1360-1.

#### Dedinacio facta de Allece.

AN ORDINANCE OF HERRING.\*

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

DWARD p la g'ce de Dieu Roi Denglerre, E Seign' Dirlande & Daquitaigne, a touz ceux as queux cestes fres vendront, saluz. Coment q nadgairs a pourement dascuns fesantz entendre a nous & nre conseil q p cause q les hostes de nre ville de g'nd Jernemuth, qi herbgent les Peschours venantz illoeqs od lour harang en temps de feire, ne voleient soeffrir les ditz Pescheours vendre lo' harang ne meller de la vente dicelle einz le vendent a lour volentee demesne, si chier come ils voleint, & donerent as Pescheours ce q lo' plust si q les Pescheours se retreherent 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 bedoug Us and our Town of Great Yarmouth, chapter 1, 1. cause that the Hosts of our I own of Great Tarmouth, 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

. Edward by the Grace of God, King of England, Lord of Ireland, and Acquitain, to all to whom these Letters shall come, Greeting.

that MS. Tr. 2.

<sup>.</sup> 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,' 21 Edw. III. Statute 3; ante page 355.

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# \* MASTERPIECES ~ OF ELOQUENCE

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

#### EDITED BY

MAYO W. HAZELTINE, A.M. HON. HENRY CABOT LODGE HON. WILLIAM E. MASON HON. JOHN D. LONG
HON. ALBERT J. BEVERIDGE
HON. JOHN C. SPOONER

ARCHBISHOP IRELAND

IN TWENTY-FIVE VOLUMES

VOLUME VI



P. F. COLLIER & SON

ROOT G ILAC

#### 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:

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

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 main 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

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#### 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

#### JOHN ADAMS

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

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#### 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

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

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## COMMENTARIES

ONTHE

LAWS

OF

## ENGLAND.

BOOK THE FIRST.

BY

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AND

SOLICITOR GENERAL TO HER MAJESTY.

THE THIRD EDITION.

O X F O R D,

PRINTED AT THE CLARENDON PRESS.

M. DCC. LXVIII.

BOOK I.

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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 cartax, 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 fent under the great feal, or the little feal, the fignet, or privy feal, in difturbance 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 18Edw.III. ft. 4. And by IW. & 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 confent of parliament, is illegal.

Nor 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 whatfoever, to examine, or draw into question, determine or dispose of the lands or goods of any subjects of this kingdom; but that the fame ought to be tried and determined in the ordinary courts of justice, and by course of law.

× c. 29. 4. IF

Ch. 1. of PERSONS.

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 toldy 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 fuch third petition; and grievances feldom falling under the notice of the fovereign, he had little opportunity to redrefs 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 13 Car. II. st. 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 1 W. & M. st. 2. c. 2. that the subject hathe a right to petition; and that all commitments and profecutions for fuch 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

Montesq. Sp. L. 12, 26.

law.

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The RIGHTS BOOK I.

law. Which is also declared by the same statute i W. & M. st. 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, left his ignorance of the points whereon they are founded should hurry him into faction and licentiousness on the one hand, or a pufillanimous indifference and criminal fubmiffion on the other. And we have feen that thefe rights confift, 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 preferve these from violation, it is necessary that the constitution of parliaments be supported in it's full vigor; and limits, certainly known, be fet to the royal prerogative. And, laftly, 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 redrefs 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 fense 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 defire to do; and are restrained from nothing, but what would be pernicious either to ourselves or our sellow citizens. So that this review of our situation

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tion may fully justify the observation of a learned French author, who indeed generally both thought and wrote in the spirit of genuine freedom ; 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 samous father Paul to his country, "Esto Perpetua!"

2 Montesq. Sp. L. 11.5.

## COMMENTARIES

ONTHE

LAWS

OF

ENGLAND.

BOOK THE FOURTH.

BY
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SOLICITOR GENERAL TO HER MAJESTY.

THE FOURTH EDITION.

PRINTED AT THE CLARENDON PRESS.
M. DCC. LXX.

### Ch. 11. WRONGS. 147

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 sisteen, are bound to attend the justices in suppressing a riot, upon pain of sine and imprisonment; and that any battery, wounding, or killing the rioters, that may happen in suppressing the riot, is justistables. 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. st. 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 assisses or quarter sessions; and, in London, by the lord mayor, aldermen, and common councilk; 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%, 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-

i Hal. P. C. 495. 1 Hawk. P. C. 161. the reftoration, usually taken the lead in Petitions to parliament for the alteration of Why the corporation of London has, fince any established law.

T 2 merly

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merly allowable to every person diffeised, or turned out of posfession, unless his entry was taken away or barred by his own neglect, or other circumstances; which were explained more at large in a former volume1. 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. So that the entry now allowed by law is a peaceable one; that forbidden is fuch as is carried on and maintained with force, with violence, and unufual 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 fuch 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 unufual 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. 141.

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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".

- 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 with fine and imprisonment; which is confirmed by statutes Westm. 1. 3 Edw. I. c. 34. 2 Ric. II. st. 1. c. 5. and 12 Ric. II. c. 11.
- II. 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 fame principle that spreading of public news of any kind, without communicating it first to the magistrate, was prohibited by the antient Gauls. 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%, 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 fame denomination. Therefore challenges to fight, either by word or letter, or to be the bearer of fuch challenge, are punishable by fine and imprisonment, according to the circumstances of the offence q. If this challenge arises on account of any mo-

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<sup>&</sup>quot; Pott. Antiqu. b. 1. c. 26.

<sup>· 2</sup> Init. 226. 3 Inft. 198.

<sup>&</sup>quot; republica a finitimis rumore aut fama acceperit, Gall. lib. 6. cap. 19.

<sup>&</sup>quot; uti ad magistratum deferat, neve cum alio

<sup>&</sup>quot; communicet: quod saepe bomines temerarios

<sup>&</sup>quot; atque imperitos falsis rumoribus terreri, et

<sup>&</sup>quot; ad facinus impelli, et de summis rebus consi-

<sup>&</sup>quot; Habent legibus fanctum, si quis quid de " lium capere, cognitum est." Cael. de bell.

<sup>4 1</sup> Hawk, P. C. 135, 138.

Public Book IV.

ney won at gaming, or if any affault 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 impriforment.

13. Of a nature very fimilar to challenges are libels, libelli famoli, which, taken in their largest and most extensive sense, fignify any writings, pictures, or the like, of an immoral or illegal tendency; but, in the fense under which we are now to consider them, are malicious defamations of any person, and especially a magistrate, made public by either printing, writing, figns, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, and ridicule'. 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 laws: and therefore the fending 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. For the fame reason it is immaterial with respect to the essence of a libel, whether the matter of it be true or false"; fince the provocation, and not the falfity, 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"; 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 profecution, the tendency which all libels have to create animofities, and to disturb the public peace, is the sole confideration of the law. And therefore, in fuch profecutions,

<sup>\*</sup> Hawk. P. C. 193. Poph. 139. 1 Hawk. P. C. 195. \* Moor. 813. \* Moor. 627. 5 Rep. 125. 11 Mod. 99. \* 2 Brownl. 151. 12 Rep. 35. Hob. 215. \* See Vol. III. pag. 125.

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TO

THE RIGHT HONOURABLE THE

LORD-MAYOR,

THE

ALDERMEN,

R E C O R D E R, SHERIFFS,

AND

COMMON-COUNCIL,

OF THE

City of London,

IN FULL ASSURANCE OF THEIR ATTENTION

TO EVERY SINCERE ENDEAVOUR

FOR PROMOTING PUBLIC PEACE AND PROSPERITY,

THESE

REFLECTIONS

ARE MOST RESPECTFULLY INSCRIBED,

BY

WILLIAM BLIZARD,

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( vii )

to add others yet more extraordinary; and thus to endeavour, in some degree, to affish 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.

LETTERS

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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 folid ground. But here the difficulty commences; for it may be asked: " If the right of being collectively in-" structed in the use of arms is admitted in its full ex-" tent, would it be lawful for a vast multitude, to " the amount of many thousand armed men, without " any visible occasion or apparent lawful object, un-" authorifed by government or any magistrate, to as-" femble together, and march where they pleafed, " for the purpose, as they professed, of instructing " and exercifing 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 diffolution 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

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" exercise in the use of arms, which shall determine fuch 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 fuch 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 fuch 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 asfembled, 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 all without the authority of the civil magistrate. With these restrictions,

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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 affiftance 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 fudden and felonious riots, and the affiftance 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 affift, in the most effectual manner that he can, in

the

( 64 )

the general defence of his country, yet, in the modern fystem of war, the ordinary civil power of the state is become so completely and manifestly inadequate to the refisfance 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, fubject 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 fo long as the occasion continues, and therefore ought, properly and regularly, to act under commiffion from the crown or under the command of some of the king's officers: the king being, by the conftitution, the legal commander of the whole military force of the country. In any other fituation, but that of invalion 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-1315.

1815

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> 8 AFFRAY.

> > mon gaol of the county, there to remain, without bail or mainprize, 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.

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

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.

The punishment of common affrays is by fine and imprison-63. s. 21. 3 Inst. ment, 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,

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.

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. 5. 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.

and either detain him till it appear whether the party will live Philips - Trult or die, or carry him before a justice of the peace, by whom he 486. 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.

1 East. P. C.

A private person interposing in the case of sudden afrays, 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.

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

1 Hale, P. C.

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.

#### 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.

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.

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

TREATISE

OF THE

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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 Holumes.

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:

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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 reof 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 sist, &c. officers or exported upon debenture or certificate, or in rescuing the same in the execution 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

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" 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 dangerouly 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 Old Bailey within the penalties of this act, there must be an assembling of Dec. Session, three persons or more for the purpose of committing some or one 1785. Cases, of the offeness described in the statute. of the offences described in the statute.

+ Sect. 8. It is also said, (a) that to bring the offenders within (a) Hutchinthe penalties of the first clause of the above statute, they must be Cases, C.L. 280. armed with offensive weapons; but it is also said, that it is not ne- (b) Franklyn's cessary that every individual assembled should be provided with Case, Cald. 244. an offensive weapon (b); and yet it seems (c) that it must appear Case, Cases, on the trial that the prisoner was armed with an offensive weapon. Cro. Law, 281.

+ Sect. 9. It has also been said, that the weapons must be such as are calculated for the purposes of offence; therefore where one Stra. 1166.

O. B. 1786. man had only a common horsewhip, although all the rest of the p. 857. gang had fire-arms, the Attorney-general declined to argue the O. B. 1785, point, and the prisoner was discharged. So also a hatchet has 0. B. 1785, been thought no offensive weapon within this act, where it was p 780. only caught up upon the spur of the occasion, and belonged to the Cases in Cro. prisoner in the way of his business. So also a large stick with three Law, \$80.. 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?

+ Sect.

<sup>(1)</sup> See postes, the statute 52 Geo. 3. c. 143. in force inflicting the penalty of death for any act " for reducing into one act all the provisions now 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 vi-" zard, 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, ob-" struct, 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. S. 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;

+ 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, co-" coa-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 de-" stroy 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."

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

+ Sect. 12. By 24 Geo. S. c. 47. s. 11. it is further enacted, shall maliciously " 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 attempt-"ing 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

A William Blakings

## TREATISE

OF THE

# PLEAS

OF THE

# CROWN:

ORA

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 SAVOT,

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

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Pult. 3. Lamb. 126.

- Book I.

1 Keb. 911. one's Fift at him, or by any other fuch like Act done in an angry. 40 Ed. 3. 40 \* threatening Manner; and from hence it clearly follows, That one charged with an Asfault and Battery, may be found guilty of the former, and 45 Ed 3. 24. b. 25. 1. yet acquitted of the later. But notwithstanding the many ancient Opi-22 Aff. 60. nions to the contrary, it feems agreed at this Day, that no Words what-2 R. A. 545. foever can amount to an Affault. Pl. 1, 2, 3, 4, 5, 6, 7, 8. 22 Aff. Pl.11.

Sect. 2. As to the second Point, viz. What shall be said to be a Battery, It feems that any Injury whatfoever, be it never fo fmall, being actually done to the Person of a Man, in an angry, or revengeful, or rude, or infolent, Manner, as by Spitting in his Face, or any Way 6 Mod. 149, touching him in Anger, or violently justling him out of the Way, are Batteries in the Eye of the Law: But it is faid to be no Battery to lay one's Hand gently on another whom an Officer has a Warrant to arrest.

2 R. A. 546. and to tell the Officer that this is the Man he wants. Pl. 1, 2.

Sect. 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 feems to be no need of any farther Confideration 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 6 Mod. 172. 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.

> Sell. 4. As to the fourth Point, viz. How unlawful Affaults 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.

#### CHAP.

Of Affrays.

N treating of Affrays, I shall consider,

r. 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 feveral Kinds of Affrays may be punished.

Sect. 1. As to the first Point, it is said, That the word Affray is de-Inft. 158. rived from the French word Effraier, to terrify, and that in a legal Sense Dalt. ca. 8. it is taken for a publick Offence, to the Terror of the People, from whence it feems clearly to follow, That there may be an Affaux which Lamb. 125,

will not amount to an Affray; as where it happens in a private Place, out of the hearing or feeing of any, except the Parties concerned; in which Case it cannot be said to be to the Terror of the People; and for

this-

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126.

this Cause such a private Assault seems not to be inquirable in a Court 4H.6. 10. 1. Leet, as all Affrays certainly are, as being common Nusances.

Sect. 2. Also it is said, That no quarressome or threatening Words H.P.C. 135. whatfoever shall amount to an Affray; and that no one can justify lay- 21E 4.45.6. ing his Hands on those who shall barely quarrel with angry Words, Lamb, Conwithout coming to blows; yet it seemeth, That the Constable may, at stable 14. the Request of the Party threatened, carry the Person who threatens to beat him before a Justice of Peace, in Order to find Sureties.

Sect. 3. Also it is certain, That it is a very high Offence to challenge Poph. 158. another, either by Word or Letter, to fight a Duel, or to be the Mellen- 1 Sid. 186. ger of fuch a Challenge, or even barely to endeavour to provoke ano- 1 Keb. 694. ther to fend a Challenge, or to fight, as by dispersing Letters to that Hob. 120, purpose, full of Reflections, and infinuating a Defire to fight, &c.

Sect. 4. But granting that no bare Words, in the Judgment of Law, carry in them to much Terror as to amount to an Affray; yet it feems certain, That in lome Cales there may be an Affray where there is no actual Violence; as where a Man arms himself with dangerous and un- Limb. 126. usual Weapons, in such a Manner as will naturally cause a Terror to the a Inft. 160. People, which is faid to have been always an Offence at Common Law, 76 D. and is strictly prohibited by many Statutes: For by 2 Ed. 3. 3. it is en- 2 Rol. Ab. 78. acted, That no Man, great nor small, of what Condition soever he be, except H. P. C. 137. 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 affilting 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 Instices, 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 Franch fes, and their Bailiffs in the same, and Mayors and Builiffs of Cities and Boroughs, within the same Cities and Boroughs, and Borough-holders, Constatles and Wardens of the Peace within their Wards, Shall have Power to execute this Act: And that the Instices 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 tunish 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. I.

And in the Exposition of it, the following Points have been holden: Sect. 5. I. That any Justice of Peace, or other Person, who is im F. N. B. 249. 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 3 Inft. 161. that if he find any Person in Arms concrary to the Form of the Statute, he Lamb. 168, may feize the Arms, and commit the Offender to Prison; and that he &c. ought also to make a Record of his whole Proceeding, and certify the same Dalif 13 into the Chancery, where he proceeds by Force of the faid Writ, or into the Exchequer, where he proceeds ex Officio. A Fitter

Sed. 6. II. That where a Justice of Beace, &c. proceeds upon the Cro. El 294. faid Writ, he may not only imprison those whom he shall find offending Con Lamb. 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 proceeds ex Officio; for feeing the faid Writ hath no other Foundation but

2 Rol.Ab. 78.

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> the faid 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.

Ero El. 294.

Sect. 7. III. That the Under-Sheriff may execute the faid 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 exprelly command him to act in his proper Perfon.

24 Ed.33.a.b. 21 H. 7.39.0. 3 laft. 161, 162. Con. 2. Rol. 2.H. 7. 39.2.

Set. 8. That a Man cannot excuse the wearing such Armour in Publick, by alledging that fuch 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 Penaky of the faid Statute for affembling his Neighbours and Friends in his own Houle, against those who threaten to 3 Inft. 162. do him any Violence therein, because a Man's House is as his Castle.

3 Mod. 1:7.

Sett, 9. V. That no wearing of Arms is within the meaning of this Statute, unless it he accompanied with such Circumstances as are apt to 2 Bull. 330. 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 shejr Ornament or Defence, in such Places, and upon such Occallons, in which it is the common Falhion to make ule of them, without eauling the least Suspicion of an Intention to commit any Act of Violence or Diffurbance of the Peace. And from the fame Ground it also follows, That Perfors 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.

Crom. 64. 8.

Sect. 19. VI. That no Person is within the Intention of the said Statute. who arms himself to suppress Rioters, Rebels, or Enemies, and endear yours to suppress or result such Disturbers of the Peace or Quiet of the Realm; for Persons who to arm themselves, seem to be exempted out of the general Words of the faid Statute, by the Part of the Exception in the beginning thereof, which foems to allow all Persons to arm themselves upon a Cry made for Arms to keep the Peace, in such Places where such is the date of the Acts happen.

Poph, 121, 122,

Lamb. 131. 3 Inft. 158. H. P. C. 131. 2 Inft. 52. 22 E. 4 44.b. Dalt. cap. 8. Lamb 131.

Self. 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 thom, and also stay them till the Heat be over, and then deliver them to the Contable, who may imprilon them till they find Surgery for the Peace; also it is faid, That any private Person may stop those whom he shall see coming to join either Party; and from hence it feems clearly so follow. That is a Man receive a Hurt from either Party in 2 1 thus endeavouring to professe the Peaco, he shall have his Remedy by an Action against hims also upon the same Ground it seems equally realongble, That if he unavoidably happen to hust either Party, in thus doing what the Law bath allows and commends, he may well justify it. inal much as he is no Way in Fault; and the Damage done to the other. was occasioned by a laudable intencion to do him a Kindness.

Con Lamb. Dalt. cap. 8

114 12 However it fooms dear, That if either Party be dangeroully wounded in such an Affray, and a Stander by, endeavouring to an-Dale cap a reft 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 ad he is bound under Pain of Fine and Imprisonment, to arrest such an Ofment 35.44. fender, and either detain him till it appear whether the Perty will live on die, or carry him before a Justice of Prace, by whom he cither is to be bailed or committed, ora.

Lamb. 131. Inft. 158, J Bin. Faux 10 H. 7. 20. 2 Inft. 52.

Se.T.

DIMERSON GOOD C

## Chap. 61.

## Of Affray.

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Sect. 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 impower'd, as all private Persons are, to part an Affray which happens in 3 Inst. 158. his Presence, but is also bound at his Peril to use his best Endeavours to H. P. C. 135. this Purpole, and not only to do his utmost himself, but also to demand the Affiltance of others, which if they refuse to give him, they are pu- Dalt cap. 8. nishable with Fine and Imprisonment.

Sect. 14. And it is faid, That if a Constable see Persons either actually engaged in an Affray, as by Striking, or offering to firike, or drawing Lamb 132, their Weapons, &c. or upon the very Point of entering upon an Affray, 133 as where one shall threaten to kill, wound, or beat another, he may ei- Dalt ca. 1, 8. ther carry the Offender before a Justice of Peace, to the End that fuch H. P. C. 136. Justice may compel him to find Sureties for the Peace, Oc. or he may Dalt. cap 1,8. imprilon him of his own Authority for a reasonable Time, till the Heat Bro. Surety, shall be over, and also afterwards detain him till he find such Surety by Moore 184. Obligation: But it feems, That he has no Power to imprison such an Pl. 436. Offender in any other manner, or for any other Purpose; for he cannot 3H 4 9.4.

Offender in any other manner, or for any other Purpose; for he cannot 21Ed 4.35.b. justify the committing an Affrayer to Gaol till he shall be punished for his 10 Ed. 4 18. Offence: And it is faid, That he ought not to lay Hands on those, who 5 H. 7.6. a. barely contend with hot Words, without any Threats of personal Hurc, and that all which he can do in such a Case, is to command them under Pain of Imprisonment to avoid Fighting.

Sett. 15. But he is fo far intrusted with a Power over all actual Af- H.P.C. 136. frays, that though he himself is a Sufferer by them, and therefore liable 1Rol.Re. 138. to be objected against, as likely to be partial in his own Cause, yet he 1 Bulft. 319. may suppress them; and therefore, if an Assault be made upon him, he may not only defend himfelf, but also imprison the Offender, in the same

manner as if he were no way a Party.

Sett. 16. And if an Affray be in a House, the Constable may break 7 Ed. 3.12.b. open the Doors to preferve the Peace; and if the Affrayers fly to a House, Dalt. cap. 8, and he follow with fresh Suit, he may break open the Doors to take Lamb 133,

Sed. 17. But it is faid, That a Constable hath no Power to arrest a H.P.C. 135. Man for an Affray done out of his own View, without a Warrant from a Cro. El. 375.

Owen 105.

Justice of Peace, unless a Felony were done or likely to be done; for it H.P.C. 136. is the proper Business of a Constable to preserve the Peace, not to punish H. P. C. 92. the Breach of it; nor does it follow from his having Power to compel thole 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 faid, That he may carry those before a Justice of Peace, who Lamb, 131. were arrested by such as were present at an Affray, and delivered by Dalt. cap. 8. them into his Hands.

Sect. 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 H.P.C. 136. Conflable, are either enabled, or required by the Law to do : But it is Dalt cap & faid, That he cannot without a Warrant authorize the Arrest of any Perfon for an Affray out of his View; yet it feems clear, that in fuch Cafe he 6. 12, 33. may make his Warrant to bring the Offender before him, in order to 14 H. 8.7. Moore 468. compel him to find Sureties for the Peace.

Lamb. 132, 3 H. 7. 10.b.

PL 551.

N'n

## COMPENDIUM

OF THE

## COMMON PV M

Dane

IN FORCE

KENTUCKY,

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.

## Of public wrongs.

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or where the affray occurs in the presence of a court of justice, or in a church or church yard. 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.

### Of public wrongs.

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

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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 e try 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 people, 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 guarranties 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

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# The papers of Thomas Jefferson

Volume 1 · 1760-1776

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## 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,1 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;

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#### 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 by or through him, and all other persons whatsoever shall be & for ever remain incapable of the same; and that the said office shall henceforth cease and never more either in name or substance be re-established within this colony.

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

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#### 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'st day of October]<sup>3</sup> and shall meet in General assembly on the [15'th 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.

All male persons of full age and sane mind having a freehold

Electors.

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. 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

The house of Representatives when met shall be free to act according to their own judgment(s) and conscience.

Senate.

his use.

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 ap- Adminispointed 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.

Under him shall be appointed by the same house and at the same Deputy time a Deputy Administrator to assist his principal in the discharge

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#### 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;)4
- 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.

Privv 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.

an Attorney general shall be appointed by the house of Repre-Genl. sentatives.

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#### III. JEFFERSON'S THIRD DRAFT

High-sheriffs and Coroners of counties shall be annually elected High 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.

sheriffs &c.

All other Officers civil and military shall be appointed by the Ad- other ministrator; 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.

#### 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 County 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.

The Judges of the General court and of the High court of Chan- Genl. Court cery 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.

and High Ct. of Chancery.

The Court of Appeals shall consist of not less than [7] nor more Court of 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 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-

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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

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#### 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 Legisla-

ture 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 independent 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 Slaves. the same in slavery under any pretext whatever.

All persons who by their own oath or affirmation, or by other Naturalizatestimony 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.

All persons shall have full and free liberty of religious opinion; Religion. nor shall any be compelled to frequent or maintain any religious institution.

No freeman shall be debarred the use of arms [within his own Arms. lands or tenements]

There shall be no standing army but in time of actual war.

Standing Free press.

Printing presses shall be free, except so far as by commission of private injury cause may be given of private action.

All Forfeitures heretofore going to the king, shall go to the state; Forfeitures. save only such as the legislature may hereafter abolish.

The royal claim to Wrecks, waifs, strays, treasure-trove, royal Wrecks. mines, royal fish, royal birds, are declared to have been usurpations on common right.

No Salaries or Perquisites shall be given to any officer but by Salaries. 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.

(The Qualifications of all officers not otherwise hereby directed, Qualificashall be an oath of fidelity to the state, and the having given no bribe

#### 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 Evarts 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.

3 The square brackets here and below in the text are in the MS.

4 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.

5 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.

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AN

# ASSISTANCE

TO

Justices of the Peace,

FOR THE

EASIER PERFORMANCE

OF THEIR

# DUTY.

By JOS. KEBLE, of Grays Inn, Efq;

LONDON,

Printed by W. Rawlins, S. Roycroft, and H. Sawbridge Affigns of Richard and Edward Atkins Esq;

For Samuel Steble at the Turks Head over against Fetter Lane End in Fleet-street. MDCLXXXIII.

## Constable.

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fame Authority that the Constable of a Vill or Wapentake hath at this day by the Common Law, Dalt. 47. cap. 16. Infra 6. 54, 56.

IV. Dalt. 3. cap. 1. The High-Constables of Hundreds are Conservators pety-sessions 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.

V. Dalt. 3. cap. 1. Every Pety-Constable within the limits of their se-peaces veral Towns, be Conservators of the Peace at the Common Law, by vertue of their Ossice; 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 6. 65.

VI. Lamb. 1. cap. 3. pag. 15. I have read also that a Constable might at Bail, 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.

VII. Lamb. 1. cap. 13. pag. 65. And if a Justice of Peace make any War- Process, rant, 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 Consta-

ble, 19, 20.

VIII. Lamb. 2. cap. 2. pag. 118, 119. Besides this, you may see admit-Imprisonmented 13 H.7. 10. Recogn. Br. 14. by the opinion of the Court, that is a man in the Night-season haunt a House that is suspected for Bawdry, or use suspected support of the Constable Arrest him to find Sureties of his Good abearing, Lamb. Duty of Constable, 12, 13. Kitch. 48 b.

IX. Lamb. 2. cap. 3. pag. 134. If one do make an Affray upon a Justice Affray. 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.

X. Lamb. 134. ibid. And the Justice or Constable may, if need be, com- Process, mand affistance of the Kings people for the pacifying of an Affray, Dalt.

33. cap. 8. Kitch. 48 a. b.

XI. Lamb. 134. ibid. If he that maketh an Affray do flee into a House Fresh Suit, 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.

XII. Lamb. 134, 135. Now if the Constable do Arrest one that hath hurt Escape, 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.

XIII. Lamb. Duty of Constable, 5. Out of which Office (viz. of Consta-Officer, ble 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, M m

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## Constable.

and 13 Ed. 1. St. 2. cap. 6. §. 1. N. 12. shall present before Justices affigued 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.

Arreft.

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 affish them, and except it be upon Hueand-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. 3.3.6.1. 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. (rompt. 223 b.

Arreft.

XVII. Lamb. Duty of Constable, 14. If any man do threaten to kill another, and he which is so threatned 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 resuse to find it; but if he yield to go, it shall be good to take the party threatned 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 as under, 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.

Sciffere.

303, 352, 353.

XX. Lamb. Duty of Constable, 17, 18. And if any man shall slee 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

Constable.

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he do it by Inventory taken in the presence, and by the testimony of the honest Neighbours, 3 Ed. 3. iter Northamb. 1 R. 3. 3. 6. 1. N. 4. Dalt. 293. cap. 110. Poult. de Pace 235. Forfeiture, 44. 33. 70. Stamf. 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 be-Imprisonment fore, 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.

XXIII. Lamb. Duty of Constable, 20, 21, 22. If a Warrant for the peace Process. or good abearing happen to be directed to any of these said Officers, then ought he with all speed and secretie 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.

And this if the party shall refuse to do, then ought such Officer forth-with 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 justifie 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. 20.

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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 Supersedeas 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 Supersedeas 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 Con-Process
stable, or such other Officer, to arrest one that is Indicted of Felony, then
may such Officer justifie the killing of such a party, if it be so that he cannot otherwise take him, or if so be that he resist, or sly when he is taken,
22 Ass. 59. Coron 261, 288, 328. Mm 2 XXV.

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## 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- SII. The RELIGION of MENT of ATHENS. SO GREECE.

- Antiquam exquirite Matrem. Virgil.

- Vos exemplaria Græca

Nocturna versate manu, versate diurna. Horat.

#### LONDON:

Printed by Sam. Palmer, for J. Knapton, R. Knaplock, J. and B. Sprint, D. Midwinter, R. Robinson, W. Taylor, W. and J. Innys, J. Osborn, W. Mears, A. Warb, and J. Bateman,

Till twenty, Men shall remain within Attica to be ready in Arms, after that they shall serve in the Army without Attica. See Book III. Chap. ii.

He shall be Ating, who offers to serve in the Horse, before he has un-

dergone the accustom'd Probation t. See Book III. Chap. iii.

The Chivalry shall be detach'd out of the most puissant and wealthy A-thenians".

Soldiers shall not observe the Punctilios of Spruceness and Foppery, in their Hair, &c. W. This Law was enacted by Cincas and Phrynus. See Book III. Chap. viii.

None shall pawn their Arms x.

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 Monthy. See

Book III. Chap. vii.

The Ceremony for proclaiming of War shall be by putting a Lamb into the Enemy's Territories 2. See as before.

The Polemarch shall lead up the right Wing of the Army . See Book III.

Chap. iv.

All publick Revenue-keepers, and Dancers at the Aiovo and, shall be exempted from serving in the Army b. See Book III. Chap. ii.

## Of Military Punishments and Rewards.

HEY, who have maintain'd their Post with Courage, shall be advanc'd, and others degraded c. 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 Crimerequires, a Mulct, or corporal Penance; if the former, he shall lie in Goal till he pays it d. See as before, and in the Laws following.

Let him be ATIMG, who casts away his Arms c.

He, who during the War by Sea, runs away from his Ship; and he, who being prest doth not go, shall be Arius. See Book III. Chap. xx.

All disabled and wounded Soldiers shall be maintain'd out of the pub-

lick Fame 8. 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 prefented with a whole Suit of Armour, settled every one in his respective

I Ulpianus in Olinthiac. III. t Lysias in Alcibiadem. " Xenophon Hipparchico. W Aristophanis Scholiastes ad Equites. x Idem ad Plutum, y Zenobius, Cent. II. Prov. LXXIX. <sup>2</sup> Disgenianus Cent. II. Prov. XCVI. <sup>2</sup> Herodotus Erato. b Demosthenes in Neeram, & in Mediam. c Xenophon Hipparchico. d Demosthenes in Timocratem, Eschines in Ctesiphontem. e Lyfias Orat. I. in Theomnestum. f Plusarchus Solone. B Lacrtins Solone.

Calling, and honour'd with first Seats in all publick Places . One of Solon's Laws.

### Miscellany Laws.

HEY shall be prosecuted for Ingratitude, who do not retaliate Kindnesses.

in all Deeds, Compacts, Suits, and other Concerns k.

A Discoverer, who alledges Truth, shall be secure; but if Falshood,

shall auffer Death'.

He shall be Atino, who stands Neuter in any publick Sedition. 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". 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. 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 P. 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 Arcopagites to Banishment, return q.

Those Compacts shall stand good, which have been approv'd of by

the Judges".

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 s.

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.

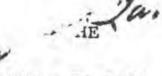
When any Person is accus'd contrary to this Oath, use may be made of the Plea call'd Dasagaph; the Archons shall have Cognizance of this Matter, and he that makes the Plea, shall make his Desence first; the Party that is cast, shall have the Fine call'd Exwestia impos'd upon him. This Law was enacted by Archinus, as a Security to the former.

No Stranger shall be wrong'd or injur'd".

Put the bewildred Traveller in his Way, and be hospitable to Strangers. No Seller of Rings shall keep by him the Signature of a Ring, when fold. One of Solon's Laws.

P Lucianus Abdicato, Valerius Maximus, lib. V. cap. 3. i Demossih. in Baotum.

κ Andocides de Mysteriis. i Plutarchus Solone. m Suidas. n Lucian Anacharside. ο Χενορhon Ελληνικών, lib. I. P Dinarchus in Demosshen. 9 Demossihenes Halones. r Cicero, Philip. I. r Lysias in Ctessphontem. t Andocides de Mysteriis: u Χενορhon Απομνημ, lib. II. w Cicero de Offic. lib. III.



WORKS

17804

OF

#### THE HONOURABLE

## JAMES WILSON, L. L. D.

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. LEGUR OMNES SERVI SUMUS, UT LIBERI ESSE POSSIMUS.

C10

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. 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.

Wounding is a dangerous hurt given to another; and is an aggravated species of battery.

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.

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.

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

c 1. Haw. 134. d 3. Bl. Cora. 120. c Id. 121.

<sup>1 1.</sup> Haw. 134, 4: Bl. Com. 217. 5 4. Bl. Com. 217.

#### LECTURES ON LAW.

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 nuistances. 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. 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.

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: duels are direct and insolent contempts of the justice of the state.

Affrays are punished by fine and imprisonment, the measure of which must be regulated by the circumstances of the case. For sending a challenge, the offenders have been adjudged to pay a fine, to be imprisoned, to

<sup>3.</sup> Ins. 158. 4. Bl. Com. 145. 11. Haw. 135

j 3. Ins. 158. 1. Haw. 135. k 1. Haw. 188. I 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.

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, 1785.

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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

#### JEFFERSON'S WORKS.

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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

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#### CORRESPONDENCE.

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. 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

<sup>\*</sup> Livy, Sallust, Casar, Ciccro's epistles, Suetomus, Tacitus, Gibbon.

#### JEFFERSON'S WORKS.

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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. 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.

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.

Pagis, August 20, 1785.

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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,



VOLUME XXIX.

MONDAY MORNING, MARCH 7, 1853.

NUMBER 3926.

### City Intelligence.

FRIDAY March 4.

THE CHARLESTOWN EXCITEMENT. The following is a but 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.

- Grovernor of Boston-charged with having refused to leave when ordered so to do by the police.

Coorge 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 McBerry of East Boston-for refusing to leave.

Timothy Conner, John Scott, James Cawley, William Garrett, of Boston; Win. Bragg, Roger Alden, John Bright and Patrick Gohan of Roxhury; Patrick Goyer of Brookline; Joshua Puller, and Prederick T. Krautz and son, of Charlestown, severally for disturbing the peace by loud outcrees.

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 floston regiment, after stopping at the Charlestown City Hall for a short time, marched to the National House, where Mayor Frotbingham bid them welcome in a brief speech, in which he returned his thanks to the officers and men for the prompiness 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 artisins would have spoken muder than their words. At Faneuil Hall, before dismissing the companies, 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 necooky.

Last night a large police force was on patrol in the neighborhood of the Catholic church ; but everything was quiet.

## OITY ITEMS.

over.—Edward Doctsch (pronounced Dutch, re) was yesterday arraigned to answer the charge would be a special benefit of said about his person, for the special benefit of said fois feeling of hostility towards a fellow country-delizen was created by the circulation of a little slander concerning Doctsch in regard to his persondition, and his disposition to pay his debts, ander he traced to Kuck. As one party violated of carrying a concealed weapon, and the other is spirit of vindictiveness, the Mayor required gree security for their good behavior in future.

#### A. J. SHAKESPEARE,

Editor and Proprietor.

The GAZETE is ontered at the post-office Kalamazoo as second class matter. ..

FRIDAY.....JANUARY 18, 1889 

#### CRIMES OF A YEAR.

Nearly 300 Cases Disposed of by the Recorder 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 imprisoned.

)

Disorderly, 34: 21 imprisoned, 1 acquitted, 10 dismissed, 2 nolle pros'd.

Drunk, 75: 39 imprisoned, 25 fined, 2 acquitted, 9 nolle pros'd.

Petty lurcony, 41: 10 sent to Ionia 60 days each, 8 jail 90 days, 4 jail 30 days, 2 jail 60 days, 2 jail 20 days, 3 reform school, 8 acquitted, 6 nolle pros'd.

Grand larceny 7: 4 bound over to circuit court, 2 nolle pros'd: 1 discharged.

ouit court, 2 nollo pros'd; 1 discharged. Disturbing religious meeting 2; 1

convicted, I nolle pros'd.

False pretenses 2; 1 discharged, 1 nollo pros'd.

Carrying concealed weapon 1; 30 days in jail.

Truant disorderly 10; 3 boys sent to reform school, 4 girls to Adrian reformatory, 3 nolle pros'd.

Slander 2; I acquitted, I nolle pros'd. Malicious injured to property 2; discharged.

Malicious 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 nollo pros'd.
Bastardy 1; nollo pros'd.
Violation of liquor law 14; 9 bound
over to circuit court, 5 nolle pros'd.

Adultory 2; discharged. Jumping board bill 1; nolle pros'd.

Violation game and fish law 1; nolle

Robbery 3; bound over to circuit court.

Keeping houses of ill-fame 4; bound over to circuit court.

Larcony 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

Forgery 8; 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.

hig Bullars Per Year. ? Three Cents Per Capy.

RICHMOND, VA., MONDAY EVENING, SEPTEMBER 16, 1872.

VOL. IV. NO. 280.

#### LOCAL MATTERS.

Buttes of Justices of the Pence-A Timely Let-ter from Mayer Kelley.

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 1869-770, 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 adthority 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 arrising 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 other-wise, 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 larce-cies 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 au-

1. 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 proany person making an affray, using threat-ening 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 pursoner 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 admin-ister 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 subpænas 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 recogni-zance 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, 2,051 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 pris-

oner 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 com-plainants to "get a warrant," and the de-fendent " 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 examinationoftentimes dismissed by the justice who se-cured a half a dollar for issuing the process -a significant commentary on the reck-lessness with which the function is exer-

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.

Add. 182

# Evening



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 SolREE for the season comes off to-night. Don your pumps and take your partners for a-quadrille.

CONUNDRUM — Why is Hopkins' Basaar 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, earrying concealed weapons; security and costs. Ann Bothe and Ellen Hall, out after hours; fine \$3 and costs each.

VOL. XIX .-- NO. 126.

RICHMOND, VA., SATURDAY, JUNE 1, 1861.

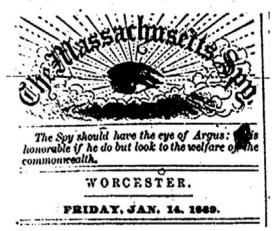
PRICE ONE CENT.

## LOCAL MATTERS.

Using Unlawful Weapons.—Mathew Eagan, an old frequenter of the Mayor's Court, was brought up again yesterday, and held to ball in the sum \$150 for striking Morris Lee with a bar of iron, and habitually going armed.—He gave the bail.

ase: 17-2202 Document: 00117305304 Page: 225 Date Filed: 06/21/2018 Entry ID: 617898

## The Massachusetts Spy: Worcester, Friday, January 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 pence; committed.

Levi Johnson of Clinton paid a fine of \$10 and costs for keeping liquor.

ase: 17-2202 Document: 00117305304 Page: 226 Date Filed: 06/21/2018 Entry ID: 617898

Morning



Oregonian.

VOL. VII

PORTLAND, OREGON: TUESDAY MORNING, AUGUST 6, 1867.

NO +

RECORDER'S Count, -The following cases were disposed of in the Recorder's Court yesterday;

Sevier Latour, tried for an assault and battery on Al-

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. Case: 17-2202 Document: 00117305304 Page: 227 Date Filed: 06/21/2018 Entry ID: 6178985

#### **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
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June 13, 2018

Case: 17-2202 Document: 00117305304 Page: 228 Date Filed: 06/21/2018 Entry ID: 6178985

#### **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:

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