

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

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EDWARD PERUTA, et al.,  
*Plaintiffs-Appellants,*

v.

COUNTY OF SAN DIEGO, et al.,  
*Defendants-Appellees.*

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ADAM RICHARDS, et al.,  
*Plaintiffs-Appellants,*

v.

ED PRIETO, et al.,  
*Defendants-Appellees.*

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On En Banc Review of Appeals from the United States District  
Courts for the Southern and Eastern Districts of California

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

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## **CORPORATE DISCLOSURE STATEMENT**

*Amicus Curiae* 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.

/s/ *Deepak Gupta*  
Deepak Gupta



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## INTRODUCTION AND INTEREST OF *AMICUS CURIAE*

Everytown for Gun Safety is the largest gun-violence-prevention organization in the country. It has over 2.5 million supporters, including over 275,000 California residents and the mayors of over 50 California cities. Everytown has devoted substantial resources to researching historical firearms legislation and has recently drawn on this material to file briefs in two important Second Amendment cases. *See Silvester v. Harris*, No. 14-16840 (9th Cir.); *Colorado Outfitters Ass’n v. Hickenlooper*, No. 14-1290 (10th Cir.). In these briefs, Everytown sought to assist the courts by providing relevant, previously overlooked historical materials. It seeks to do the same here.<sup>1</sup>

These consolidated cases involve a constitutional challenge to California’s regulatory scheme for carrying handguns in public. California does not ban all public carry, nor do the two counties whose policies are at issue. Instead, California has taken an approach like that of eight other States, collectively expressing the popular will of more than a quarter of the American people. As implemented by San Diego and Yolo Counties, California’s law has two important features: First, it generally allows open carry in sparsely populated (*i.e.*, unincorporated) areas comprising the vast majority of each County’s geography (84% and 95%,

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<sup>1</sup> All parties consent to the filing of this brief, and no counsel for any party authored it in whole or part. Apart from *amicus curiae*, no person contributed money intended to fund the preparation and submission of the brief.

respectively). Cal. Penal Code §§ 25850(a), 26350(a). Second, it permits concealed carry throughout the State, including in populated (*i.e.*, incorporated) areas, but only upon a showing of “good cause,” which the Counties have interpreted to require more than a generalized fear for personal safety. *Id.* § 26170(a)(2).

In striking down this regime, a panel of this Court held that California’s law “destroy[s] the right [to bear arms] altogether.” Panel Op. 47. But that holding rests on both a misapprehension of how the law operates and a woefully incomplete historical account. As to the former: Although the panel determined that “open carry is prohibited in San Diego County,” *id.* at 48 & n.16, it is in fact permitted in the unincorporated areas that constitute 84% of the County. As to the latter: Although the panel purported to undertake “a complete historical analysis” of the right to bear arms outside the home, *id.* at 58, it relied almost entirely on 19th-century cases and laws from the slaveholding and sparsely populated South—while overlooking a seven-century Anglo-American tradition of restricting public carry in populated areas.

This brief provides an account of that tradition. For centuries, English law broadly prohibited anyone from carrying a dangerous weapon in public, beginning with the Statute of Northampton in 1328, and continuing after the English Bill of Rights of 1689. This tradition took hold in America in the 17th and 18th centuries, when several colonies enacted similar restrictions. And it carried into the 19th

century, when three distinct types of public-carry laws predominated: one primarily northern, one southern, and one western. The panel focused exclusively on the southern model, the most permissive of the three, which regulated only the manner of carry (open, not concealed) and was motivated largely by the ever-present fear of slave rebellions. But the other two approaches—which themselves derived from centuries-old regulations—provide a firm historical pedigree for the law at issue here. The northern model required “reasonable cause to fear an assault or other injury” to carry a firearm in public (much like California’s “good cause” requirement), while the western model prohibited public carry in cities, towns, and villages, but not rural areas (much like California’s incorporated/unincorporated distinction). Altogether, by the end of the 19th century, nearly 20 States and many cities had at some point enacted laws embodying one of these two approaches.

Because California’s law carries forward this longstanding tradition, it is constitutional under *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). Although such a robust historical pedigree is not necessary to satisfy the Second Amendment, it is sufficient to do so. Whatever the Second Amendment’s precise contours or scope, there can be no doubt that a law that has its roots in 14th-century England, and operates as dozens of American laws did throughout the 19th century, both before and after the 14th Amendment, is consistent with our “historical tradition,” *id.* at 627, and thus constitutional.

## BACKGROUND

### A. English History

**1. Beginning in 1328, England broadly restricts public carry in populated areas.** The Anglo-American tradition of restricting public carry in populated areas stretches back to at least 1328, when England enacted the Statute of Northampton, providing that “no Man great nor small” shall “go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, *nor in no part elsewhere.*” 2 Edw. 3, 258, ch. 3 (1328) (emphasis added). Shortly thereafter, King Edward III directed sheriffs and bailiffs to arrest “all those whom [they] shall find going armed.” Charles, *The Faces of the Second Amendment Outside the Home*, 60 Clev. St. L. Rev. 1, 13-14 (2012). His successors did so as well. *Id.* at 16-25. This prohibition “did not extend to the realm’s unpopulated and unprotected enclaves,” however, because “English law generally made exceptions for the use of arms in the countryside.” *Id.* at 19.

Over the ensuing decades, England repeatedly reenacted the public-carry restriction. *See, e.g.*, 7 Ric. 2, 35, ch. 13 (1383); 20 Ric. 3, 93, ch. 1 (1396) (“[No one] little nor great, shall go nor ride by Night nor by Day armed . . . without the King’s special License.”). Because this restriction carried misdemeanor penalties, violators were usually required to forfeit their weapons and pay a fine. *See id.* A separate law went further, outlawing “rid[ing] armed covertly or secretly with Men

of Arms against any other.” 25 Edw. 3, 320, ch. 2, § 13 (1350). Because this law regulated more dangerous behavior than simple public carry, it had heavier penalties. *Id.*

By the 16th century, firearms had become increasingly accessible in England, and thus increasingly threatening to public safety. To guard against this threat, Queen Elizabeth I in 1579 called for robust enforcement of the Statute of Northampton’s prohibition on carrying “Daggers, Pistols, and such like, not only in Cities and Towns, [but] in all parts of the Realm in common high[ways], whereby her Majesty’s good quiet people, desirous to live in [a] peaceable manner, are in fear and danger of their lives.” Charles, *Faces of the Second Amendment*, 60 Clev. St. L. Rev. at 21 (spelling modernized). The carrying of “such offensive weapons” (like “Handguns”), she elaborated, and “the frequent shooting [of] them in and near Cities, Towns corporate, [and] the Suburbs thereof where [the] great multitude of people do live, reside, and trav[el],” had caused “great danger” and “many harms [to] ensue.” *Id.* at 22 (spelling modernized). Fifteen years later, she reaffirmed that publicly carrying pistols and daggers—whether “secretly” or in the “open”—was “to the terrour of all people professing to travel and live peaceably.” *Id.*

**2. In the 17th and 18th centuries, English authorities interpret the Statute of Northampton to restrict public carry in populated areas.** This understanding of the law—as broadly prohibiting carrying guns in populated

public places—continued into the 17th and 18th centuries. *See generally* Charles, *The Statute of Northampton by the Late Eighteenth Century*, 41 Fordham Urb. L.J. 1695 (2012). In 1644, for example, Lord Coke—“widely recognized by the American colonists as the greatest authority of his time on the laws of England,” *Payton v. New York*, 445 U.S. 573, 593-94 (1980)—described the Statute of Northampton, in a chapter entitled “Against going or riding armed,” as making it unlawful “to goe nor ride armed by night nor by day . . . in any place whatsoever.” Coke, *The Third Part of the Institutes of the Laws of England* 160 (1817 reprint).

One century later, Blackstone—“the preeminent authority on English law for the founding generation,” *Heller*, 554 U.S. at 593-94—described the statute similarly: “The offense of riding or going armed with dangerous or unusual weapons is a crime against the public peace, by terrifying the good people of the land, and is particularly prohibited by the statute of Northampton.” 4 Blackstone, *Commentaries on the Laws of England* 148-49 (1769). In other words, because carrying a dangerous weapon (such as a firearm) in populated public places naturally terrified the people, it was a crime against the peace—regardless of whether it was accompanied by a threat, violence, or any additional breach of the peace. *See Chune v. Piott*, 80 Eng. Rep. 1161, 1162 (K.B. 1615) (Croke, J.) (“Without all question, the sheriffe hath power to commit . . . if contrary to the Statute of Northampton, he sees any one to carry weapons in the high-way, in terrorem populi Regis; he ought



to take him, and arrest him, notwithstanding he doth not break the peace in his presence.”); *King v. Hutchinson*, 168 Eng. Rep. 273, 276 (1784) (holding that “guns [and] pistols” are “dangerous” and “offensive” weapons). Blackstone traced this prohibition back to “the laws of Solon,” under which “every Athenian was finable who walked about the city in armour.” Blackstone, *Commentaries* 149.<sup>2</sup>

To carry out the Statute of Northampton’s prohibition, British constables, magistrates, and justices of the peace were instructed to “Arrest all such persons as they shall find to carry Daggers or Pistols” publicly. Keble, *An Assistance to the Justices of the Peace, for the Easier Performance of Their Duty* 224 (1683) (further advising that “if any person whatsoever . . . shall be so bold as to go or ride Armed, by night or by day, in Fairs, Markets, or any other places . . . then any Constable . . . may take such Armor from him for the Kings use, and may also commit him to the Gaol”); see also Lambarde, *The Duties of Constables, Borsholders, Tythingmen, and Such Other Low and Lay Ministers of the Peace* 13-14 (1602) (same).<sup>3</sup>

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<sup>2</sup> The same description of the statute appears in “the most important early American edition of Blackstone’s *Commentaries* (by the law professor and former Antifederalist St. George Tucker).” *Heller*, 554 U.S. at 594; see Tucker, *Blackstone’s Commentaries* 149 (1803).

<sup>3</sup> See also 1 Hutcheson, *Treatise on the Offices of Justice of Peace* app. I at xlvi (1806) (citing Cromwell, *Instructions Concerning Constables* (1665)) (“A constable shall arrest any person, not being in his Highness service, who shall be found wearing naugbuts, or guns, or pistols, of any sort.”); *id.* at lxx-lxxvi (citing *Commission and Instructions to the Justices of Peace & Constables* (1661)) (same).

**3. The law's narrow exceptions confirm this general prohibition on public carry.** In addition to its focus on populated public places, the Statute of Northampton was understood to contain several limited exceptions. One important exception was that the prohibition did not apply inside the home, in keeping with principles of English self-defense law. As Lord Coke explained, using force inside the home “is by construction excepted out of this act[,] . . . for a man’s house is his castle.” Coke, *Laws of England* 162. “But [a man] cannot assemble force,” Coke continued—including by carrying firearms—even “though he [may] be extremely threatened, to go with him to Church, or market, or any other place, but that is prohibited by this act.” *Id.*<sup>4</sup> William Hawkins, in writing about the law, likewise explained that “a man cannot excuse the wearing [of] such armour in public, by alleging that such a one threatened him, and he wears it for the safety of his person from his assault,” but he may assemble force “in his own House, against those who threaten to do him any Violence therein, because a Man’s House is as his Castle.” 1 Hawkins, *A Treatise of the Pleas of the Crown* 489 (1721) (1824 reprint); *see also id.* at 516; 1 Russell, *A Treatise on Crimes & Misdemeanors* 589 (1826) (writing

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<sup>4</sup> *See also* 1 Hale, *History of the Pleas of the Crown* 547 (1800) (noting that armed self-defense was permitted in the home, but not during “travel, or a journey,” because of the “special protection” accorded the “home and dwelling”); *Semayne’s Case*, 77 Eng. Rep. 194, 195 (K.B. 1603) (“[E]very one may assemble his friends and neighbors to defend his house against violence: but he cannot assemble them to go with him to the market, or elsewhere for his safeguard against violence.”).

same to American audience); Tucker, *Blackstone's Commentaries* 225 (explaining castle doctrine's confinement to the home).<sup>5</sup>

There were two other important exceptions to the general public-carry prohibition: a narrow (unwritten) exception permitting high-ranking nobles to wear fashionable swords and walk in public with armed servants, and a narrow (written) exception for the King's officers. See Hawkins, *Treatise of the Pleas of the Crown* 489, 798 (explaining that noblemen were in "no danger of offending against this statute" by wearing "weapons of fashion, as swords, &c., or privy coats of mail," or by "having their usual number of attendants with them for their ornament or defence," for that would not "terrify the people").<sup>6</sup> Putting these exceptions together, "no one" could "carry arms, by day or by night, *except the vassals of the great lord of the land, carrying the swords of their masters in their presence*, and the serjeants-at-arms [of the royal

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<sup>5</sup> A contrary rule—permitting armed self-defense in populated public areas, despite the fact that it terrified the public—would have suggested that "the King were not able or willing to protect his subjects." *Sir John Knight's Case*, 87 Eng. Rep. 75, 76 (K.B. 1686). Thus, English law imposed a broad duty to retreat while in public, Blackstone, 4 *Commentaries* 185—a duty that would become the law in all American colonies, and subsequently the States, Garret Epps, *Any Which Way But Loose*, 55 Law & Contemp. Probs. 303, 311-14 (1992).

<sup>6</sup> See also Russell, *Treatise on Crimes & Misdemeanors* 588-89 (same); Charles, *Faces of the Second Amendment*, 60 Clev. St. L. Rev. at 26 n.123 (citing 18th-century legal dictionary's distinction between "go[ing] or rid[ing] armed with dangerous and unusual Weapons" and nobleman "wear[ing] common Armour"); *Rex v. Sir John Knight*, 90 Eng. Rep. 330 (K.B. 1686) (noting a "general connivance" for "gentlemen" to carry arms in this way, but declining to dismiss indictment for "walk[ing] about the streets armed with guns" against a defendant who was later acquitted because he was a King's officer, see *Sir John Knight's Case*, 87 Eng. Rep. at 76; Charles, *Faces of the Second Amendment*, 60 Clev. St. L. Rev. at 28-30).

family],” as well as those responsible for “saving and maintaining the peace.” Carpenter & Whittington, *Liber Albus: The White Book of the City of London* 335 (1419) (1861 reprint) (emphasis added).<sup>7</sup>

**4. The Statute of Northampton’s public-carry restriction remains fully in effect following the English Bill of Rights of 1689.** In the late 17th century, William and Mary enshrined the right to bear arms in the Declaration of Rights, later codified in the English Bill of Rights in 1689. This right—which “has long been understood to be the predecessor to our Second Amendment,” *Heller*, 554 U.S. at 593—ensured “[t]hat the subjects which are protestants, may have arms for their defence suitable to their conditions, and as allowed by law.” 1 W. & M. st. 2. ch. 2. As Blackstone later wrote, this right was considered “a public allowance, under due restrictions[,] of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression.” 1 Blackstone, *Commentaries* 144. One such “due restriction” was the Statute of Northampton, which remained fully in effect after the right to bear arms was codified in 1689. *See, e.g.*, 4 Blackstone, *Commentaries* 148-49; Gardiner, *The Compleat Constable* 18 (1692) (informing constables that they may

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<sup>7</sup> A 1409 royal order confirms the narrow exception allowing noblemen to carry swords. It “forb[ade] any man of whatsoever estate or condition to go armed within the city [of London] and suburbs, or any except lords, knights and esquires with a sword.” 3 *Calendar of the Close Rolls, Henry IV* 485 (Jan. 30, 1409).

seize the weapons of anyone “wear[ing] or carry[ing] any Daggers, Guns or Pistols Charged”).

## **B. Founding-Era American History**

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

***2. Many States enact laws mirroring the Statute of Northampton both before and after the Constitution’s adoption.*** Eight years after New

Jersey’s law, Massachusetts enacted its own version of the Statute of Northampton, expressly authorizing justices of the peace to arrest anyone who “shall ride or go armed Offensively before any of Their Majesties Justices, or other Their Officers or Ministers doing their Office, or elsewhere.” 1694 Mass. Laws 12, no. 6.

By using the word “offensively,” Massachusetts ensured that this prohibition would apply only to carrying an “offensive weapon,” as it had in England—not *all* arms. Constable oaths published in 18th-century legal treatises used similar language when discussing the law. *See* Charles, *Faces of the Second Amendment*, 60 Clev. St. L. Rev. at 34 n.178. One guide for justices of the peace, for example, explained that “Persons with offensive Weapons in Fairs, Markets or elsewhere in Affray of the King’s People, may be arrested.” Bond, *A Compleat Guide for Justices of the Peace* 42 (1707); *id.* at 181 (“A person going or riding with offensive Arms may be arrested.”). Thus, under the law, a person could carry a hatchet or horsewhip in public, but not a pistol. *See Hutchinson*, 168 Eng. Rep. at 276 (making clear that “guns, pistols, daggers, and instruments of war” are “offensive” weapons); Hawkins, *Treatise of the Pleas of the Crown* 665 (explaining that a hatchet, horsewhip, and a “large stick with three natural prongs and a large head” were not “offensive weapons,” while “guns, pistols, daggers, and instruments of war” were).<sup>8</sup>

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<sup>8</sup> American treatises said the same. *See* Russell, *Treatise on Crimes & Misdemeanors* 124; Bishop, *Commentaries on the Law of Statutory Crimes* 214 (1873).

One century later, Massachusetts reenacted its law, this time as a State. 1795 Mass. Laws 436, ch. 2 (“[No person] shall ride or go armed offensively, to the fear or terror of the good citizens of this Commonwealth.”). Because the prohibition had been on the books for so long, it was “well known to be an offence against law to ride or go with . . . firelocks, or other dangerous weapons,” as one Massachusetts newspaper later reported, so it “[could not] be doubted that the vigilant police officers” would arrest violators. Charles, *Faces of the Second Amendment*, 60 Clev. St. L. Rev. at 33 n.176 (quoting *The Salem Gazette*, June 2, 1818, at 4).

Following Massachusetts’s lead, five more States enacted similar laws before the Civil War: two in the Founding Era (Virginia and North Carolina); three in the 19th century (Tennessee, Maine, and Delaware). *See* 1786 Va. Laws 33, ch. 21 (“[No one may] go nor ride armed by night nor by day, in fairs or markets, or in other places, in terror of the Country.”); 1792 N.C. Laws 60, 61 ch. 3 (“[No one may] go nor ride armed by night nor by day, in fairs, markets, . . . nor in no part elsewhere.”); 1801 Tenn. Laws 710, § 6 (making it illegal for “any person or persons [to] publically ride or go armed to the terror of the people”); 1821 Me. Laws 285, ch. 76, § 1 (“[No one] shall ride or go armed offensively, to the fear or terror of the [people].”); 1852 Del. Laws 330, 333, ch. 97, § 13 (similar).<sup>9</sup>

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<sup>9</sup> The Statute of Northampton also applied in Maryland by virtue of that State’s constitutional guarantee of all rights granted by “the Common Law of

To ensure that these laws were enforced, the constables, magistrates, and justices of the peace in these States (as well as in New Jersey) were required to “arrest all such persons as in your sight shall ride or go armed.” Haywood, *A Manual of the Laws of North-Carolina* pt. 2 at 40 (1814) (N.C. constable oath); A Bill for the Office of Coroner and Constable (Mar. 1, 1682), reprinted in *Grants, Concessions & Original Constitutions* 251 (N.J. constable oath) (“I will endeavour to arrest all such persons, as in my presence, shall ride or go arm’d offensively.”). That was because, as constables were informed, “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 prohibited by statute.” Haywood, *The Duty and Office of Justices of the Peace, and of Sheriffs, Coroners, Constables* 10 (1800); see also Haywood, *The Duty & Authority of Justices of the Peace, in the State of Tennessee* 176 (1810).

As with the English statute, these laws lacked a self-defense exception. No one could “excuse the wearing [of] such armor in public, by alleging that such a one threatened him.” Wharton, *A Treatise on the Criminal Law of the United States* 527-28 (1846).

## **C. Early-19th-Century American History**

***1. Many States enact laws restricting public carry while creating a narrow exception for “reasonable cause to fear an assault.”*** In 1836,

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England” and “the English statutes” in effect at the time of independence. Md. Const. of 1776, art. III, § 1.



Massachusetts amended its public-carry prohibition to provide a narrow exception for those having “reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property.” 1836 Mass. Laws 748, 750 ch. 134, § 16. Absent such “reasonable cause,” no person could “go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon.” *Id.* Those who did so could be punished by being made to pay sureties for violating the statute, *id.*; if they did not do so, they could be arrested. *See* 1784 Mass. Laws 105, ch. 27.<sup>10</sup>

Although the legislature chose to trigger these penalties using a citizen-complaint mechanism (allowing “any person having reasonable cause to fear an injury, or breach of the peace” to file a complaint, 1836 Mass. Laws 750, § 16), the law was generally understood to restrict carrying a firearm in public without good cause—even when the firearm was not used in any threatening or violent manner. The legislature placed the restriction in a section entitled “Persons who go armed may be required to find sureties for the peace,” and expressly cited the State’s previous enactment of the Statute of Northampton. *Id.* And elsewhere in the same statute the legislature separately punished “any person [who] threatened to commit an offence against the person or property of another.” *Id.* at 749, § 2. Thus, as Massachusetts Judge Peter Oxenbridge Thatcher explained in a grand jury charge

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<sup>10</sup> Sureties were a form of criminal punishment in England and early America, akin to a bond. *See, e.g., Punishments*, The Proceedings of the Old Bailey, London’s Central Criminal Court, 1674 to 1913, <http://bit.ly/1ED5tC2>; 34 Edw. 3, 364, ch. 1 (1360).

appearing in the contemporary press in 1837, there was little doubt at the time that “no person may go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to apprehend an assault or violence to his person, family, or property.” Cornell, *The Right to Carry Firearms Outside of the Home*, 39 Fordham Urb. L.J. 1695, 1720 & n.134 (2012); see also Hammond, *A Practical Treatise; Or an Abridgement of the Law Appertaining to the Office of Justice of the Peace* 184-86 (1841).

Within a few decades, almost a dozen States (all but one outside the slaveholding South) had adopted nearly identical laws. See 1838 Wisc. Laws 381, § 16; 1841 Me. Laws 709, ch. 169, § 16; 1846 Mich. Laws 690, 692, ch. 162, § 16; 1847 Va. Laws 127, 129, ch. 14, § 15; 1851 Minn. Laws 526, 528, ch. 112, § 18; 1853 Or. Laws 218, 220, ch. 16, § 17; 1857 D.C. Laws 567, 570, ch. 141, § 15; 1861 Pa. Laws 248, 250, § 6. Most of these States copied the Massachusetts law verbatim—enforcing the public-carry prohibition through a citizen-complaint provision and permitting a narrow self-defense exception, while separately prohibiting threats and violence. See, e.g., 1851 Minn. Laws at 527-28, §§ 2, 17, 18 (placing prohibition in section entitled “Persons carrying offensive weapons, how punished”); 1873 Minn. Laws. 1025, § 17 (doing same after 14th Amendment’s ratification). At least one State (Virginia) used slightly different language, providing that “[i]f any person shall go armed with any offensive or dangerous weapon,

without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, he may be required to find sureties for keeping the peace.” 1847 Va. Laws at 129, § 15. Semantic differences aside, these laws were understood to do the same thing: broadly restrict public carry, while establishing a limited exception for those with a particular need for self-defense.

**2. Taking a different approach, most southern States elect to permit public carry, but only if the weapon is not concealed.** In contrast to the Massachusetts approach, most States in the slaveholding South were more permissive of public carry. They generally allowed white citizens to carry firearms in public so long as the weapons were not concealed. *See, e.g.*, 1854 Ala. Laws 588, § 3272; 1861 Ga. Laws 859, § 4413; *see generally* Cramer, *Concealed Weapon Laws of the Early Republic* (1999).

This “lash and pistol” model is perhaps attributable to widespread concerns about slave rebellions in the South, as well as the more prevalent violence there. *See id.* at 21 (“[Frederick Law] Olmsted attributed the need to keep slaves in submission as the reason that, ‘every white stripling in the South may carry a dirk-knife in his pocket, and play with a revolver before he has learned to swim.’” (quoting Olmsted, *A Journey in the Back Country* 447 (1860)); *id.* at 18 (“Modern historians . . . conclude that the South was substantially more violent than the North.”); *see also McDonald*, 561 U.S. at 844 (Thomas, J., concurring) (“[I]t is

difficult to overstate the extent to which fear of a slave uprising gripped slaveholders and dictated the acts of Southern legislatures.”).

## **D. Mid-to-Late-19th-Century American History**

***1. States continue to restrict public carry both before and after the 14th Amendment’s ratification.*** As America entered the second half of the 19th century, other States began enacting laws broadly restricting public carry, subject to limited self-defense exceptions. Before the Civil War, New Mexico passed *An Act Prohibiting The Carrying Of Weapons, Concealed Or Otherwise*, making it unlawful for “any person [to] carry about his person, either concealed or otherwise, any deadly weapon,” and requiring repeat offenders to serve a jail term “of not less than three months.” 1859 N.M. Laws 94, § 2. After the Civil War, several other States enacted similar prohibitions notwithstanding the recent passage of the 14th Amendment.<sup>11</sup>

West Virginia and Texas enacted laws within a few years of ratifying the 14th Amendment that broadly prohibited public carry without reasonable cause to fear violence. West Virginia’s law made clear that “[i]f any person go armed with a

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<sup>11</sup> Much congressional discussion about the right to bear arms before the 14th Amendment’s adoption focused on self-defense inside the home. *See, e.g.*, Cong. Globe, 39th Cong., 1st Sess. 1182 (Mar. 5, 1866) (Sen. Pomeroy) (describing the constitutional “safeguards of liberty” as including “the right to acquire and hold” a homestead, “the right to be safe and protected in that citadel,” and “the right to bear arms for the defense of himself and family and his homestead”); *see also* Amar, *The Bill of Rights* 265 (1998) (focusing on “home-centered vision”).

deadly or dangerous weapon, without reasonable cause to fear violence to his person, family, or property, he may be required to give a recognizance.” 1870 W. Va. Laws 702, 703, ch. 153, § 8.<sup>12</sup> Courts construed this self-defense exception narrowly to require specific evidence of a concrete, serious threat. *See, e.g., State v. Barnett*, 34 W. Va. 74 (1890). Texas’s law contained a similarly circumscribed exception, barring anyone not acting in “lawful defense of the state” (“as a militiaman” or “policeman”) from “carrying on or about his person . . . any pistol” without “reasonable grounds for fearing an unlawful attack on his person” that was “immediate and pressing.” 1871 Tex. Laws 1322, art. 6512.<sup>13</sup>

**2. *Beginning immediately after the 14th Amendment’s ratification, many western legislatures enact laws prohibiting public carry in populated areas.*** Starting with New Mexico in 1869, many legislatures in the West began to enact public-carry prohibitions that were sensitive to local conditions. These laws generally differentiated between cities, towns, and villages

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<sup>12</sup> A later version reaffirmed the law’s breadth by clarifying that it didn’t “prevent any person from keeping or carrying about his dwelling house or premises, any such revolver or other pistol, or from carrying the same from the place of purchase to his dwelling house, or from his dwelling house to any place where repairing is done, to have it repaired and back again.” 1891 W. Va. Laws 915, 915-16, ch. 148, § 7. Violators were “guilty of a misdemeanor” and could be fined or jailed. *Id.*

<sup>13</sup> During this time, some States enacted laws without self-defense exceptions. Tennessee made it illegal for “any person to publicly or privately carry a . . . pocket pistol or revolver other than an army pistol.” 1871 Tenn. Laws 81, ch. 90, § 1. Arkansas did similarly, while permitting “carrying any weapon when upon a journey, or upon [one’s] own premises.” 1881 Ark. Laws 490, ch. 53, § 1907.

(where the prohibition applied) and rural areas (where it did not). New Mexico made it “unlawful for any person to carry deadly weapons, either concealed or otherwise, on or about their persons within any of the settlements of this Territory,” while providing a narrow self-defense exception. 1869 N.M. Laws 312, *Deadly Weapons Act of 1869*, § 1. Violators could serve up to 50 days in jail. *Id.* § 3.

Over the next two decades, Wyoming, Idaho, and Arizona enacted similar location-sensitive prohibitions. *See* 1875 Wyo. Laws 352, ch. 52, § 1 (banning carrying firearms “concealed or openly” “within the limits of any city, town or village”); 1889 Idaho Laws 23, § 1 (making it unlawful “to carry, exhibit or flourish any . . . pistol, gun or other-deadly weapons, within the limits or confines of any city, town or village or in any public assembly”); 1889 Ariz. Laws, ch. 13, § 1 (“[No] person within any settlement, town, village or city within this Territory shall carry on or about his person, saddle, or in his saddlebags, any pistol.”). And Texas and Michigan later enacted laws granting cities the power to “prohibit and restrain the carrying of pistols” within their limits. 1909 Tex. Laws 105; *see* 1901 Mich. Laws 687, § 8.

When Texas and Michigan enacted these laws, many cities throughout the country had imposed such restrictions for decades. *See, e.g.,* Nebraska City, Neb., Ordinance no. 7 (1872); Nashville, Tenn., Ordinance ch. 108 (1873); Los Angeles, Cal., Ordinance nos. 35-36 (1878); Salina, Kan., Ordinance no. 268 (1879);

Syracuse, N.Y., Ordinances ch. 27 (1885); Dallas, Tex., Ordinance (1887); New Haven, Conn., Ordinances § 192 (1890); Checotah, Okla., Ordinance no. 11 (1890); Rawlins, Wyo., Rev. Ordinances art. 7 (1893); Wichita, Kan., Ordinance no. 1641 (1899); McKinney, Tex., Ordinance no. 20 (1899). “A visitor arriving in Wichita, Kansas, in 1873,” for example, “would have seen signs declaring, ‘LEAVE YOUR REVOLVERS AT POLICE HEADQUARTERS, AND GET A CHECK.’” Winkler, *Gunfight* 165 (2011). Dodge City was no different. *Id.* (mentioning sign that read: “THE CARRYING OF FIREARMS STRICTLY PROHIBITED”). Even in Tombstone, Arizona, people “could not lawfully bring their firearms past city limits. In fact, the famed shootout at Tombstone’s O.K. Corral was sparked in part by Wyatt Earp pistol-whipping Tom McLaury for violating Tombstone’s gun control laws.” Blocher, *Firearm Localism*, 123 Yale L.J. 82, 84 (2013) (footnote omitted).

## ARGUMENT

**BECAUSE CALIFORNIA’S LAW CARRIES FORWARD A SEVEN-CENTURY ANGLO-AMERICAN TRADITION OF RESTRICTING PUBLIC CARRY IN POPULATED AREAS, IT IS A “LONGSTANDING,” CONSTITUTIONAL REGULATION UNDER *HELLER*.**

The question in this case is not whether the Second Amendment, which the Supreme Court held in *Heller* protects “the right of law-abiding, responsible citizens to use arms in defense of hearth and home,” 554 U.S. at 635, has any application outside the home. Rather, it is whether California’s public-carry regime (as

implemented by San Diego and Yolo Counties) is consistent with the Second Amendment's protections (as applied to the States by the 14th Amendment).

Before this Court may answer that question, it must first understand how the regulatory scheme works. California law, as implemented here, generally allows individuals to openly carry a firearm for self-defense in the unincorporated, sparsely populated areas that comprise most of San Diego and Yolo Counties' geography (84% and 95%, respectively). Cal. Penal Code §§ 25850(a), 26350(a); San Diego County, <http://bit.ly/1DBC3El> (3,572 square miles unincorporated out of 4,261); Yolo County, <http://bit.ly/1HVypru> & <http://bitly.com/1Gz9Nl6> (621,224 acres unincorporated out of 653,549). And it allows public carry of a concealed weapon throughout the State—including in the Counties' incorporated, more densely populated areas—with a permit, which requires a showing of “good cause.” Cal. Penal Code § 26170(a)(2). In San Diego and Yolo Counties, this requirement is not satisfied by a generalized fear for personal safety, but is met if the applicant can provide “documented threats” or “restraining orders” showing that “he or she is a specific target presently at risk of harm.” San Diego Cnty. Br. 6; *see also* Yolo Cnty. Br. 9. It is also met if the applicant is an active or retired law-enforcement officer, security or investigative personnel, or a business owner or employee in a high-risk occupation. San Diego Cnty. Br. 6. The question here is whether this scheme is constitutional.



To answer that question, this Court “employs a two-prong test,” first “ask[ing] whether the challenged law burdens conduct protected by the Second Amendment,” and then determining, “if so, what level of scrutiny should be applied.” *Fyock v. Sunnyvale*, 779 F.3d 991, 996 (9th Cir. 2015). Although California’s law would satisfy the appropriate level of scrutiny if subjected to it (for reasons laid out in other briefs filed in this case), the purpose of this brief is to show that the analysis needn’t go that far: This law survives at step one.

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

One way to determine whether a law burdens Second Amendment conduct is to assess the law based on a “historical understanding of the scope of the right,” *Heller*, 554 U.S. at 625, and consider whether the law is one of the “prohibitions ‘that have been historically unprotected.’” *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 960 (9th Cir. 2014). The Supreme Court in *Heller* identified several “examples” of such regulations, including “prohibitions on the possession of firearms by felons and the mentally ill” and “laws imposing conditions and qualifications on the commercial sale of arms,” which are presumed not to violate the Second Amendment because of their historical acceptance as consistent with its protections. 554 U.S. at 626-27 & n.26. Such “longstanding” laws, the Court explained, should be treated as tradition-based “exceptions” by virtue of their “historical justifications.” *Id.* at 635. Or put in this Court’s words: “longstanding

prohibitions” are “traditionally understood to be outside the scope of the Second Amendment.” *Fyock*, 779 F.3d at 997.

So what does it mean to be longstanding? As Judge Easterbrook has noted, it does not require that a law “mirror limits that were on the books in 1791” (or in this case involving a state law, 1868). *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010) (en banc); *see also United States v. Booker*, 644 F.3d 12, 23 (1st Cir. 2011) (“[T]he legislative role did not end in 1791.”). To the contrary, as this Court has held, even laws that “cannot boast a precise founding-era analogue”—like the “early twentieth century regulations” identified in *Heller*—may “demonstrate a history of longstanding regulation if their historical prevalence and significance is properly developed in the record.” *Fyock*, 779 F.3d at 997.

The law in this case, however, is no 20th-century creation. By requiring good cause to publicly carry a firearm in populated areas, and allowing public carry in rural areas, California’s law embodies a deep historical tradition of public-carry regulations. It is “longstanding” and hence constitutional under *Heller*.

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

**1. The law’s special sensitivity to local conditions traces back to 13th-century England and 19th-century America.**

For centuries, English and American laws have restricted public carry in populated areas and largely permitted it in unpopulated areas—just like California

does today. The Statute of Northampton, first enacted in 1328, trained its prohibition on “fairs,” “markets,” and other populous places, 2 Edw. 3, 258, ch. 3, while a royal declaration from a century later specifically directed “the mayor and sheriffs of London” to enforce the prohibition against “any man of whatsoever estate or condition [who] go[es] armed within the city and suburbs.” 3 *Calendar of the Close Rolls* 485. One century after that, Queen Elizabeth spoke of the need to focus enforcement in the areas where the “great multitude of people do live, reside, and trav[el].” Charles, *Faces of the Second Amendment*, 60 Clev. St. L. Rev. at 21.

When this localism tradition came to America, it gained particular popularity in the West during the mid-to-late 19th century. From 1869 to 1889, New Mexico, Wyoming, Idaho, and Arizona all enacted laws broadly prohibiting public carry in cities, towns, and villages. *See* 1869 N.M. Laws 312, § 1; 1875 Wyo. Laws 352, ch. 52, § 1; 1889 Idaho Laws 23, § 1; 1889 Ariz. Laws, ch. 13, § 1. And, as discussed above (at 20-21), numerous local governments imposed similar restrictions around the same time—from New Haven to Nashville, Dallas to Los Angeles, and even in places like Dodge City and Tombstone.

These laws illustrate “how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century,” *Heller*, 554 U.S. at 605, and carry special relevance when determining the scope of the right to bear arms as understood when it was applied to the States in 1868. Because they

help “determine *the public understanding* of a legal text in the period after its enactment or ratification,” they are “a critical tool of constitutional interpretation.” *Id.* And they unmistakably show that large swaths of the American public considered public-carry prohibitions to be permissible in populated areas and consonant with the right to bear arms.

California’s law fits comfortably within this localism tradition. Although not all States and cities enacted such laws in the 19th century, “the Constitution establishes a federal republic where local differences are cherished as elements of liberty, rather than eliminated in a search for national uniformity.” *Friedman v. Highland Park*, — F.3d —, 2015 WL 1883498, \*5 (7th Cir. Apr. 27, 2015) (Easterbrook, J.). *McDonald* “does not foreclose *all* possibility of experimentation. Within the limits established by the Justices in *Heller* and *McDonald*, federalism and diversity still have a claim.” *Id.*

## **2. The law’s good-cause requirement has its roots in pre-Civil War America.**

California’s law also falls squarely within another historical tradition—the requirement that a person have “good cause” to carry a firearm in populated public areas. In the middle of the 19th century, numerous States enacted laws containing such a requirement. Virginia, for example, made it unlawful for anyone to “go armed” with a gun “without reasonable cause to fear an assault or other injury.” 1847 Va. Laws at 129, § 15; *see also, e.g.*, 1836 Mass. Laws 750, § 16; 1851

Minn. Laws 528, ch. 112, § 18. And West Virginia and Texas did the same. *See* 1870 W. Va. Laws 702, ch. 153, § 8; 1871 Tex. Laws 1322, art. 6512. These prohibitions would have meant nothing if anyone could have satisfied the exception by asserting a generalized fear of self-defense, and they were not enforced that way. *See, e.g., Barnett*, 34 W. Va. 74.

California has not violated our Constitution by continuing this tradition. Nor have the eight States that currently have similar laws. Although such a lengthy historical pedigree is not necessary to satisfy the Second Amendment, it is sufficient to do so. Whatever else the Second Amendment permits, it surely allows a State's citizens to decide for themselves whether to carry forward a centuries-long legislative tradition.

## **CONCLUSION**

The judgments of the district courts in both cases should be affirmed.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7)**

I hereby certify that my word processing program, Microsoft Word, counted 6,993 words in the foregoing brief, exclusive of the portions excluded by Rule 32(a)(7)(B)(iii).

April 30, 2015

/s/ Deepak Gupta  
Deepak Gupta

## **CERTIFICATE OF SERVICE**

I hereby certify that on April 30, 2015, I electronically filed the foregoing Brief of *Amicus Curiae* Everytown for Gun Safety in Support of Appellees with the Clerk of the Court of the U.S. Court of Appeals for the Ninth Circuit by using the Appellate CM/ECF system. All participants are registered CM/ECF users, and will be served by the Appellate CM/ECF system.

/s/ Deepak Gupta  
Deepak Gupta

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<sup>1</sup>] shall not be made against the Form of the said Statute; and that the Assises, Attaints, and Certifications be taken before the Justices commonly assigned, which should be good Men and lawful, having Knowledge of the Law, and none other, after the Form of another Statute made in the Time of the said [King Edward the First;]<sup>2</sup> and that the Oyers and Terminers shall not be granted but before Justices of the one Bench or the other, or the Justices Errants, and that for great [hurt,] or horrible Trespasses, and of the King's special Grace, after the Form of the Statute thereof ordained in Time of the said Grandfather, and none otherwise.

III. Riding or going armed in Affray of the Peace. ITEM, It is enacted, That no Man great nor small, of what Condition soever he be, except the King's Servants in his presence, and his Ministers in executing of the King's Precepts, or of their Office, and such as be in their Company assisting them, and also [upon a Cry made for Arms to keep the Peace, and the same in such places where such Acts happen,]<sup>3</sup> be so hardy to come before the King's Justices, or other of the King's Ministers doing their office, with force and arms, nor bring no force in affray of the peace, nor to go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere, upon pain to forfeit their Armour to the King, and their Bodies to Prison at the King's pleasure. And that the King's Justices in their presence, Sheriffs, and other Ministers<sup>4</sup> in their Bailiwicks, Lords of Franchises, and their Bailiffs in the same, and Mayors and Bailiffs of Cities and Boroughs, within the same Cities and Boroughs, and Borough-Holders, Constables, and Wardens of the Peace within their Wards, shall have Power to execute this Act. And that the Justices assigned, at their coming down into the Country, shall have Power to enquire how such Officers and Lords have exercised their Offices in this Case, and to punish them whom they find that have not done that which pertained to their Office.

IV. The Statute of Lincoln, 9 Edw. II. concerning Sheriffs, &c. confirmed. ITEM, Because the Peace cannot be well kept without good Ministers, as Sheriffs, Bailiffs, and Hundreders, which ought to do Execution as well of the King's Privities as of other Things touching our Lord the King and his People; It is ordained and established, That the Statute made in the time of King Edward, Father to the King that now is, at Lincoln, containing that Sheriffs, Hundreders, and Bailiffs shall be of such People as have Lands in the same Shires or Bailiwicks, shall be observed in all Points after the Form thereof; and that Sheriffs and Bailiffs of Fee shall cause their Counties and Bailiwicks to be kept by such as have Lands therein.

V. The Statute Westminster the Second, 13 Edw. I. chapter 39, concerning the Delivery of Writs to the Sheriff, confirmed. ITEM, Where it was ordained by the Statute of Westminster the Second, that they which will deliver their Writs to the Sheriff, shall deliver them in the full County, or in the Rere County, and that the Sheriff or under Sheriff shall thereupon make a Bill; It is accorded and established, that at what Time or Place in the County a Man doth deliver any Writ to the Sheriff or to the Under-Sheriff, that they shall receive the same Writs, and make a Bill, after the form contained in the same Statute, without taking any Thing therefore; and if they refuse to make a Bill, others that be present shall set to their Seals; and if the Sheriff or Under-Sheriff do not return the said Writs, they shall be punished after the form contained in the same Statute; and also the Justices of Assises shall have power to enquire thereof at every Man's Complaint, and to award Damages, as having respect to the Delay, and to the loss and peril that might happen

<sup>1</sup> Commissioners  
<sup>2</sup> upon a Proclamation of Death of Arms in time of Peace, and that in Places where such Deaths are to be done.—See Lib. Rub. Secus. Westm. fo. 122 b. a Writ reciting a Grant of K. Richard I. "qd' foreceumita sint in Angl in v. placias: In p. Sarf & Wilton: In p. Warrewich & Kenelingsworth: In p. Stanford & Warneford: In p. Brakle & Mirebri: In p. Blie & Tykelith. Ita qd' pax tre nre nō infringer, n' potestas Justiciarum minorabit Nec de t. i. nō nō dīpnū infrect'." <sup>3</sup> of the King

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

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

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

Ensement la ou ordene est, p̄ statut de Westminster le secund, q̄ ceux q̄ livrer volent leur briefs as viscountes, les livrent en plein Counte, ou en rerecounte, & q̄ visconte ou southvisconte facent sur ce bille; acorde est & establi q̄ a quele heure ou a queu lieu deinz le Counte home livre a viscountes, ou a southviscontes, briefs, qils les rescivent & facent bille en la forme contenue en le dit estatut, & ce sanz rien p̄ndre; et sils refusent de faire bille, mettent autres leur realx qi p̄ront p̄sentz; et si le Viscounte ou le Southviscounte ne retorne mie les briefs, soient puniz solonc la forme contenue en le dit estatut; & jadumeins eient les Justices as assises p̄ndre assignez poair denquer de ce a chescun p̄leinte & de agarder damages, eant regard au delai, & a les p̄tes & p̄ils qi p̄ront avenir.



Statutū apud Westm̄ in p̄liamento in festo S̄ci Hilarit̄ anno regni  
Regis E. t̄ c̄i vicesimo q̄nto tento, f̄cm.

In Margine  
Rotuli.

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

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

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

En p̄mes, p̄ce q̄ tresguntz & tresout'geouses da-  
mages & grevances sont faites au poeple p̄ les pno's  
& p̄veo's des vitailles p̄ les hosteux n̄re f̄' le Roi,  
ma dame la Roigne, & de lo' enfantz, Si est acorde  
& assentuz en le dit plement, q̄ les pno's & p̄veo's  
des bledz p̄ les ditz hosteux les p̄ignent p̄ mesure  
rase, selonc ceo q̄ hōme use p̄my le Roialme. Et q̄  
touz bledz, feyns, litere & bestaill, & touz au's vi-  
tailles & choses quecūq̄s, queles sont aprendre p̄ meis-  
mes les hosteux, soient p̄sez a la v̄roie value, p̄ les  
Conestables & au's bons gentz des villes ou tieles  
prises se feront, sanz ce q̄ p̄ manacés, ou duresces  
soient les preisours chacez a mettre autre pris q̄ leur  
v̄ement ne voet, & come curt cōement en les p̄scheins  
marchees: et q̄ entre les Purveyours et ceux des queux  
les biens s̄ront prises, en la p̄sence des Conestables &  
preisours, soient tailles tantost faites, saunz ceo q̄ les  
gentz des queux les biens s̄ront prises soient aillours  
traitz ou t̄vaillez; & meismes les tailles ensealez des  
seals les pnours des choses issint prises, p̄ les queles  
tailles gre soit fait as ceux des queux les choses s̄ront  
issint prises: et si nul pnour ou P̄veour p̄ les ditz  
hosteux face p̄ autre man̄e, soit maintenant arestu p̄  
la ville ou la prise s̄ra faite, et mesne a la p̄scheine  
gaole, et si de ceo soit atteint, soit la fait de lui come  
de laron, si la quantite des biens le demand; solonc  
ceo q̄ en un estatut fait en temps meisme n̄re f̄' le Roi  
lan de son regne quint, & en un autre estatut fait  
en temps laiēl n̄re Seign' le Roi s̄ tieles prises, est con-  
tenuz plus au plein: et q̄ desore soit contenuz es  
cōmissions des tieux P̄veours et pnours, lentent et la  
peine contenuz en cest estatut: et q̄ nule cōmission soit  
faite forsq̄, soulement souz les ḡnt ou prive sealx le  
Roi; ne q̄ nul hōme soit tenuz de obeier a autre cōmis-  
sion nen autre man̄e q̄ nest dit en avant; et q̄ meisme  
lestatut tiegne lieu en toutz pointz de v̄s chescun  
pnour & p̄veour, de chescune man̄e des vittailles en  
chescune p̄tie du Roialme de quele condition qil soit.

Auxint p̄ceo q̄ di v̄ses opinions ount este einz ces  
heures q̄u cas, q̄nt il avient doit estre dit treson, &  
en quel cas noun, le Roi a la requeste des Seign's & de  
la Cōe, ad fait declarissement q̄ ensuit, Cest assavoir;

STATUTE THE FIFTH.

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

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

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

I.  
Corn shall  
be taken by  
Purveyors  
by Measure  
striked  
Things taken  
by Purveyors  
shall be  
appraised  
at the very  
Value.

Tallies of  
the Goods  
taken.

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

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

II.  
Declaration  
what Offences  
shall be  
adjudged  
Treason.

' and Purveyors

' prayed

' any other Commissions, or in other manner MS. Tr. 2.

' what case should be adjudged Treason, and what not;

### III. Challenge of an Indictor upon an Inquest.

ITEM, It is accorded, That no Indictor shall be put in Inquests upon Deliverance of the Indicttees of Felonies or Trespass, if he be challenged for that same cause by him which is so indicted.

<sup>1</sup> le grant seal le Roi, *Rot. Parl.* 25 E. 3. P. II. nu. vij. (17.)  
<sup>2</sup> Lusseburgh *Rot. Parl.* <sup>3</sup> q ce estent *Rot. Parl.*  
<sup>4</sup> & *Rot. Parl.*

Estre ceo, come contenu soit en la g<sup>nt</sup> Chre des franchises Dengleterre q<sup>l</sup> nul soit pris ne emprisonne, ne ouste de son frank ten<sup>re</sup> ne de ses franchises ne de ses franchises custumes, sil ne soit p<sup>r</sup> lei de la l<sup>re</sup>; Acorde est, assentu & establi, q<sup>l</sup> nul desore soit pris p<sup>r</sup> petition ou suggestion faite a n<sup>re</sup> Seign<sup>r</sup> le Roi ou a son conseil, sil ne soit p<sup>r</sup> enditement ou p<sup>r</sup>esentement des bones & loialx du visnee ou tiele fait se face, & en due man<sup>ere</sup>, ou p<sup>r</sup>es fait sur brief original a la c<sup>de</sup> lei; ne q<sup>l</sup> nul soit ouste de ses franchises ne de son frakten<sup>re</sup> sil ne soit mesne duement en respons, & forjugge dycelles p<sup>r</sup> voie de lei; et si rien soit fait al encont<sup>r</sup> soit redresse & tenue p<sup>r</sup> nul.

Ensement acorde est & establi, q<sup>l</sup> executours des executours eient accion des dettes, acomptes, & des biens emportez du primer testatour, & execution des estatutz marchantz & reconissances faites en court de record au p<sup>r</sup>mer Testatour, en meisme la man<sup>ere</sup> come le p<sup>r</sup>mer testatour a<sup>voit</sup> sil fust en vie, auxibien daccions de temps passe, come de temps avenir, en toutz cases ou juggedmentz ne sont pas renduz uncore entre tieux executours des executours; mes q<sup>l</sup> les juggedmentz a cont<sup>r</sup>re en temps passe, estoient en lour force; et q<sup>l</sup> meismes les executours des executours respaignent as auts de tant come ils a<sup>veront</sup> recov<sup>r</sup> des biens du p<sup>r</sup>mer testatour, sicome les p<sup>r</sup>mers executours ferroient sils feussent en pleine vie.

Auxint acorde est & assentu, q<sup>l</sup> nul p<sup>r</sup>neur de buche ou de maderie al oepe n<sup>re</sup> Seign<sup>r</sup> le Roi, p<sup>r</sup> o<sup>veyns</sup> ne p<sup>r</sup> auts choses faire, coupe, ne abate les arbres de nully cressantz entour ou dedein<sup>s</sup> sa mansion; et si nul face au cont<sup>r</sup>re face gre a la p<sup>r</sup>te du damage au treble, & eit la prisone dun an, & soit forjugge de son office.

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

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

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

de mensur  
& pond.

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

ITEM, It is accorded and established, That Executors of Executors shall have Actions of Debts, Accomps, and of Goods carried away of the first Testators, and Execution of Statutes Merchants and Recognizances made in Court of Record to the first Testator, in the same Manner as the first Testator should have had if he were in Life, as well of Actions of the Time past, as of the Time to come, in all Cases where Judgement is not yet given betwixt such Executors (1); but that the Judgements given to the contrary to this Article in Times past shall stand in their Force; and that the same Executors of Executors shall answer to other of as much as they have recovered of the Goods of the first Testators, as the first Executors should do if they were in full Life.

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

MOREOVER It is accorded and established, That no Forester, nor Keeper of Forest or Chase, nor any other Minister, shall make or gather Sustenance, nor other Gathering of Victuals, nor other Thing, by colour of their Office, against any Man's Will, within their Bailiwick nor without, but that which is due of old Right.

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

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

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

<sup>1</sup> of Executors

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

nor disfranchised, but by Course of Law.

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

VI.  
Purveyors shall not take Trees about the Mansion.

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

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

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

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

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

Justices shall inquire of and punish the Offenders.

Saving of Franchises.

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

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

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

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

XIII. The current Coin shall not be impaired.

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

XIV. Process against Persons indicted of Felony.

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

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

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

XVI. Exception of Nontenure of Parcel.

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

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

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

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

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

<sup>3</sup> a common Exchange

<sup>4</sup> Knight's

<sup>5</sup> upon

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

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

Ensement acorde est & establi, q bien lise a chescun home de chaunger ou p' argent ou p' or, ou argent p' argent ou p' or, issint q nul home tiegne cõe eschaunge, ne rien pigne de pfit p' tiel eschaunge faire, s' peine de forfait'e de la monioie issint chaungee, forprises les Chaungeours le Roi, les queux pignent pfit p' tiel eschaunge solonc lordenance avant faite.

Auxint acorde est & establi, q la monioie dor & dargent qore coert, ne soit mie empire, en pois nen alai; mes au plus tost q home pusse trover bone voie gele soit mys en launcien estat, come en esterling.

Et auxint est acorde & assentu, q ap's ceo q aucun home soit endite de felonie devant Justices en lour sessions doier & miner, soit cõmande au viscount dattach son corps, p brief ou pcept qest appelle Capias, & le viscount retourn en le dit brief ou pcept q le corps soit mie trovee, maintenant soit autre brief ou pcept de Capias fait, retournable as trois symeignes ap's; & en meisme le brief ou pcept soit compris q le viscount face seisir les chateux & les sauvement garder tantq a jour de brief ou pcept retournable; et si le viscount respoigne q le corps nest pas trovee, ne lendite vient point, soit lexicend agarde & soient les chateux forfaizt, sicome la lei de la corone demand; Mes sil viegne & se rend ou soit pris p viscount ou p autre Ministre devant le retourn del sde Capias, adonq's soient les biens & les chateux sauvez.

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

Auxint acorde est & assentue, q p excepcion de nouten'e de pcell null brief soit abatu fors q p' la quantite de la nouten'e qest allegge. Ensement acorde est & assentue, q autiele pces soit fait en brief de dette, defeneu des chateux, & en prises des avers p brief de Capias, & p pces d'exigent, p retourn de viscount, sicome est usee en brief dacompt.

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

<sup>2</sup> petit Printed Copier—mesme Rot. Parl. xxxj. (41.)

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

Auxint come nre Seign' le Roi eit avant ces heures fait ptecciens as diſses gentz q̄ lui estoient tenuz en ascun manere des dettes, qils ne ſront mie empledex des dettes queles ils deivent as auts, tanq̄ ils eussent fait gre a nre Seign' le Roi de ceo q̄ lui estoit due p̄ eux p̄ resoun de sa Prerogative, & issint durantes tieles ptecciens nul hōme ad este osee depleder tieux deit's; acorde est & assentue, q̄ nient contreestant tieles ptecciens les pties qount accions a leurs dettours, soient resounduz en la Court le Roi p̄ leurs dettours, et si jūgement soit sur ceo rendu p̄ le plaintiff ou demandant, soit lexecucion de cel jūgement mys en suspens tanq̄ gre soit fait au Roi de sa dette; et si les Creansours voillent empndre p̄ la dette le Roi, soient ils a ceo receuz, & outre eient execucion deſs leurs dettours de dette a eux due, & auxint recoſent deſs eux tant come ils paieront p̄ eux au Roi.

Ensemble acorde est & assentue, q̄ les Moneours, & auſs gardiens & Ministres de la monioie, receivent plat dor & dargent p̄ pois, & en meisme la manere deliſent les monioies q̄nt eles ſront faiz p̄ pois, & nemie p̄ nombre, saunz nully targer. Estre ce, come avant ces heures les Botillers nre Seign' le Roi & leurs deputees soleient pndr, & pnent de jour en autre, moult plus des vynes, p̄ colour de leur office al oeps nre Seign' le Roi q̄l ne bosoigneroit, des queux les plus fiebles ils deliſent al oeps nre Seign' le Roi, & les meillours en ḡnt nombre ils reitengent deſs eux a vendre & a faire ent leur p̄fit, & alafoitz ils relessent as marchantz ceo qils ount pris de eaux, p̄ fines & donnees qils p̄ignent de meismes les marchantz p̄ extortion, en ḡnt damage & empovissement des ditz marchantz; si est acorde & establi q̄ le Seneschal del Hostiel le Roi, & le Tresorer de la Garderobe, mandent as touz les portz Dengleterre la ou vynes sont a pndr al oeps le Roi le ſtein nombre q̄ le Botiller pndra en chescun port, si q̄ rien soit pris outre cel nombre; et q̄ Meir & Baillifs des ditz portz ſtiffient les ditz Seneschal & Tresorer le nombre des toneux issint prises p̄ le Botiller ou ses lieutenantz, souz les seals des ditz Meir & Baillifs, & p̄ endenture faite entre eaux & les pnours des ditz vynes; et en cas q̄l soit trove q̄ le Botiller ou ses lieu tenantz p̄ignent plus ou p̄ignent lower de nully ou delaie nully p̄ colour de son office, come p̄ arest, face gre de double a la ptie & soit ouste de son office, & eit la prison & soit reint a la volunte le Roi; et le Roi assignera ses Justices q̄nt lui plerra denquere sur cestes choses; & respoigne le Botiller sibien p̄ ses deputees come p̄ lui meismes, la ou ils ne sont mie sufficantz.

Auxint p̄ ce q̄ ascuns p̄chacent a la Court de Rome p̄visions, davori Abbeies & Priories en Engleterre, en destruction du Roialme & de seinte religion, acorde est & assentue q̄ chescun q̄ p̄chace tieles p̄visions dabbie ou de priorie, q̄ lui & ses executours & pcuratours q̄ suent & fount execucion de tieles p̄visions, soient hors de la pteccion nre Seign' le Roi; & q̄ hōme pusse faire

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

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

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

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

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

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

XIX. The King's Debtors suable notwithstanding Protections.

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

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

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

Regulations therein.

Punishment of the Butlers.

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

Old Printed Copies omit these Words.

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

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

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

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

Of the  
proclaiming  
the Statute.

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

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

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

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

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

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

The Treasurer and Barons of the Exchequer.

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

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

¶ Vič Kanč, saltn. Quedam statuta, in plamento nro apud Westm̄ in festo scti Hillar' p̄ p̄rito convocato, p nos Prelatos Duces Comites Barones & alios de cōitate regni nri Angt ad dcm plamentum sūmonitos, edita, tibi mittim<sup>9</sup> sub pede sigilli nri, mandantes qd statuta p̄dca in pleno Com̄ tuo legi & ea firmit' observari & teneri fac. T. R. apud Westm̄ vi. die Marč.

D' p̄clama6ōe  
Statuti.

Conš bria dirigunt' singulis vicecomitib; p Angt sub eadem data.

Conš bre dirigit' Justic' Hibii mutatis mutand sub eadem data.

Conš bria dirigunt' subscriptis sub eadem data videlt. Wilto de Sharesull & sociis suis Justic' ad plita coram rege tenend assign.

Joh de Stonore & sociis suis Justic' de cū Banco.

Theš & Baronib; de scaccio.

## Ordinatio p' Clero fc'a apud Westm̄, anno r. R. E. l'cii vicesimo quinto.

In Margine  
Rotuli.

### AN ORDINANCE FOR THE CLERGY,

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

#### STATUTE THE SIXTH.\*

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

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

Nre Seignour le Roi, veues & examinez p bone deliberacion les peticions & articles a lui bailliez en son plement, tenuz a Westmonster en la feste de seint Hillar' lan de son regne Dengleterre vintisme quint, & de France duszisme, p Lon'able pierre en Dieu Simon Ercevesq. de Cant'bris et aut's Evesqs de sa pvince, s' & p' ōeines grevances queles ils disoient estre faites a seinte eglise et a la clergie, encontre les privileges de seinte eglise, & dunk ils prierent q̄ cove-

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

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

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

By the King Himself and Council.

judiciū, & ipius populi destructiōem & injuriam manifestas, ac cont' justiciam & formā statuti p'dē: Volum' & firm' p'cipim' qd Justic' n'r Hibn qui p' tempe fuit, in singulis Com' & p'ibz p quos t'nserit, associatis sibi Prelato loci, & aliquo Comite seu alio nobili vel Milite eazdem p'ciū vicinaz, de p'dēis falsitatibz, extorsionibz, opp'essionibz, g'vaminibz, & excessibz, & omibz sup'dēis p ipos firmarios quomodolibet ppet'is, & de ipoz f'cis & gestibz in hac pte, tam ad secutam n'ram q'm alioz quozcūq, inde conqueri volenciū tam de tempe p'ito q'm futuro inquirat; & vsus eos pcedat, & contemptus, falsitates, extorsiones, opp'essiones, g'vamina & excessus, ac alia p'dēa audiat & t'minet, necnon delinquentes & culpabiles cum tales inventi f'rint castiget & puniat, scdm legem & consuetudinem t're n're Hibn antedēas; & nos & consiliū n'r in Angt de nōibz sic culpabiliū, ac de falsitatibz, extorsionibz, opp'essionibz & g'vaminibz & aliis p'dēis sub sigillis ipius Justic' & sibi associatoz, distincte & apte de tempore in tempus nichilomin' difficet ex t'ra causa. [In cujus, &c. T. R. apud Westm' xxv. die Octobr. p ipm Regem & Cons.]

<sup>1</sup> In cujus rei testimoniū has lras n'ras fieri fecim' patentes. Teste me ipso apud Westm' vicesimo quinto die Octobr, anno regni n'ri Angt r'cesimo p'mo, regni v'o n'ri Franc' decimo octavo.

Nos autem Ordinaciōes Voluntates & s'cepta p'dēa, ac omnia alia & singla in his p'dēis cōtenta rata hentes & g'ta, ea p nob & heredibz n'ris quantum in nob est, acceptam' approbamus, ratificam' & confirmam', put l're p'dēe rationalit' testant'. In cuj', &c. T. R. apud Westm' xxvj die Junii.

Rot. Pat. 17 Ric. II.

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

### Statutu fc'm in p'liamēto tento apud Westm; anno r'xliij<sup>to</sup>.

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

In Margue  
Roualh.

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 (')

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

1.  
Who shall be  
Justices of  
the Peace.  
Their Juris-  
diction over  
Offenders;  
Rioters;  
Barators;

Vagabonds;

They may  
take Surety  
for good  
Behaviour;

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

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

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

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

Primement q' en chescun Countee Denglētre soient assignez, p' la garde de la pces, un Seign', & ovesq' lui trois ou quatre des meultz vauex du Countee, ensemblement ove ascuns sages de la ley, & cient poer de restreindre les mesfesours, rioters, & touz aut's baretto's, & de les p'suir, arester, p'ndre, chastier, selonc leur t'pas ou mesprision; & de faire emprisonner, & duement punir selonc la ley & custumes du Roialme, & selonc ce q'ils vront mieltz affaire p lo' discrecions & bon avisement; & ausint de eux enformer & denquer de touz ceux q' ont este pilours & robeours es p'ties de dela, & sont ore revenuz & vont vagantz, & ne voillent t'vailler come ils solcient avant ces hours; & de p'ndre & arester touz ceux q'ils p'ront trov' p'ndement, ou p' suspencion & les mettre en prison & de p'ndre de touz ceux [q' sont'] de bone fame, ou ils s'ront trovez, souffisant seurete & ineinprise de

<sup>1</sup> q' ne sont Lib. Scacc. Westm. IX; MS. Cott. Ners C. I; and the Old Printed Copies.

lo' bon port, de<sup>vs</sup> le Roi & son poeple, & les au<sup>s</sup> duement punir; au fin q̄ le poeple ne soit p̄ tieux rioto's trouble nendamage ne la pees enblemy, ne marchantz nau<sup>s</sup> passantz p̄ les hautes cheimyns du Roialme destourbez ne abaiez du pil q̄ p'ra avenir de tieux messesours: & auxint doier & yminer a la suite le Roi, tote mañe de felonies & v̄spas faites en meisme le Countee, selonc les leys & custumes avantdites; & q̄ briefs doier & yminer soient g'ntes selonc les estatuz ent faites, mes q̄ les Justices q̄ enserront assignez soient nomez p̄ la Court, & nemie p̄ la ptie. Et le Roi voet q̄ totes geñales enquerres avant ces heures g'ntez deinz seign'ies queconques p' les meschiefs & opp'essions q̄ ont este faites au poeple p̄ tieles enquerres, cessent outriement & soient repellez: Et q̄ fins q̄ sont affaire devant Justices, p' v̄spas fait p̄ aucune psonne, soient resonables & justes, cant regard au q'n'tite du v̄spas & les causes p' queles eles sont faites.

Item acorde est q̄ prises desore ne soient faites p̄ au<sup>s</sup> q̄ p̄ les p'veours le Roi, ma Dame la Roine & le Prince leur eisme filz; & q̄ si Purveyours des au<sup>s</sup> facent tieu prises soit fait de eux come des gentz q̄ fount sanz garaunt, & leur fait jugge come chose faite contre la pees & la ley de la tre; & soient tieux q̄ se fount p'veours en la mañe duement puniz.

Item des p'veances faites al oep<sup>s</sup> la Roine & du Prince, du polait & d'autres menuz choses, soit paiement fait en poigne s' la prise; & des au<sup>s</sup> grosses p'veances deinz le Mois ou sis simaignes es Countees ou ils v̄ront prises; & q̄ le nombre de tieux p'veours soit abregge, en tant come bonement p'ra p' eide & quiete du cōmune poeple.

Item porce q̄ viscontes & au<sup>s</sup> ministres sovent araient leur panels en tote mañe denquestes des gentz pceurez & pluis lointifs du Countee, q̄ nont conissance du fet dount lenqueste v̄ra prise; Acorde est, q̄ tieu paneles soient faites des plus p̄scheins gentz, q̄ ne sont pas suspectes, ne pceurez; & q̄ les viscontes, Coroners & au<sup>s</sup> ministres q̄ font alencontre soient puniz devant les Justices q̄ la dite enqueste p̄ndra, selonc la q'n'tite de leur v̄spas, sibien de<sup>vs</sup> le Roi come de<sup>vs</sup> la ptie, p' la q'n'tite du damage qil ad sufert en tieu mañe.

Item est acorde, q̄ ceux q̄ v̄ront assignez de garder la pees eient poair denquere des mesures & auxint des pois, selonc lestatut ent fait lan du regne n̄re Seign' le Roi vint & quint, en quel est contenu la forme q̄ sensuit. Porce q̄ v̄sg'nt damage & desceit est fait au poeple p̄ tant q̄ plusieurs Marchantz usent dachater & poiser leins & au<sup>s</sup> marchandises p̄ une pois qest appelle Aunsel; Acorde est & establi, q̄ celle pois appelle Aunsel entre achatour & vendour soit de tout ouste, & q̄ chescun vende & achate p̄ balances; issint q̄ les balances soient owels & les leins & au<sup>s</sup> marchandises owlement poisez p̄ droit pois, et q̄ le sac de leine ne poise q̄ vint & sis peres, & chescun perc poise quatorze livres, & q̄ lestatut de la balance ne encline ne a l'une ptie ne al autre, & q̄ le pois soit acordant al estandard del Eschequer; et si nul Achatour face al encontre, soit grevouement puny sibien a la suite de ptie come a la suite n̄re Seign' le Roi.

Item come contenu soit en la g'nt Ch̄re, q̄ une mesure soit use pmy tut Engle<sup>re</sup>, la quele Ch̄re nad mie este tenue bien en ce point avant ces heures; si est acorde & assentu, q̄ totes les mesures, cest assavoir bussel demy bussel & Peck, galon potel & quart, p̄ tout Engle<sup>re</sup> deinz franchise & dehors

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

and may hear and determine Felonies and Trespasses.

Commissions of general Inquiries shall cease.

Fines for Trespasses shall be reasonable.

ITEM, It is accorded, That [Taking<sup>1</sup>] shall not be from henceforth made by other than the Purveyors of the King, of the Queen, and of the Prince their eldest Son; and that if any other Man's Purveyors make such Takings, it shall be done of them as of People which do without Warrant, and their Deed judged as a Thing done against the Peace and the Law of the Land; and such as do make themselves Purveyors in such Manner shall be duly punished.

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

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

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

ITEM, Because that the Sheriffs and other Ministers often do array their Panels in all Manner of Inquests, of People procured, and most far off [from<sup>2</sup>] 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.

IV.  
Panels of Inquests shall be of the Neighbourhood.

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

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

ITEM, Whereas it is contained in the Great Charter, that one Measure be used through the Realm, which Charter hath not been holden well in this Point before this Time; It is accorded and assented, That all the Measures, that is to say, Bushel, Half Bushel, Peck, Gallon, Pottle, and Quart, through (1) England, within

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

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

<sup>2</sup> Takings

of

all



Application  
of the  
Forfeitures.

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

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

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

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

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

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

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

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

confirmed  
and extended  
to Aliens  
holding  
Benefices in  
England;

<sup>1</sup> *Wines, and the*

soient puentz ou des *l's* des feires & marchees, & auſi lieux ou tielz draps defectives ſront trovez, ou de lo's Seneschalx & Baillifs ou des Conestables des villes & lieux avantditz p endentures ent entre eux duement affaires; les queles endentures soient chescun an a le feste de Saint Michel liſez en lescheqir p ceux qensi ferront la dite liſee, al effect de charger illoeqs les Alneours & coillours avantditz p queux tielz defautes deussent estre ſchez chastiez & amendez & ne sont my einz cõement maintenuz ou concelez toutz ptez; pur quele tierce pte qappient au Roi come sa forfaiture p force de lestatutz devant ore faitz les alneo' & coillo' avantditz, en chescun Countee & lieu ou tielz draps defectives ſront trovez p' peine encontre lo's ditz mal fait & concelement, facent gree de lo's ppres deniers a nre dit *l'* le Roi en son Escheqir de la value de celle tierce pte, issint q sibi de mesme la tierce pte come del remenant du dit drap nre *l'* le Roi soit entierement responduz a son Escheqir avantdit.

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

Item combn q nadgairs en diſſes plementz tenez a Westm les ans du regne nre dit *l'* le Roi quint & sisme, furent faitz diſſes ordinances, & estatutz des personers de Londres & dauſ vitalliers & auxint des vineters & la vente des vins, & sur ce mesmes les ordinances & estatutz ovesq, les peynes en ycelles contenunz furent publiez & pclamez pmy le Roialme sicome en les ditz ordinances & estatutz puis pleinement purra apparoir; Nientmeyns p' ſteins enchesons a la requeste des Cões Dengleſre sur ceo especialment faite, est assentuz & accordez q mesmes les ordinances & estatutz des Personers Vineters & Vitalliers, faitz en les ans desuisditz, soient de tout anientiz & repellez & pden lour force & vñue; Sauvez nientmeins a nre *l'* le Roi toutz les forfaitures des vins a lui apptenantes p vñue de mesmes les ordinances & estatutz qantal temps passez. Purvez toutz foitz q toutz les [vins] & vitalliers sibi Personers come auſ ove leur vitailles venantz a la dñe Citee de Londres, soient desore desouz le goſñaille [ & reulle ] des Meir & Aldermannes de la Citee avandñe p' le temps esteantz come auncienement y soleient estre.

Item come nadgairs en plement tenez a Westm lan du regne nre *l'* le Roi tierce, a la requeste des Cões & p assent des *l's* temporels, estoit ordeigne & assentuz & sur grevous peyne defunduz q null liege le Roi nautre psone quelconq de quel estat ou condicion qil fuist, pñdroit ne resceivoit delors enavant deinz le Roialme Dengleſre pcuracie, tre datto'ne, ne ferme, nautre administraciõ p endenture nen autre manie quelconq, de nulle psone dascun benefice de Seinte Eglise deinz le dit Roialme fors tantoulement des lieges nre *l'* le Roi de mesme le Roialme sanz especiale g'ce & exp'sse congie de nre *l'* le Roi sur ſteine peine comprise en lestatutz avantdit, assentuz est ore & accordez p mesmes les *l's* q mesme lestatutz tiegne ses

<sup>1</sup> *Vinters Old Printed Copies.*

<sup>2</sup> *Interlined on the Roll.*

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

xiiij. Item est ordeigne & assentuz & le Roi defende q̄ desoremes null hōme chivache deinz le Roialme armez, encontre la forme de lestatut de Norhampton sur ce fait, ne ovesq̄ lancegayz deinz mesme le Roialme, les queux lancegayes soient de tout oustez deinz le dit Roialme come chose defendue p nre f<sup>r</sup> le Roi, sur peine de forfaiture dicelx lancegayes armures & auts herneys quelconques es mayns & possession de celluy q̄ les porta desore deinz mesme le Roialme contre cestz estatut & ordonances sanz especiale congie de Roi nre f<sup>r</sup>.

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

Item sur la grevousse plainte q̄est fāite des meyn-teno's des queeles & chaumpto's; est ordeigne & assentuz q̄ lestatut ent faitz en les ans du regne le Roi Edward aiel nre dit f<sup>r</sup> le Roi primer & quart, et auxint en lan de nre f<sup>r</sup> le Roi qore est primer, soient tenuz & gardez & duement executz en toutz pointz.

Item est assentuz & le Roi defende estreitement q̄ decy enavant nulle psonne aliene ou denszein de quelconq̄ estat ou condicion q̄il soit amesme ou envoie ou face amesner ou envoier p v̄re ou p meer hors du Roialme Dengleŕre as aucunes pties Descoce en prive ne en appt aucune maibe darmure de blee de brees ne dautre vitaille ou dautre refreshchement queconq̄, sur peine de forfaiture de mesmes les vitailles armures & des autres choses avantdites ensemble avec les niefs veuseulx charettes & chivalx q̄ils portent ou amesment, ou de la v̄roie value dicelles, si ensi ne soit q̄ le

\*\*\* Interlined on the Roll.

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

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

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

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

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

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

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

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

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

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

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

by themselves and

and

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

XVII.  
When Main-  
perners shall  
be liable in  
Damages  
by Delay.

ITEM, It is assented and accorded, That in Writs of Debt, Trespass, and Account, and in all other Cases where Mainprise and Writs of Supersedas be grantable, that if the Persons [comprised<sup>1</sup>] come not before the Judges at a Day comprised in the same Mainprise, and by so much the Plaintiff is put to Delay and Loss, the said Mainperners shall be answerable to the Plaintiffs of a certain Sum of Silver, to be limited by the Discretion and Advice of the said Judges, having Consideration to the Quality and Quantity of the Damages of the Parties, and of the Things in Demand. And this Ordinance of Mainperners shall endure in Assay till the next Parliament only.

[<sup>2</sup> And therefore We command you that as well the said Statute of Winchester, four times in each Year from henceforth, in Manner as above is ordained, as the other Statutes and Ordinances above written, in all the Cities, Boroughs, Market Towns, and other notable laces within your Bailiwick, where it shall seem to you most expedient, within Franchise and without, you do cause to be proclaimed on our behalf, and to be published and duly kept and observed according to the Form and Effect of the same. Given under the Witness of our Great Seal at our Palace of Westminster the Twentieth Day of November, in the Seventh Year of our Reign.<sup>3</sup>]

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

<sup>1</sup> for his labour

<sup>2</sup> mainprised

<sup>3</sup> Former Translations read only thus :

And therefore We command you, &c. Dated, &c.

Roi nre s' nent donne sa licence especiale a contr'rie. Et au fyn q' ceste ordinance soit duement gardez & mys en bone execucion est auxint assentuz q' celluy qi ap's q' proclamacion ent soit faite purra espier & p'ver qascun eit mespris, ou forfait en aucun point contre la forme de ceste ordinance, eit la tierce p'tie des dites forfaitures ent'ement a son p'pre oeps p' son t'vaille.

Item est assentuz & accordez q'en briefs de dette trespas & de compte, & en toutz autres cas ou maynprise & brief de Supedeas sont g'ntables, si les p'sones maunprisez ne viegnent mye devant les Juges au jo' compris en mesme la meynprise, & p' tant le pleiniif soit mys en delay & p'de, soient les ditz meinpnours respoignables as pleintifs dune s'aine s'ome, ('') a limiter p' la discrecion & advis des ditz Juges, eiantz consideration a la qualitee & quantitee des damages du p'tie & de la chose en demande. Et si durera ceste ordinance des mainpno's en assaie, tanq' al p'chein plement tantoulement.

Et purce vous mandons q' s'ibn le dit Estatut de Wyncestre quatre foitz chescun an decy enavant p' maile q' dessus est ordeigne, come les autres Estatutz & ordinances dessusescritz en toutz les Citees Burghs villes marchees & autres lieux notables deinz v're baillie ou vous verrez q' mieutz soit affaire deinz franchise & dehors, facez p'clamer dep' nous & publier & duement garder & tenir selonc la forme & effect d'icelles. Doñ p' tesmoignance de n're g'nt Seal a n're Paleys de Westminster avantdit le xxvj<sup>me</sup> jour de Novembre lan de n're regne septisme.

Consimilia mandata & dirigunt' singulis Vicecomitibz p' Angl' sub eadem dat.

<sup>4</sup> dargent Old Printed Copies.

Anno 8° RICARDI, II. A.D. 1384.

Statutū apud Westm̄ anno octavo editū.

STATUTE MADE AT WESTMINSTER IN THE EIGHTH YEAR.

In Margine  
Rotuli.

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

I.  
Liberties of  
the Church,  
and Statutes  
confirmed.

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

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

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

<sup>1</sup> accorded and statuted MS. Tr. 2.

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

AD honorem dei & requisicōem cōitatis regni Angl' f'ram dñō Regi in pliamēto suo tento apud Westm̄ in Crastino Scti Martini anno regni sui octavo, idem dñs Rex de assensu Prelatoꝝ Magnatū & Cōitatis p'dē quoddam statutū in eodem pliamēto p' cōi utilitate dñi regni & p'sertim p' bona & justa gubnacōe ac debita execuōe cōis legis fieri fecit in forma subsequenti :

In primis concordatū est & statutū qd s'ca ecclia heat omēs libtates suas, & qd Magna Carta & Carta de Foresta, Statuta de p'visoribz & laboratoribz & omia alia statuta & ordinacōes ante hec tēpora edita & minime revocata teneant' observent' & execuōi debite demandent' juxta formam & eff'ctm eorūdem.

Item concordatū est & statutū qd nullus homo de lege sit decto Justic' assisas vel cōis delibacōis gaolaz in p'pria p'ria sua et qd capitalis Justic' de cōi Banco assignet' in p' alios ad h'p'i assisas capiend' & ad gaolas deliband set quoad capitalem Justic' de Banco Regis fiat sicut p' majori pte Centū annoꝝ p' p'f'itoꝝ fieri consuevit.

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

For the  
proclaiming  
the Statute.

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

By the King Himself and Council.

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

garde de Farndon dedens puissent eslire un Alderman sage suffisant & able p' gouverner mesme la garde dedens, & estre nome lalderman de la garde de Farndon dedens; et q' pentre cy & le dit fest de Saint Gregoire les gentz de la garde de Farndon dehors puissent eslire un autre Alderman sage suffisant & able p' gouverner mesme la garde dehors, & estre nommez lalderman de la garde de Farndon dehors. Et q' les ditz deux Aldermans issint esliz puissent estre establiz & nemye remoez si noun p cause resonable, come ordeinez est & g'ntez p nre dit R' le Roi en cest plement des auts Aldermans du dite Citee.

R. Viñ Kan, salm. Quoddam statutum in ultimo Parlamento nro apud Westm̄ tento p nos de assensu Magnatum & Cōitatis regni nri Angl nobiscum ibidem tunc assistentiū editū tibi mittim⁹ in forma patentī; Mandantes qd Statutum illud & omēs & singulos articulos in eodem contentos, in Civitatibus Burgis Villis Ricatoriis & aliis locis infra ballivā tuam ubi melius expediri videris, publice pclamari & quantum ad te p̄tinet firmit⁹ & inviolabiliter observari fac. T. R. apud Westm̄ primo die Junii.

p ipm Regem & consilium.

Consimilia bñā dirigunt' singulis Vicecomitib⁹ p Angl; ac Johi Duci Aquit & Lancast' vel ejus Cancellario in eodem Ducatu Lancast' sub eadem data.

Anno 20° RICARDI, II. A.D. 1396-7.

### Statutū de Anno vicesimo.

#### STATUTE OF THE TWENTIETH YEAR.

In Margine  
Rotuli.

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

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

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

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

LE ROY en son parlement tenuz a Westm̄ en la feste de Saint Vincent lan de son roialme vintiesme, del assent des Prelatz & Cōmunes de son roialme en mesme le parlement, pur quiete & t'quillite de son poeple ad fait deins estatutz & ordenances qensuiet.

Primement, come en un estatut fait lan septiesme du regne nre Seignur le Roy soit ordeigne & assentuz q' nult hōme chivache deins le Roialme armez contre la fourme de lestatut de Norhampton sur ce fait, ne ovesq lancegaye deins mesme le roialme, et q' les ditz lancegayes soient de tout oustez deins le dit Roialme, come chose defendue par le Roy sur peyne de forfaiture dicelles lancegayes armures & auts hernoys quelconques, es mayns & possession dycelx qui les porta delors deinz mesme le Roialme encontre ycelles estatutz & ordenances sanz espale congie du Roy:

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

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

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

Item q' come il soit contenuz en un estatut de f' Edward nadgairs Roy Dengleire Aiel a nre f' le Roy qorest lan de son regne vynt & oetisme, q' nulle man'e de nief q' soit frette dev's Engleire ou aillours soit artez de venir a nul port Dengleire ne y dem'er contre le gree des Mestres & Marins dicelle, ou des Marchantz as queux les biens sont, et si tielx niefs veignent de gree ou soient chacez p' tempeste ou au' infortune ou meschief a aucun port Dengleire & les Meistres & marins ou Marchantz de mesmes les niefs voillent vendre & deliv'er pte de leur m'chandises p' loure bone voluntee, bien lise a chescun tiele m'chandises achatre franchement sanz empeschement en le port ou tieles niefs viendront, tout ne soient les m'chandises mises a la f're pur vendre; Et q' les Meistres Marins & Marchantz, aps ce q'ils av'ont issint venduz ce q' leur plerra de leur ditz biens & paie ent la custume, puissent f'unchement deptier & aler ove leur niefs & tout le remenant de leur bils pla ou leur plerra sanz custume ent paier: Nre Seignur le Roy p' la quiete & ease de son poeple voet q' le dit estatut soit tenuz & gardez en toutz pointz & dueiment executez nient contresteaunt ascune ordeignance ou usage a contr'rie.

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

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

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

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

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

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

<sup>1</sup> *Prill* <sup>2</sup> *Omit this word.* <sup>3</sup> *Badge or Livery* <sup>4</sup> *Will*  
<sup>5</sup> or other Misfortune or Mischiefe, <sup>6</sup> put to Land, to sell.

Confirmation thereof.

No Man shall ride or go armed.

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

II. Liveries of Companies restrained.

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

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

Confirmation thereof.

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

1400.

*Membrane 24d—cont.*

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

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

Feb. 7. To the sheriff of York. Order upon sight etc. to cause proclamation to be made, that no man of whatsoever estate or condition shall under pain of forfeiture take over wool, corn or other merchandise in any places by the sea called 'crykes' or any other places, known ports excepted, without special licence of the king. Westminster. Like writs to the sheriffs of the following counties etc. :

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

Also to the chancellor of the county palatine of Lancastre.

*MEMBRANE 23d.*

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

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

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

1409.

*Membrane 23d—cont.*

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

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

*Memorandum of acknowledgment, 6 February.*

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

*Memorandum of acknowledgment, 7 February.*

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

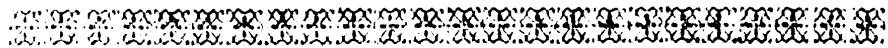


One Half of  
the Fines and  
Forfeitures to  
be unto Their  
Majesties, and  
the other Half  
to the Informers.

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

Measurer of  
Salt, and Cull-  
ler of Fish.

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



22<sup>o</sup> 6.

Continued  
22 Aug. 1695.

### *An Act for the Punishing of Criminal Offenders.*

Curfing and  
Swearing.

Procurators.

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

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

Drunkennes.

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

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



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

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

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

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

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

Breach of the Peace.

Forcible Entry and Detainer.

Libel and Libelling.

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

Forgery.

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

1786.

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

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

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

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

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

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

C H A P. XXI.

*An Act forbidding and punishing Affrays.*

[Passed the 27th of November, 1786.]

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

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

C H A P. XXII.

*An Act against Conspirators.*

[Passed the 27th of November, 1786.]

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

Who shall be deemed conspirators.

24627

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

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

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

AAS copy.

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



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

---

NEW BERN:  
FROM THE EDITOR'S PRESS.

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1792.

C H A P. VIII.

*Nothing shall be taken for Beaupleader.*

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

---

C H A P. XIV.

*None shall commit Maintenance.*

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

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

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C H A P. I.

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

[Unnecessary to be inserted.]

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C H A P. III.

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

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

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

## C H A P. V.

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

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

## C H A P. VI.

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

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

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

[This Act passed January 22, 1795.]

C H A P. II.

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

Act repealed.

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

Justices of the Peace empowered.

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

[This Act passed January 29, 1795.]

C H A P.



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

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

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

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

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

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

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

Penalty for failing.

Proceedings against persons going armed contrary to this act.

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

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

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

## CHAPTER LXXVI.

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

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

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

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

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

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

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

Must recognize with sureties,

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

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

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

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

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

Penalty for refusing to obey such Justice.

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

Justices may grant subpoenas for witnesses in criminal cases:

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

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

Penalty for neglect.

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

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

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

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

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

SEC. 8. *Be it further enacted*, That all civil actions, where-  
 in the debt or damage does not exceed twenty dollars, (and  
 wherein the title of real estate is not in question, and special-  
 ly pleaded by the defendant,) shall, and may be heard, tried,  
 adjudged and determined by any Justice of the Peace within  
 his county; and the Justices are severally empowered to grant  
 summons, capias and attachment, at the request of any per-  
 son applying for the same, directed to some proper officer  
 within the same county, empowered by law to execute the  
 same. And such summons or capias and attachment shall be  
 duly served by such officer, seven days at the least before the  
 day therein set for trial, otherwise the party sued shall not be  
 held to answer thereon; and if after such process shall be  
 duly served, the party sued, after being duly called, shall not  
 appear to answer to the same suit, the charge against him in  
 the declaration shall be taken to be true, and the Justice shall  
 give judgment against him for such damages as he shall find  
 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  
 sum of twenty dollars shall be awarded in any action origin-  
 ally brought or tried before a Justice of the Peace; but if the  
 plaintiff shall not support his action, shall fail to prosecute, or  
 become nonsuit, the Justice shall award to the party sued, his  
 reasonable costs, taxed as the law directs. And upon all  
 judgments given by a Justice of the Peace in civil actions, he  
 shall award execution thereon in form by law prescribed.

Justice's juris-  
 diction in civil  
 actions, (where  
 title to real es-  
 tate is not in  
 question,) to  
 extend to 20  
 dollars.

Justices may is-  
 sue summonses,  
 capias, attach-  
 ment, &c.

—to be served  
 seven days be-  
 fore trial.

Proceedings be-  
 fore Justice.

Judgment, &c.  
 if plaintiff pre-  
 vail.

Damages not to  
 exceed 20 dol-  
 lars.

Judgment in  
 case defendant  
 prevail.

Execution.

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

Justice to have  
 jurisdiction  
 where the ad  
 damnum does  
 not exceed 20  
 dollars.

SEC. 10. *Be it further enacted*, That any party aggrieved  
 at the judgment of any Justice of the Peace, in a civil action,  
 where both parties have appeared and plead, may appeal  
 therefrom 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 reason-  
 able sum as the Justice shall order, not exceeding thirty dol-  
 lars, to pay all intervening damages and costs, and to prose-  
 cute his appeal with effect; and shall be held to produce a  
 copy of the whole case, at the Court appealed to, and both  
 parties shall be allowed to offer any evidence upon the trial  
 at the Circuit Court of Common Pleas, in the same manner as  
 if the cause had been originally commenced there. And no  
 other appeal shall be had on such action after one trial at the  
 Circuit Court of Common Pleas. And the Circuit Court of  
 Common Pleas, when any person recognized as before men-

Party aggriev-  
 ed may appeal  
 to C. C. Com-  
 Pleas.

—Must recog-  
 nize to prose-  
 cute.

and produce co-  
 pies at C. C. C.  
 Pleas.  
 Proceedings in  
 that Court.

No further ap-  
 peal.

Defendant in  
 trespass failing  
 to bring for-

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

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

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

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

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

Justices may grant subpoenas in all civil actions.

May adjourn their Courts by proclamation:

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

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

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

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

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

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

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

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

Justice to keep record of his proceedings.

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

Appeal allowed to either party.

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

Punishment for refusal so to do.

Duty of the Justice when the record is produced, to transcribe it into his own record.

Copy of such transcript to be evidence.

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

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

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

[Approved March 15, 1821.]

—:00:—

## CHAPTER LXXVII.

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

**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:—

Justices may  
take recogniz-  
ances for debts.

Form of recog-  
nizancee.

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

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

To be recorded  
by the Justice.

Execution may  
issue thereon  
within 3 years.

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

State of Maine.

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

Form of execu-  
tion.

Because A. B. of , in the County of , on the day of , in the year of our Lord before E. F. Esq. one of the Justices of the Peace for the said County of , acknowledged that he was indebted to C. D. of , in the county of in the sum of which he ought to have paid on the day of , and remains unpaid as it is said : We command you therefore, that of the goods, chattels or real estate of the said A. B. within your precinct, you cause to be paid and satisfied unto the said C. D. at the value



## TITLE FIFTEENTH.

### Of Justices of the Peace.

CHAPTER 97. General powers, duties and jurisdiction of justices in criminal cases.

- 98. Jurisdiction in bastardy cases.
- 99. Justices' jurisdiction in civil cases of debt.
- 100. Justices' jurisdiction in trespass cases.
- 101. Justices' jurisdiction in cases of forcible entry and detain-  
er; and of holding over.

### CHAPTER 97.

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

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

#### *Number.*

2003  
Number.

New Cas-  
tle.

Kent.  
Sussex.

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

#### *General powers and duties.*

2004  
May issue  
process.  
Forms.

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



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

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

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

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

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

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

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

A commitment may be in this form:—

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

{ L. S. } Given under my hand and seal this —— day of ——  
{ } A. D., 18—. J. P. 2011  
Commit-  
ment.

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

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

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

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

2013  
Power to  
punish as-  
saults and  
batteries.

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

2014  
Binding to  
ANSWER  
CHARGE.

Binding for appearance to answer may be thus:—

——— county, ss. *The State of Delaware.* BE IT REMEMBERED, that C. D., of ——— hundred, and R. S. and T. W., of ——— hundred, in said county, personally appeared before E. F., a justice of the peace for said county, and acknowledged to owe the State of Delaware the sum of ——— dollars, to be levied on their goods and chattels, lands and tenements respectively for the use of the said State: UPON CONDITION, that if the above bound C. D., be and appear before the next Court of General Sessions of the Peace and Jail Delivery, to be held at ———, for the county aforesaid, there to answer such matters and things as shall be objected against him, and particularly touching a charge (here state the offence charged) said to have been committed by the said C. D., at ——— hundred, in said county, on the ——— day of ———, and shall not depart the court without leave thereof; then this recognizance to be void, otherwise to be in full force and virtue.

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

2015  
Binding a  
witness to  
appear.

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

2016  
Parties may  
settle as-  
saults and  
batteries.

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

2017  
Not to re-  
ceive fines.

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



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

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

2018  
To certify  
fines to au-  
ditor.

Penalty.

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

2019  
Power to  
bind over  
for THREATS

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

2020  
To cause ar-  
rests.

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

2021  
Drunkards;  
swearers.

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

2022  
To punish  
those who  
resist au-  
thority.

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

2023  
Proceed-  
ings in crimi-  
nal cases;  
complaint.

A warrant of arrest may be in this form:

2024  
Warrant of  
arrest.

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

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

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

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

2025  
How di-  
rected.

2026  
Proceeding  
on arrest.

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

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

2027  
Examina-  
tion.  
Voluntary  
declarations

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

2028  
In felonies  
to be in writ-  
ing.

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

2029  
Testimony  
in writing.

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

2030  
Commit-  
ment; or  
binding to  
appear.

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

2031  
Binding the  
witnesses.

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

2032  
[2014, &c.]

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

2033  
To deliver  
recognizan-  
ces, &c.

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

Fee.

2034  
Names of  
witnesses to  
be indorsed.

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



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

SEC. 22. Every justice shall cause to be arrested, on proper complaint, all persons found within his county charged with any offence; and all persons who, after committing any offence in such county, shall escape out of the same. 2035  
Duty to arrest persons complained against.

SEC. 23. A warrant of arrest, issued by a justice in one county, may be executed in any county of the State; and the constable, or officer, having it in hand, may command aid as in his own county; but he shall, upon request, carry the defendant before some justice of the county, where he is arrested, to be bailed, if he offer sufficient bail and the offence is bailable; otherwise he shall convey him from the county in execution of his warrant. 2036  
Warrant, where executed.

SEC. 24. In criminal cases, bail for the appearance of the accused, except when taken by the sheriff, or officer to whom process is directed, and security for the appearance of a witness, shall be given by recognizance. Each judge of the Superior Court, and every justice of the peace shall have authority to take such recognizance; and when so taken out of court, the recognizance shall be signed by the recognizers. When a person is committed for want of bail, or security, the sum required shall be set down on the commitment. 2037  
Bail for appearance, how taken.  
By whom.  
Commitment.

SEC. 25. A person, so committed, shall be discharged upon giving sufficient bail, or security; and any judge, or justice, may require such person to be brought before him for that purpose. 2038  
How discharged.

SEC. 26. A capital offence shall not be bailable; but the Court of General Sessions of the Peace and Jail Delivery, when in session, or any judge thereof in vacation, may admit to bail a person accused of such offence before indictment found, if, upon full inquiry, it appears that there is good ground to doubt the truth of the accusation. On such inquiry, the justice, or officer who committed the accused, shall be summoned, and care shall be taken to hear the proper witnesses. 2039  
Capital cases.  
When bail may be taken.

SEC. 27. When a person arrested by virtue of process issued upon an indictment, or presentment, except for a capital crime, and except process returnable forthwith, offers sufficient bail, it shall be taken, and the person discharged. The court awarding the process, or any judge thereof, or the attorney general, may determine the sum in which bail shall be taken, and set it down on the process; or if no sum be so determined, the officer issuing the process shall set down what sum he deems reasonable for bail. 2040  
Bail in other cases.  
How determined.

SEC. 28. Bail shall be taken by the sheriff, or officer to whom the process is directed, by a joint and several bond executed, by the accused and his bail, to the State, in the sum set down for bail upon the process, with condition, in substance, *that if the accused shall appear in the court, mentioned in the process, at the place and time of the return thereof, to answer as expressed therein, and shall not depart the court without leave, the said bond shall be void.* Bond so taken, shall be returned with the process, and, if default be made, it shall be recorded thereon in the same manner as in the case of a recognizance. 2041  
How taken by sheriff.

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

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

2043  
Complaint  
in writing.

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

2044  
How direct-  
ed.

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

2045  
When it  
may be exe-  
cuted at  
night.

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

2046  
Power to try  
offences by  
SLAVES.

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

Judgment  
for costs.

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

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

2048  
Order on  
master to  
pay costs,  
&c.

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



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

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

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

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

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

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

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

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

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

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

Challenges.

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

Panel how completed.

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

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

[Translation.]

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

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

Carrying weapons prohibited.

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

First conviction fine.

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

Second conviction. imprisonment.



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

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

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

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

Aprobado Febrero 2 de 1860.

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

Decrétese por la Asamblea Legislativa del Territorio de  
Nuevo Méjico:

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

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

Penalty for dis-  
charging or  
drawing wea-  
pons.

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

Penalty for cut-  
ting or wound-  
ing in assem-  
blies.

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

In case of death,  
to be deemed  
murder

Duty of sheriffs  
and constables  
to arrest.

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

Sheriffs and  
constables to  
take oath.

Officers excus-  
ed.

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

Travellers ex-  
cused.

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

Segunda conviccion, encarcelamiento.

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

Disparando armas, pena de.

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

Hiriendo en reuniones públicas, pena de.

Muerte en primer grado.

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

Deberes de los alguaciles, y ofensores de dar fianzas.

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

Viajeros, &c., esceptuados.

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

Judges to give  
this act in  
charge.

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

Repealing  
clause.

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

To be publish-  
ed.

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

[Translation.]

### *An Act regulating Mercantile Copartnerships.*

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

Who may en-  
ter into.

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

Good faith to  
be observed.

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

Articles what  
to contain and  
before whom  
made.

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

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.

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

Chap. IX.

An Act against wearing Swords, &c.

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

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

In the Year of our L O R D, 1784.

Powers of Justices in criminal Cases.

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C H A P. XXVII.

An Act vesting certain Powers in Justices of the Peace  
in criminal Cases.

*BE it enacted by the Senote and House of Representatives, in General Court assembled, and by the authority of the same, That it shall be within the power, and be the duty of every Justice of the Peace within his county, to punish by such fine as is by the statute law of the Commonwealth provided, all assaults and batteries that are not of a high and aggravated nature, and to cause to be stayed, and arrested all affrayers, rioters, disturbers and breakers of the peace, and to bind them by recognizance to appear at the next Supreme Judicial Court, or Court of General Sessions of the Peace, to be held within or for the same county, at the discretion of the Justice; and also to require such persons to find sureties for their keeping the peace, and being of good behaviour until the sitting of the Court they are to appear before, and to commit such persons as shall refuse so to recognize and find such surety or sureties. And the Justices of the Peace shall examine into all homicides, murders, treasons, and felonies done and committed in their counties, and commit to prison all persons guilty or suspected to be guilty of manslaughter, murder, treason or other capital offence. 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 shall take cognizance of, or examine into all other crimes, matters and offences, which by particular laws are put within their jurisdiction.*

Duty of Justices of the Peace.

*And it is also enacted by the authority aforesaid, That Justices of the Peace within their respective counties, be, and they are hereby authorized and empowered, to grant *sub poenas* for witnesses in all criminal causes pending before the Supreme Judicial Court, and Court of General Sessions of the Peace, and before themselves or any other Justice. And all sheriffs, constables and other officers, are directed and empowered to serve any warrant issuing from a Justice of the Peace; and each Justice shall have authority to command the assistance of every sheriff, deputy sheriff, constable, and all other persons present at any affray, riot, assault or battery, and may fine any person refusing such assistance, in a sum not exceeding forty shillings, 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.*

Justices to grant sub-poenas for witnesses.

*And be it further enacted by the authority aforesaid, That any person aggrieved at the sentence given against him by any Justice of the Peace, may appeal therefrom to the next Court of General Sessions of the Peace, to be held within the same county, and shall, before his appeal is granted, recognize to the Commonwealth in such reasonable sum, not less than five pounds, as the Justice shall order, with sufficient surety or sureties for his prosecuting his appeal, and shall be held to produce the copy of the whole process, and of all writings filed before the Justice at the Court appealed to. And if he shall not there prosecute his appeal, and produce the copies as aforesaid, the Court*

Persons aggrieved allowed an appeal from the sentence of any Justice to the Court of Sessions.

D d

shall

*In the Year of our LORD, 1784.*

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Coparceners, joint Tenants, &c.

Persons failing to prosecute their appeal, how to be proceeded against.

shall order his default to be noted upon their record, and shall certify the same recognizance with the record of the default in the performance of the condition thereof, to the Court of Common Pleas, to the intent that a *seire facias* may be thereupon issued for the recovery of the penalty. And the said Court of General Sessions of the Peace, may order the same case to be laid before the Grand Jury, or may issue an attachment against the body of such appellant, and cause him thereby to be brought before them, and when he is so in Court, shall affirm the sentence of the Justice against him with all additional costs.

Justices of the Peace to account annually for all fines received.

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

[This act passed March 16, 1784.]

C H A P. XXVIII.

An Act to prevent Coparceners, joint Tenants, and Tenants in common, from committing Waste, and for making Partition of their Interest, and for abolishing the Principle of Survivorship in joint Tenancy.

Tenants in common not to commit waste or forfeiture.

*BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,* That if any person being a tenant in common of any lands, shall cut down, destroy, or carry away any trees, wood or underwood whatsoever, standing or laying on such lands, or make any other strip or waste thereon, without first giving notice in writing under his or their hands, unto all the persons interested therein, or to their agents, factors or attornies, forty days before hand, setting forth, that he or they have occasion for, and shall enter upon and improve such lot or lots of land lying in common as aforesaid, shall forfeit and pay the sum of forty shillings for every tree measuring one foot diameter at the distance of two feet from the ground, and for all trees of greater dimensions three times the value thereof, besides forty shillings as aforesaid, and twenty shillings for every tree or pole under the dimensions of one foot diameter, and for other wood or underwood treble the value thereof; and treble damage for other strip or waste; the said forfeiture to be recovered by any one or more of the persons interested, who shall prosecute and sue for the same in an action of trespass in his or their own names, as well on the behalf of the other tenants in common, as of him or themselves, (who are hereby authorized and impowered so to do) one moiety of the aforesaid penalty to be for the use of such person

Forfeitures how to be recovered.



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

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

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

## TITLE II.

### Of proceedings in criminal cases.

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

## CHAPTER 134.

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

#### SECTION

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

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

Officers' authorized to keep the peace. SECTION 1. The justices of the supreme judicial court, the justices of the court of common pleas, justices of police courts, in vaca-

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

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

SECT. 3. If, upon examination, it shall appear that there is just cause to fear that any such offence may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer, to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate or court having jurisdiction of the cause. Arrest.  
1794, 26, § 2.

SECT. 4. When the party complained of is brought before the magistrate, he shall be heard in his defence, and he may be required to enter into a recognizance, with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of this Commonwealth, and especially towards the person requiring such security, for such term as the magistrate may order, not exceeding six months, but shall not be bound over to the next court, unless he is also charged with some other offence, for which he ought to be held to answer at such court. Trial.  
Recognizance to keep the peace.  
4 Mass. 497.  
8 Mass. 73.  
2 B. & A. 278.  
1833, 63, §§ 1, & 2.

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

SECT. 6. If the person, so ordered to recognize, shall refuse or neglect to comply with such order, the magistrate shall commit him to the county jail, house of correction, or house of industry, during the period for which he was required to give security, or until he shall so recognize; stating, in the warrant, the cause of commitment, with the sum and the time for which security was required. Refusing to recognize, to be committed.  
1833, 63, § 1

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

SECT. 8. When no order respecting the costs is made by the magistrate, they shall be allowed and paid, in the same manner as costs before justices in criminal prosecutions; but in all cases, where a person is required to give security for the peace, or for his good behavior, the court or magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed, until such costs are paid, or he is otherwise legally discharged. Payment of costs in other cases.  
1824, 128, § 2.  
1834, 151, § 4.

SECT. 9. Any person aggrieved by the order of any justice of the peace, or of a police court, requiring him to recognize as afore- Appeal allowed.  
1833, 63, § 1.

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

On appeal,  
witnesses to  
recognize.

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

Proceedings on  
appeal.

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

Recognizance,  
when to remain  
in force.

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

Persons com-  
mitted for not  
recognizing,  
how discharged.

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

Recognizances  
to be transmit-  
ted to the court.

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

— when to be  
required on  
view of the  
court or magis-  
trate.

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

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

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

Court may re-  
mit part of pen-  
alty.  
7 Mass. 397.  
1810, 80.

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

Surety may  
surrender his

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

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

principal, who  
may recognize  
anew.

## CHAPTER 135.

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

#### SECTION

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

#### SECTION

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

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

Officers, empowered to act under this chapter.

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

Complaints, warrants, and summonses for witnesses.



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

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

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

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

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

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

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

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

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

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

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

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

**SECT. 16.** Any person, going armed with any dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without a reasonable cause to fear an assault on himself, or any of his family or property, may, on the complaint of any person having cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace for a term, not exceeding one year, with the right of appeal as before provided. Persons going armed, without reasonable cause. 1821, 76, § 1.

**SECT. 17.** In a suit, on such recognizance taken in a criminal case, if a forfeiture is found or confessed, the court, on petition, may remit the penalty, or such part of it as they may think proper, on such terms as they may think right. Power of court, to remit the penalty of a recognizance. 1821, 50, § 4.

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

## CHAPTER 170.

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

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

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

TITLE XXXI.  
CHAPTER 162.

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

Party, when discharged.

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

Refusing to recognize, to be committed.

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

Complainant, when to pay costs.

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

Payment of cost in other cases.

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

Appeal allowed.

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

Witnesses to recognize.

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

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

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

Recognizance, when to remain in force.

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

Person committed how discharged.

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

Recognizance to be transmitted to clerk of court.



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

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

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

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

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

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

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

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

## CHAPTER 163.

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

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

Complainant, &c.  
to be examined.

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

Proceedings if it  
appear that an  
offence has been  
committed.

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

# TITLE III.

## OF PROCEEDINGS IN CRIMINAL CASES.

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

## CHAP. XIV.

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

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

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

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

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

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

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

Recognizances required for offences in presence of magistrate or court.

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

Persons armed, required to find sureties.

Appeal allowed.

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

Persons not of good fame to give surety.

## CHAP. XV.

### OF ARREST AND COMMITMENT.

#### SECTION

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

#### SECTION

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

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

Process to arrest for offences, by whom issued.

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

Examination on complaint.



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.

When to be committed.

Forfeiture of recognizance.

When discharged.

May be delivered on warrant of executive, &c.

Complainant liable for costs, &c.

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.

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 kept.
2. Proceedings when complaint is made to magistrate.

#### SECTION

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

SECTION

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

SECTION

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

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

What officers to cause public peace to be kept.

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

Proceedings when complaint is made to magistrate.

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

Magistrate when to issue warrant.

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

Proceedings upon examination before magistrate.

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

Defendant may have counsel.

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

Defendant when to enter into recognizance.

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

Defendant when to be discharged.

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

Defendant when to be committed.

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

Defendant when to be discharged.



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

Costs by whom paid

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

Appeal when allowed.

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

When magistrate may require witness to recognize.

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

District court how to proceed upon such appeal.

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

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

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

After commitment, how defendant may be discharged.

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

Recognizance to be transmitted to district court.

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

When person may be ordered to recognize without warrant.

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

Persons carrying offensive weapons how punished.

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

Suit brought on recognizance.

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

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

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

Surety may take and surrender principal in recognizance.

## CHAPTER 113.

### OF ARRESTS.

#### SECTION

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

#### SECTION

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

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

Arrest defined.

SEC. 2. An arrest may be either,

Arrest how and by whom made.

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

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

Every person must aid officer in making arrest.

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

Arrest for felony or misdemeanor how made.

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

Arrest for felony or misdemeanor how made.

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

Defendant how to be restrained.



## CHAPTER XVI.

## PROCEEDINGS TO PREVENT COMMISSION OF CRIMES.

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

Keeping the  
peace.

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

When sure-  
ties may be  
required. 17  
Wen. 181;  
23 do. 639.

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

Warrant to  
issue.

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

Examination

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

Privilege of  
defendant.

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

Recogniz-  
ance when  
required.

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

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

CHAP. 16.

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

When to be committed.  
23 Wen. 639.

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

Complainant when to pay costs.

SEC. 9. When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security for the peace, or for his good behavior, the magistrate may further order the costs of prosecution, or any part thereof, to be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.

Costs.

SEC. 10. Any person aggrieved by the order of any justice of the peace, requiring him to recognize as aforesaid, may, within ten days after the decision of the justice, on giving the security required, appeal to the district court, next to be holden in the same county, or that county to which said county is attached for judicial purposes.

Appeal.

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

Witnesses when to recognize.

SEC. 12. The court before which such appeal is prosecuted, may affirm the order of the justice, or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution, as it may deem just and reasonable.

Power of appellate court

SEC. 13. If any party appealing, shall fail to prosecute his appeal, his recognizance shall remain in full force and effect, as to any breach of the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as security for any cost which shall be ordered by the court appealed to, to be paid by the appellant.

Failing to prosecute appeal.

SEC. 14. Any person committed for not finding sureties, or refusing to recognize as required by the court or magistrate, may be dis-

Discharge of party committed.

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

Recognizances when to be transmitted.

SEC. 15. Every recognizance taken in pursuance of the foregoing provisions, shall be transmitted by the magistrate to the district court for the county, on or before the first day of the next term, and shall be there filed of record by the clerk.

Order to recognize without warrant.

SEC. 16. Any person, who shall, in the presence of any magistrate mentioned in the first section of this chapter, or before any court of record, make an affray, or threaten to kill, or beat another, or to commit any violence or outrage against his person or property, and every person, who, in the presence of such court or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace, and being of good behavior for a term not exceeding six months, and in case of a refusal, may be committed as before directed.

Armed persons, when required to find sureties.

SEC. 17. If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault, injury, or other violence to his person, or to his family or property, he may, on complaint of any other person, having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace for a term not exceeding six months, with the right of appealing as before provided.

Suit on recognizance.

SEC. 18. Whenever on a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

Surety may surrender principal.

SEC. 19. Any surety in a recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right to take and surrender his principal, as if he had been bail for him in a civil case, and upon such surrender, shall be discharged and exempted from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person so surrendered, may recognize anew with sufficient sureties, before any justice of the peace for the residue of the term, and thereupon shall be discharged.

## CHAPTER XVII.

### ARRESTS.

- SEC. 1. Arrest defined.  
 2. Arrest, how and by whom made.  
 3. Every person must aid officer in making arrest, if required.  
 4. Arrest for felony and misdemeanor, when may be made.  
 5. As to what constitutes arrest.  
 6. Officer may pursue fugitive into other counties.  
 7. When an officer or private person may arrest without warrant.  
 8. Arrest, how made in such case.  
 9. Escape and capture of prisoner.

Arrest.

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

SEC. 2. On the trial of every indictment, the party accused shall be allowed to be heard by counsel, and he may defend himself, and he shall have a right to produce witnesses and proofs in his favor, and to be confronted with the witnesses who are produced against him.

SEC. 3. No person indicted for an offence shall be convicted thereof, unless by confession of his guilt in open court, or by admitting the truth of the charge against him by his plea or demurrer, or by the verdict of a jury, accepted and recorded by the court.

SEC. 4. No person shall be held to answer on a second indictment for any offence of which he has been acquitted by the jury, upon the facts and merits, on a former trial; but such acquittal may be pleaded by him in bar of any subsequent prosecution for the same offence, notwithstanding any defect in the form or in the substance of the indictment on which he was acquitted.

SEC. 5. No person who is charged with any offence against the law, shall be punished for such offence, unless he shall have been duly and legally convicted thereof in a court having competent jurisdiction of the cause and of the person.

## CHAPTER 141.

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

#### SECTION

1. Officers authorized to keep the peace.
2. Complaint; how made.
3. Arrest.
4. Trial; recognizance to keep the peace.
5. Party; when to be discharged.
6. Refusing to recognise, to be committed.
7. Party, when discharged; and complainant, when to pay costs.
8. Payment of costs in other cases.
9. Appeal allowed.
10. On appeal, witnesses to recognise.
11. Proceedings upon an appeal.
12. Recognizance; when to remain in force.
13. Persons committed for not recognising; how discharged.
14. Recognizances to be transmitted to the court.

#### SECTION

15. Recognizances; when to be required on view of the court or magistrate.
16. Persons who go armed may be required to find sureties for the peace, &c.
17. Proceedings when person is suspected of selling liquor contrary to law.
18. Surety may surrender his principal, who may recognise anew.

#### SEARCH WARRANTS.

19. Search warrants for property stolen.
20. In what other cases to be issued.
21. } Warrant; to whom directed, and when
22. } and how executed.
23. Property seized may be kept as evidence, and then restored to owner or destroyed.

## SECTION

## CORONERS' INQUESTS.

24. Coroners' inquests; when to be held.
25. Coroner to issue a warrant to constable to summon jury. Form of warrant.
26. Penalty for constable's or juror's neglect.
27. Jurors; how empaneled and sworn.
28. Witness; how summoned, &c.
29. Oath of witnesses.
30. When and how post mortem to be made, or chemical analysis to detect poison; and fees, &c., for same.
31. Testimony of witnesses reduced to writing.
32. Inquisition; how taken, and form thereof.

## SECTION

33. Coroner; duty in case of felonious killing, &c.
34. Burial of dead body and payment of costs.
35. Jury to report money, &c., found; and same, how disposed of.
36. When coroner to publish description of deceased.
37. Duty of officer in relation to such money.
38. Coroner, failing to pay over same.
39. Property on body to be sold and disposed of as money.
40. When justice of the peace to act as coroner.

SECTION 1. The judge of the criminal court, or any judge of the circuit court, in vacation as well as in term, and also all justices of the peace, shall have power to cause all laws made for the preservation of the public peace to be kept, and, in the execution of that power, may require persons to give security to keep the peace, or for their good behavior, or both, in the manner provided in this chapter.

SEC. 2. Whenever complaint shall be made to any such magistrate that any person has threatened to commit an offence against the person or property of another, the magistrate shall examine the complainant, and any witness who may be produced, on oath, and reduce such complaint to writing, and cause the same to be subscribed by the complainant. A wife may pray surety of the peace against her husband, or anybody else may pray such surety, in her behalf, against him, and such person shall, in such proceeding, be deemed the complaining witness.

SEC. 3. If, upon examination, it shall appear that such affidavit is made only to secure the protection of the law, and not from anger or malice, and that there is just cause to fear that any such offence may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed forthwith to apprehend the person complained of and bring him before such magistrate, or some other magistrate or court having jurisdiction of the cause.

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



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

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

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

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

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

SEC. 9. Any person aggrieved by the order of any justice of the peace requiring him to recognise as aforesaid, may, on giving the security required, appeal to the criminal court at its next session to be discharged therefrom.

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

SEC. 11. The criminal court may affirm the order of the justice or

discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution as may be deemed just and reasonable.

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

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

SEC. 14. Every recognizance taken pursuant to the foregoing provisions shall be transmitted by the magistrate to the criminal court on or before the first day of the next term, and shall be there filed by the clerk.

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

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

SEC. 17. If any justice of the peace suspect any person of selling, by retail, wine or ardent spirits, or a mixture thereof, contrary to law, he shall summon the person and such witnesses as he may think

proper, to appear before him ; and, upon such person appearing, or failing to appear, if the justice, on examining the witnesses on oath, find sufficient cause, he shall inform the district attorney, or other proper officer, that a prosecution or suit may be instituted, and shall recognise the material witnesses to appear at the next term of the court before which the case is heard. Such justice may also require the person suspected to enter into a recognizance to keep the peace and be of good behavior for any time not exceeding one year. If such recognizance be given, the condition thereof shall be deemed to be broken if, during the period for which it is given, such person shall sell, by retail, wine or ardent spirits, or a mixture thereof, contrary to law.

SEC. 18. Any surety in a recognizance to keep the peace, or for good behavior, or both, shall have authority and right to take and surrender his principal, and, upon such surrender, shall be discharged and exempt from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance. Such person may recognise anew, with sufficient sureties, before any justice of the peace, for the residue of the term, and be thereupon discharged.

#### SEARCH WARRANTS.

SEC. 19. When complaint shall be made on oath to any magistrate authorized to issue warrants in criminal cases, that personal property has been stolen or embezzled, or obtained by false tokens or pretences, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he be satisfied that there is reasonable cause for such belief, shall issue a warrant to search for such property.

SEC. 20. Any such magistrate may also, upon a like complaint made on oath, issue search warrants, when satisfied that there is reasonable cause, in the following cases, to wit :

First, to search for and seize any counterfeit or spurious coin, forged bank notes, and other forged instruments, or any tools, machines, or materials, prepared or provided for making either of them ;

Secondly, to search for and seize any books pamphlets, ballads, printed papers, or other things containing obscene language, or obscene prints, pictures, figures, or descriptions, manifestly tending



Acts of assembly to be strictly pursued.

Meaning of general terms.

192. In all cases where a remedy is provided, or duty enjoined, or anything directed to be done by any act or acts of assembly of this commonwealth, the directions of the said acts shall be strictly pursued; and no penalty shall be inflicted, or anything done agreeably to the provisions of the common law in such cases, further than shall be necessary for carrying such act or acts into effect. (a)

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

- Warrants of arrest, &c. 1. The judges of the supreme court, of the court of oyer and terminer and jail delivery, of the courts of quarter sessions, or any of them, shall and may direct their writs and precepts to the sheriffs and coroners of the several counties within this commonwealth, when need shall be, to take persons indicted for felonies, or other offences, before them, who may dwell, remove or be received into another county; and it shall and may be lawful to and for the said judges, or any of them, to issue 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 subpoenas, by attachment or otherwise, and under such pains and

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

193. Ibid. § 184.

1. Act 31 March 1860, § 1. P. L. 423.

system by the 13th section of the act of 22d April 1794, 3 Sm. 190; it will also be found in the punishments provided by the act of 23d April 1829, 10 Sm. 430. Report on the Penal Code 38.

(a) This section is taken from the 13th section of the act of

6 S. & R. 289. 11 S. & R. 345. Bright. R. 69. 13 S. & R. 426. 4 R. 457. 5 R. 64. 1 Ash. 46. 7 Am. L. R. 620.  
(b) This section explains the meanings of general terms which have been used for the sake of brevity. Report on the Penal Code 39.

penalties as other writs or subpoenas are or ought by law to be granted and awarded; and that it shall be lawful for said judges, or any of them, if they see fit to direct such writ, precept, summons, subpoena or attachments, to be executed by the sheriff of the county in which the same is awarded, which said writ, precept, summons or subpoena, shall be the sufficient warrant of such sheriff for executing the same throughout this commonwealth, as fully and effectually as if directed to, and executed by the sheriff of the proper county where issued: *Provided*, That the reasonable expenses of executing such process, when issued on behalf of the commonwealth, shall be paid out of the funds of the county where issued; and the expenses of removing any person charged with having committed an offence in one county into another county, or of transporting any person charged with having committed any offence in this state from another state into this state for trial, or for conveying any person, after conviction, to the penitentiary, shall be paid out of the treasury of the county where the offence is charged to have been committed. (a)

2. Where any person charged with having committed any felony, (b) in any city or county of this commonwealth, shall go or escape into any other county thereof, it shall and may be lawful for the president, or any judge of the court of common pleas in the county where the said person may be found, to issue his warrant, authorizing and requiring the sheriff of the said county, to take the said person and conduct him to the proper county, where the said felony is alleged to have been committed, the expenses of which shall be paid to the said sheriff by the county to which the said person is conducted. (c)

3. In case any person against whom a warrant may be issued by any judge or alderman of any city, or justice of the peace of any county in this commonwealth, for any offence there committed, shall escape, go into, reside or be in any other city or county out of the jurisdiction of the judge, alderman, justice or justices of the city or county granting such warrant as aforesaid, it shall and may be lawful for, and it is hereby declared to be the duty of any alderman, justice or justices of the city or county where such person shall escape, go into, reside or be, upon proof being made, upon oath or affirmation, of the handwriting of the judge, alderman, justice or justices granting such warrant, to indorse his or their name or names on such warrant, which shall be sufficient authority to the person or persons bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute the same in such other city or county, out of the jurisdiction of the alderman, justice or justices, granting such warrant as aforesaid, and to apprehend and carry such offender before the alderman, justice or justices who indorsed such warrant, or some other alderman, justice or justices of such other city and county where such warrant was indorsed. And in case the offence for which such offender shall be so apprehended, shall be bailable in law by an alderman or justice of the peace, and such offender shall be willing and ready to give bail for his appearance at the next court of general jail delivery or quarter sessions, to be held in and for the city and county where the offence was committed, such alderman, justice or justices shall and may take such bail for his appearance, in the same manner as the alderman or justice of the peace of the proper city or county might have done; and the said alderman, justice or justices of the peace of such other city or county so taking bail, shall deliver or transmit such recognisance and other proceeding to the clerk of the court of general jail delivery or quarter sessions, where such offender is required to appear by virtue of such recognisance, and such recognisance and other proceedings shall be as good and effectual in law as if the same had been entered into, taken or acknowledged in the proper county where the offence was committed, and the same proceedings shall be had therein. And in case the offence for which such offender shall be apprehended in any other city or county, shall not be bailable in law by an alderman or justice of the peace, or such offender shall not give bail for his appearance at the proper court having cognisance of his crime, to the satisfaction of the alderman or justice before whom he shall be brought, then the constable or other person so apprehending such offender, shall carry and convey him before one of the aldermen or justices of the peace of the proper city or county where such offence was committed, there to be dealt with according to law. (d)

4. No action of trespass, or false imprisonment, or information, or indictment, shall be brought, sued, commenced, exhibited or prosecuted by any person, against the alderman, justice or justices, who shall indorse such warrant, for or by reason of his or their indorsing the same, but such person shall be at liberty to bring or prosecute his or their action or suit against the alderman or justice who originally granted the warrant. (e)

5. When any person shall be accused before a magistrate, upon oath or affirmation—

2. Act 31 March 1860, § 2. P. L. 429.

3. *Ibid.* § 3.

4. *Ibid.* § 4.

5. *Ibid.* § 5.

Disposition of property

(a) This section is composed of the 8th section of the act of 22d May 1722, 1 Sm. 138; of the 14th section of the act of 23d September 1791, 3 Sm. 43; and of the 2d section of the act of 25th April 1846, P. L. 406. It is not proposed to repeal all the 8th section of the act of 1722, because part of it equally applies to civil as well as criminal proceedings. Report on the Penal Code 39. The county is not liable for the expenses incurred in an unsuccessful attempt to arrest a fugitive from justice, who has taken refuge in another state. 8 C. 540.

(b) This does not extend to misdemeanors; a fugitive charged with having committed a misdemeanor in another county can

only be arrested under the provisions of the succeeding section. Grant 218.

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

(d) A warrant issued by a justice of the peace in one county, and indorsed by a justice of another county, charging a misdemeanor to have been committed in the county whence the warrant issued, will not justify the detention of the offender in the jail of the county where the warrant was indorsed. Grant 218.

(e) The 3d and 4th sections are taken from the act of 16th April 1827, 9 Sm. 424. Report on the Penal Code 39.



- supposed to be stolen, found in the possession of one accused. tion, of the crime of burglary, robbery or larceny, and the said magistrate shall have issued his warrant to apprehend such person or persons, or to search for such goods as have been described, on oath or affirmation, to have been stolen goods, if any shall be found in the custody or possession of such person or persons, or in the custody or possession of any other person or persons, for his, her or their use, and there is probable cause, supported by oath or affirmation, to suspect that other goods, which may be discovered on such search, are stolen, it shall and may be lawful for the said magistrate to direct the said goods to be seized, and to secure the same in his own custody, unless the person in whose possession the same were found shall give sufficient surety to produce the same at the time of his or her trial. And the said magistrate shall forthwith cause an inventory to be taken of the said goods, and shall file the same with the clerk of that court in which the accused person is intended to be prosecuted, and shall give public notice in the newspapers, or otherwise by advertising the same in three or more public places in the city or county where the offence is charged to have been committed, before the time of trial, noting in such advertisement the said inventory, the person charged and time of trial. And if, on such trial, the accused party shall be acquitted, and no other claimant shall appear or suit be commenced, then, at the expiration of three months, such goods shall be delivered to the party accused, and he, she or they shall be discharged, and the county be liable to the costs of prosecution; but if he be convicted of larceny only, and, after restitution made to the owner and the sentence of the court being fully complied with, shall claim a right in the residue of the said goods, and no other shall appear or claim the said goods, or any part of them, then it shall be lawful, notwithstanding the claim of the said party accused, to detain such goods for the term of nine months, to the end that all persons having any claim thereto may have full opportunity to come, and to the satisfaction of the court, prove their property in them: on which proof the said owner or owners, respectively, shall receive the said goods, or the value thereof, if from their perishable nature it shall have been found necessary to make sale thereof, upon paying the reasonable charges incurred by the securing the said goods and establishing their property in the same; but if no such claim shall be brought and duly supported, then the person so convicted shall be entitled to the remainder of the said goods, or the value thereof, in case the same shall have been sold agreeably to the original inventory. But if, upon an attainder of burglary or robbery, the court shall, after due inquiry, be of opinion that the said goods were not the property of such burglar or robber, they shall be delivered, together with a certified copy of the said inventory, to the commissioners of the county, who shall indorse a receipt therefor on the original inventory, register the said inventory in a book, and also cause the same to be publicly advertised, giving notice to all persons claiming the said goods to prove their property therein to the said commissioners; and unless such proof shall be made within three months from the date of such advertisement, the said goods shall be publicly sold, and the net moneys arising from such sale shall be paid into the county treasury for the use of the commonwealth: *Provided always*, That if any claimant shall appear within one year, and prove his or her property in the said goods to the satisfaction of the commissioners, or in the case of dispute, shall obtain the verdict of a jury in favor of such claim, the said claimant shall be entitled to recover, and receive from the said commissioners, or treasurer, the net amount of the moneys paid as aforesaid into the hands of the said commissioners, or by them paid into the treasury of this commonwealth. (a)
- When to be delivered to county commissioners. **Surety of the peace.** 6. If any person shall threaten the person of another to wound, kill or destroy him, or to do him any harm in person or estate, (b) and the person threatened shall appear before a justice of the peace, and attest, on oath or affirmation, that he believes that by such threatening he is in danger of being hurt in body or estate, such person so threatening as aforesaid, shall be bound over, with one sufficient surety, to appear at the next sessions, (c) according to law, and in the meantime to be of his good behavior, and keep the peace toward all citizens of this commonwealth. (d) If any person, not being an officer on duty in the military or naval service of the state or of the United States shall go armed with a dirk, dagger, sword or pistol, or other offensive or dangerous weapon, without reasonable cause to fear an assault or other injury or violence to his family, person or property, he may, on complaint of any person having reasonable cause to fear a breach of the peace therefrom, be required to find surety of the peace as aforesaid. (e)
- Disposition of proceeds. **Bail.** 7. In all cases the party accused, on oath or affirmation, of any crime or misdemeanor against the laws, shall be admitted to bail by one or more sufficient sureties, to be taken before any judge, justice, mayor, recorder or alderman where the offence charged has been committed, except such persons as are precluded from being bailed by the constitution of this commonwealth: (g) *Provided also*, That persons accused as aforesaid, of

6. Act 31 March 1860, § 6. P. L. 432.

7. *Ibid.* § 7.

(a) This section is taken from the 10th section of the act 23d September 1791, 3 Sm. 42. Report on the Penal Code 39.

(b) Surety of the peace is demandable of right by any individual who will make the necessary oath. 1 B. 102, n. See 1 Ash. 46. 2 P. 458.

(c) A committing magistrate has no authority to bind a person to keep the peace, or for his good behavior, longer than the next term of the court. 2 P. 458.

(d) Surety for good behavior may be ordered by the court, after the acquittal of a prisoner, in such sum, and for such length of time, as the public safety requires. 2 Y. 437. 10 Barr

339. 2 Hayw. 73-4. See 12 Eng. L. & Eq. 462.

(e) This section is partly taken from the act of 1700. 1 Sm. 5, the addition thereto provided by this section, against the unnecessarily carrying deadly weapons, is introduced from an obvious necessity, arising from daily experience and observation. Report on the Penal Code 39.

(g) A justice may take bail after commitment for trial. 6 W. & S. 314. 2 P. 458. And see 7 W. 454. 5 B. 512. 1 Sm. 57, n. A recognisance taken by a justice to answer the charge of arrest is *coram non iudice*, and void. *Com. v. Philips*, 2 U. S. Law Mag. 316.

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

8. All sureties, mainpernors, and bail in criminal cases, whether bound in recognisances for a particular matter or for all charges whatsoever, shall be entitled to have a bail-piece, duly certified by the proper officer or person before whom or in whose office the recognisance of such surety, mainpernors or bail shall be or remain, and upon such bail-piece, by themselves, or their agents, to arrest and detain, and surrender their principals, with the like effect as in cases of bail in civil actions; (b) and such bail-piece shall be a sufficient warrant or authority for the proper sheriff or jailor to receive the said principal, and have him forthcoming to answer the matter or matters alleged against him: *Provided*, That nothing herein contained shall prevent the person thus arrested and detained from giving new bail or sureties for his appearance, who shall have the same right of surrender hereinbefore provided. (c)

9. In all cases where a person shall, on the complaint of another, be bound by recognisance to appear, or shall, for want of security, be committed, or shall be indicted for an assault and battery or other misdemeanor, to the injury and damage of the party complaining, and not charged to have been done with intent to commit a felony, or not being an infamous crime, and for which there shall also be a remedy, by action, if the party complaining shall appear before the magistrate who may have taken recognisance or made the commitment, or before the court in which the indictment shall be, and acknowledge to have received satisfaction for such injury and damage, it shall be lawful for the magistrate, in his discretion, to discharge the recognisance which may have been taken for the appearance of the defendant, or in case of committal, to discharge the prisoner, or for the court also where such proceeding has been returned to the court, in their discretion, to order a *nolle prosequi* to be entered on the indictment, as the case may require, upon payment of costs: *Provided*, That this act shall not extend to any assault and battery, or other misdemeanor, committed by or on any officer or minister of justice. (d)

#### B. INDICTMENTS AND PLEADINGS.

10. The foreman of any grand jury, or any member thereof, is hereby authorized and empowered to administer the requisite oaths or affirmations to any witness whose name may be marked by the district attorney on the bill of indictment. (e)

11. Every indictment shall be deemed and adjudged sufficient and good in law which charges the crime substantially in the language of the act of the assembly prohibiting the crime, and prescribing the punishment, if any such there be, or, if at common law, so plainly that the nature of the offence charged may be easily understood by the jury. Every objection to any indictment for any formal defect, apparent on the face thereof, shall be taken by demurrer, or on motion to quash such indictment, before the jury shall be sworn, and not afterward; and every court, before whom any such objection shall be taken for any formal defect, may, if it be thought necessary, cause the indictment to be forthwith amended in such particular, by the clerk or other officer of the court, and thereupon the trial shall proceed as if no such defect appeared. (g)

8. Act 31 March 1860, § 8 P. L. 432.

9. *Ibid.* § 9.

10. *Ibid.* § 10.

11. *Ibid.* § 11.

(a) This section is a consolidation of the first clause of the act of 1705, 1 Sm. 56; and the first section of the act of 30th April 1832, P. L. 388. Report on the Penal Code 39.

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

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

(d) This section is an extension of the existing law of the 17th March 1806, 4 Sm. 318. Report on the Penal Code 40.

(e) This is taken from the 1st section of the act 5th April 1826, 9 Sm. 136. That witnesses, whose names had not been marked by the district attorney on the bill of indictment, were sworn and examined by the foreman of the grand jury, is not pleadable in bar; at most, it is only ground for a motion to quash. *Tillard v. Com.*, 13 Leg. Int. 132.

(g) Sections 11 to 22 are all new, and are certainly not the least important in the proposed amendments of our penal system. The history of criminal administration abounds with instances in which the guilty have escaped, by reason of the apparently unreasonable nicety required in indictments. Lord Hale, one of the best, and most humane of English judges, long since remarked, that such niceties were "grown to be a blemish and an inconvenience in the law, and the administration thereof; that more offenders escaped by the easy ear given to exceptions to indictments, than by the manifestations of their innocence, and that the grossest crimes had gone unpunished, by reason of these unseemly niceties." The reason for recognising these subtleties by the common law, no doubt arose from the humanity of the judges, who, in administering a system in which the punishment of death followed almost every conviction of felony, were naturally disposed, in favor of life, to hold the crown to the strictest rules. Since, however, the reform of the penal laws, and the just apportionment of punishment to crimes according to their intrinsic atrocity and danger, the reason which led to the adoption of these technical niceties has ceased, and with the cessation of the reason, the technicalities themselves should be expunged from our system. The 11th section of this act proposes what the com-

missioners believe will be an effective remedy to this reproach of the common law, without depriving the accused of any proper privilege; it leaves him, at the outset of his trial, to determine whether he will question the relevancy of his accusation, or take issue on the merits of the charge; if he elects the latter, and is condemned, there seems neither moral nor legal fitness in permitting him to urge formal exceptions, which, if suggested, at an early period, would have been promptly corrected. The 12th and 13th sections are intended to meet cases of frequent occurrence, in which, although an indictment is strictly formal, yet, owing to some accidental slip in its preparation, it is found on the trial that the proofs do not entirely tally with the description of the instrument set forth in the indictment, or in the names of persons or places described therein. By the law as it now stands, where written instruments enter into the gist of the offence, as in forgery, passing counterfeit money, selling lottery tickets, sending threatening letters, &c., they are required to be set out in words and figures; the omission of a figure in an indictment for forgery is fatal. In the case of *Com. v. Gillespie*, 7 S. & R. 469, a mistake in spelling the name of "Burrall," which in the indictment was spelled "Burrill," was adjudged fatal after verdict. So, a variance between the names of the persons aggrieved, and places described in the indictment, and the proofs thereof on trial, will entitle the defendant to an acquittal, on the ground of the want of agreement between the allegata and the probata. The proposed sections authorize the courts to amend such verbal errors, if objected to; and thus terminate a class of technical niceties, which are a reproach to the rational administration of justice. The 14th and 15th sections avoid the existing necessity of setting forth, in indictments, the names of numerous individuals, owners of property feloniously or fraudulently taken, or maliciously injured or destroyed; it will serve to reduce the voluminousness of such indictments, and can do no possible injury to the defendant, who cannot be interested in the fact, whether one person is, or one hundred persons are the owners of property in regard to



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

Immaterial variances between indictment and proof amendable.

Manner of laying the ownership of property in cases of partners and joint owners.

12. It shall be lawful for any court of criminal jurisdiction, if such court shall see fit so to do, to cause the indictment for any offence whatever, when any variance or variances shall appear between any matter in writing or in print, produced in evidence, and the recital or setting forth thereof in the indictment whereon the trial is pending, to be forthwith amended in such particular or particulars, by some officer of the court, and after such amendment the trial shall proceed in the same manner, in all respects, as if no such variance or variances had appeared.

13. If, on the trial of any indictment for felony or misdemeanor, there shall appear to be any variance between the statement of such indictment and the evidence offered in proof thereof, in the name of any place mentioned or described in any such indictment; or in the name or description of any person or persons or body politic or corporation therein stated, or alleged to be the owner or owners of any property, real or personal, which shall form the subject of any offence charged therein; or the name or description of any person or persons, body politic or corporate therein stated or alleged to be injured or damaged, or intended to be injured or damaged, by the commission of such offence; or in the Christian name or surname, or both Christian and surname, or other description whatsoever of any person or persons whomsoever therein named or described; or in the name or description of any matter or thing whatsoever therein named or described; or in the ownership of any property named or described therein; it shall and may be lawful for the court before whom the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defence upon such merits, to order such indictment to be amended, according to the proof, by some officer of the court, both in that part of the indictment wherein said variance occurs, and in every other part of the indictment in which it may become necessary to amend; and after such amendment, the trial shall proceed in the same manner, in all respects, and with the same consequences, as if no variance had occurred. And every verdict and judgment which shall be given after making such amendment, shall be of the same force and effect, in all respects, as if the indictment had originally been in the same form in which it was after such amendment was made.

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

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

13. Ibid. § 13.

14. Ibid. § 14.

which he is charged with having committed a felony or misdemeanor. The 16th section refers to public property, and rests on the same principle as the fourteenth and fifteenth sections. The 17th and 18th sections will enable the criminal pleader to simplify hereafter the forms of indictments in forgery, and facilitate him in averring instruments necessary to be recited in any other indictment. The 12th and 13th sections contemplate the amendment of indictments, framed according to the existing law, where an accidental error occurs between the instrument and names described, and those offered in proof. These sections strike at the root of the evil sought to be eradicated, by giving the pleader the option to prepare his indictment in such a way as to avoid, altogether, such difficulties; which can be done with ordinary care and caution. The 19th section contemplates avoiding the necessity of specifically describing the parties intended to be defrauded, and the embarrassing the proofs, in any case, with a question not really material to the issue. In forgeries, uttering and passing forged money, and in cheating by false pretences (the crimes contemplated by the section), the gist of the offence is, that the act charged was committed with an intent to defraud; an indictment containing that averment, should be sufficient, without requiring the pleader to go into the description of who was the party intended to be defrauded; a mistake in whom would acquit the accused, although the jury should be convinced that he had forged or uttered false money, or had been guilty of cheating by false pretences, with intent to defraud. The 20th section, providing for indictments for murder and manslaughter, from the nature and consequences of these offences, require that a somewhat detailed explanation of the reasons which have led to their introduction should be given. By the common law, in an indictment for murder, it is essentially necessary to set forth, particularly, the manner of the killing, and the means by which it was effected; if a person be indicted for one species of killing, as by poisoning, he cannot be convicted by evidence of a different species of death, as by shooting, starving or strangling. A few cases will serve to illustrate how far this principle has been carried. In *Rex v. Kelly*, 1 Mood. Cro. Cas. 113, decided in 1825, the indictment charged that the prisoner struck the deceased with a piece of brick, and it appeared probable that the prisoner had not struck with the brick but that he struck with his fist, and that the deceased fell from the blow upon a piece of brick, and that the fall on the brick was the cause of the death; it was unanimously held by the twelve judges of England, on a case reserved, that the cause of

death had not been truly stated, and the prisoner was discharged. So, in *Rex v. Martin*, 5 C. & P. 128, where the indictment charged the wound to have been inflicted by a blow with a hammer, held in the prisoner's hand, and it appeared that the injury might have been occasioned by a fall against the lock or key of a door, it was held, that if the injury was occasioned by a fall against the lock or key of a door, produced by the act of the defendant, the indictment was not sufficient. In *Rex v. Hughes*, 5 C. & P. 126, decided in 1832, the prisoner was indicted for an attempt to murder, by shooting the injured party with a pistol loaded with a leaden bullet; on the trial, no evidence was produced to actually prove that the pistol was loaded with a leaden bullet, none having been found either in the wound, or in the room where the wound was inflicted; the surgeon, examined in the case, testified that the wadding, if rammed tight, might have produced the effect without any ball; in this state of the evidence, the court ruled, that the indictment was not sufficiently proved, and the defendant was acquitted. It is true, that the courts have drawn a distinction, which rendered their rulings in indictments for homicide, as to the manner and cause of the death, more reconcilable with reason, to wit: that where the instrument laid in the indictment, and the instrument proved, are of the same nature and character, there is no variance, as if the wound is charged to have been inflicted with a dagger or knife, proof is sufficient which establishes the wound to have been inflicted with a sword, spear or the like; so, if the indictment allege a death by one kind of poison, proof of death by another kind of poison will support it. The section under consideration proposes to go one step in advance of this doctrine, by declaring that it shall hereafter be sufficient, in an indictment for murder, to charge that the defendant did feloniously, wilfully, and of his malice aforethought, kill and murder the deceased; without going into the details of the cause and manner of the death, which the cases cited show only tends to create unnecessary difficulties on the trial, and often results in the complete defeat of justice. The 21st and 22d sections are intended to simplify indictments for perjury and subornation of perjury, which are now extremely voluminous and technical; these characteristics of indictments for these crimes, are so familiar to all criminal lawyers, as to render it unnecessary to enter into any details on the subject. The sections recommended for adoption will remedy these evils, and place indictments for these crimes on a rational footing. Report on the Penal Code 40-3.

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

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

Manner of charging frauds against partners and joint owners.

16. With respect to property belonging to counties, cities, townships and districts, it shall be sufficient in any indictment for any felony or misdemeanor committed on or with respect to any goods, chattels, furniture, provisions, clothes, tools, utensils, materials or things whatsoever, which have been or at any time shall be provided for or at the expense of any county, city, township or district, to be used in any court, jail, house of correction, almshouse, or other building or place, or in any part thereof respectively, or to be used for the making, altering or repairing of any bridge or road, to aver that any such things are the property of such county, city, township or district.

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

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

Forms of indictment in cases of forging, stealing, embezzling, &c.

18. In all other cases whatsoever in which it shall be necessary to make any averment in any indictment, as to any instrument, whether the same consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, and in such manner as to sufficiently identify such instrument, without setting out any copy or fac-simile of the whole or any part thereof.

Forms in other cases.

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

Intent to defraud particular persons, need not be alleged or proven in certain cases.

20. In any indictment for murder or manslaughter, it shall not be necessary to set forth the manner in which, or the means by which the death of the deceased was caused, but it shall be sufficient in every indictment for murder, to charge that the defendant did feloniously, wilfully and of his malice aforethought, kill and murder the deceased; and it shall be sufficient in every indictment for manslaughter, to charge that the defendant did feloniously kill and slay the deceased. (a)

Indictment for murder and manslaughter.

21. In every indictment for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged, and in what court, or before whom the oath or affirmation was taken, averring such court or person or body to have competent authority to administer the same, together with the proper averment, to falsify the matter wherein the perjury is assigned, without setting forth the information, indictment, declaration or part of any record or proceeding, other than as aforesaid, and without setting forth the commission or authority of the court, or person, or body before whom the perjury was committed.

Requisites of indictment for perjury.

22. In every indictment for subornation of perjury, or for corrupt bargaining, or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence, without setting forth the information, indictment, declaration or part of any record or proceedings, and without setting forth the commission or authority of the court, or person or body before whom the perjury was committed, or was agreed or promised to be committed.

Requisites of indictment for subornation of perjury.

23. In cases arising under the laws of this commonwealth for the restraint of the horrid practice of duelling, it shall be sufficient to form an indictment generally, against either of the principals for challenging another to fight at deadly weapons, and notwithstanding it may appear on the trial that the defendant only accepted the challenge, it shall be sufficient to convict and render him liable to the penalties of the law; and in like manner an indictment against the seconds may be framed generally, for carrying and delivering a challenge, and proof of the mere act of fighting, and the defendant being present thereat, shall be sufficient to convict the defendant upon an indictment so framed; and if the duel shall take place within this commonwealth, the mere fact of fighting shall be full and complete evidence of the charges, respectively, of giving or receiving, or of carrying or delivering a challenge, without other proof thereof. (b)

Indictment for duelling.

15. Act 31 March 1860, § 15. P. L. 434.

16. Ibid. § 16.

17. Ibid. § 17.

18. Ibid. § 18.

19. Ibid. § 19.

20. Ibid. § 20.

21. Ibid. § 21.

22. Ibid. § 22.

23. Ibid. § 23.

(a) An indictment drawn in conformity with the provisions against him." 1 Wr. 109.

of this section is not in conflict with the constitutional proviso, (b) This section is taken from the 3d section of the act of 31st March 1860, 4 Sm. 354. Report on the Penal Code 42.



Counts for stealing and receiving, may be joined.

24. In every indictment for feloniously stealing property, it shall be lawful to add a count for feloniously receiving the said property, knowing it to have been stolen; and in any indictment for feloniously receiving property, knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing said property; and it shall be lawful for the jury trying the same, to find a verdict of guilty either of stealing the property, or of receiving the same, knowing it to have been stolen; and if such indictment shall have been preferred and found against two or more persons, it shall be lawful for the jury who shall try the same, to find all or any of the said persons guilty of either stealing the property or of receiving it, knowing it to have been stolen, or to find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving it, knowing it to have been stolen. (a)

Issue and trial in criminal cases.

25. In all cases of felony the prisoner shall be arraigned, and where any person on being so arraigned shall plead not guilty, every such person shall be deemed and taken to put himself upon the inquest or country for trial, without any question being asked of him how he will be tried, and the inquest shall be charged only to inquire whether he be guilty or not guilty of the crime charged against him, and no more. And wherever a person shall be indicted for treason or felony, the jury impanelled to try such person shall not be charged to inquire concerning his lands, tenements or goods, nor whether he fled for such treason or felony. (b)

Prisoners standing mute.

26. If any prisoner shall, upon his arraignment for any offence with which he is indicted, stand mute, or not answer directly, or shall peremptorily challenge above the number of persons summoned as jurors for his trial to which he is by law entitled, the plea of not guilty shall be entered for him on the record, (c) the supernumerary challenges shall be disregarded, and the trial shall proceed in the same manner as if he had pleaded not guilty, and for his trial had put himself upon the country. (d)

Prosecutor's name to be indorsed on indictment.

27. No person shall be required to answer to any indictment for any offence whatsoever, unless the prosecutor's name, if any there be, is indorsed thereon; and if no person shall avow himself the prosecutor, the court may hear witnesses, and determine whether there is such a private prosecutor, and if they shall be of opinion that there is such a prosecutor, then direct his name to be indorsed on such indictment. (e)

Distinct acts of embezzlement may be charged in same indictment.

28. It shall be lawful in cases of embezzlement by clerks, servants or other persons in the employ of another, to charge in the indictment, and proceed against an offender for any distinct acts of embezzlement, not exceeding three, which may have been committed by him against the same master or employer, within the space of six calendar months, from the first to the last of such acts, and in every such indictment, except where the offence shall relate to a chattel, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained, if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed, shall not be proved, or if he shall be proved to have embezzled any piece of coin or valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly. (g)

Nolle prosequi.

29. No district attorney shall, in any criminal case whatsoever, enter a *nolle prosequi*, either before or after bill found, without the assent of the proper court in writing first had and obtained. (h)

Plea of autrefois convict, or autrefois acquit.

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

24. Act 31 March 1860, § 24. P. L. 436.  
25. Ibid. § 25.

26. Ibid. § 26.  
27. Ibid. § 27.

28. Ibid. § 28.  
29. Ibid. § 29.

30. Ibid. § 30.

(a) This section is new, and is intended to remedy difficulties arising from the common law doctrines in relation to the joinder of offences and joint offenders. At common law, a felony and a misdemeanor, such as burglary and receiving stolen goods, could not be regularly joined; in larceny, counts for receiving were sometimes added, but the practice was regarded as of doubtful legality, until in the cases of *Rex v. Galloway*, 1 Mood. Cro. Cas. 234, and of *Rex v. Madden*, 1 Mood. Cro. Cas. 277, it was decided to be erroneous. In Pennsylvania, the uniform practice has been to unite counts for larceny and receiving, but in no other kind of felonious taking has such joinder been permitted. So, at common law, if two persons are charged with jointly receiving stolen goods, a joint act of receiving must be proved; proof that one received in the absence of the other, and afterwards delivered to him, will not suffice. *Rex v. Messingham*, 1 Mood. Cro. Cas. 257. The proposed section will obviate these technical difficulties, as it permits a count for receiving to be joined with all indictments for felonious taking, and authorizes the conviction of one or more of several persons, jointly indicted, for felonious taking or receiving, either as principals or receivers, according to their actual guilt. Report on the Penal Code 43.

(b) This section is new, and has been introduced to dispense with the useless forms which prevail in some of our criminal courts, following the ancient practice of the common law. Report on the Penal Code 43.

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

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

(d) This section is taken from the 5th section of the act of 23d September 1791, 3 Sm. 40. Report on the Penal Code 44.

(e) This section is taken from one of the clauses of the act of 1705, 1 Sm. 56. The old law has been so amended as to enable the court to determine the question, in any case, whether there is such a prosecutor, and who he is, and if any, to order his name to be indorsed on the indictment. Report on the Penal Code 44. If there be no proof of a prosecutor, the defendant must plead without such indorsement. 1 D. 5.

(g) The provisions of this section are necessary for preventing the difficulties that may be hereafter experienced in the prosecution of the various fraudulent embezzlements prescribed against by the "Act to consolidate, revise and amend the penal laws of this commonwealth," and particularly by the 107th section thereof (tit. "Crimes" 107), against such embezzlement by clerks, servants and other persons in the employ of others. Report on the Penal Code 44.

(h) This section is taken from the proviso to the 1st section of the act of 3d May 1860, P. L. 654. Report on the Penal Code 44. See tit. "District Attorneys," 10, note a.

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

## C. COURTS OF CRIMINAL JURISDICTION.

31. The courts of oyer and terminer and general jail delivery shall have power—(a) Courts of oyer and terminer.  
I. To inquire by the oaths and affirmations of good and lawful men of the county, of all crimes committed, or triable in such county.

II. To hear, determine and punish the same, and to deliver the jails of such county of all prisoners therein, according to law.

III. To try indictments found in the quarter sessions, and certified by the said court according to law; and the said courts shall have exclusive jurisdiction and power to try and punish all persons charged with any of the crimes herein enumerated, which shall be committed within the respective county, to wit:

(1.) All persons charged with any murder or manslaughter, or other homicide, and all persons charged with being accessory to any such crime.

(2.) All persons charged with treason against the commonwealth.

(3.) All persons charged with sodomy, buggery, rape or robbery, their counsellors, aiders and abettors.

(4.) All persons charged with the crime of voluntarily and maliciously burning any building, or other thing, made punishable in the same manner as arson.(b)

(5.) All persons charged with mayhem, or with the crime of cutting off the tongue, putting out the eye, slitting the nose, cutting off the nose, cutting off a lip, cutting off or disabling any limb or member of a person, by lying in wait, or with malice aforethought, and with intent in so doing to maim or disfigure such person, and their aiders and abettors and counsellors.

(6.) All persons charged with burglary.

(7.) Every woman who shall be charged with having endeavored privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which, if it were born alive, would be by law a bastard, so that it may not be known whether such issue was born dead or alive, or whether it was murdered or not.

(8.) All persons charged with the second or any subsequent offence of receiving, harboring or concealing any robber, burglar, felon or thief, or with the crime of receiving or buying any goods or chattels, which shall have been feloniously taken or stolen, knowing the same to be so taken or stolen.

32. The courts of quarter sessions of the peace shall have jurisdiction and power within the respective counties— Quarter sessions.

I. To inquire, by the oaths or affirmations of good and lawful men of the county, of all crimes, misdemeanors and offences whatsoever, against the laws of this commonwealth, which shall be triable in the respective county.

II. To inquire of, hear, determine and punish, in due form of law, all such crimes and misdemeanors and offences, whereof exclusive jurisdiction is not given, as aforesaid, to the courts of oyer and terminer of such county.

III. To take, in the name of the commonwealth, all manner of recognisances and obligations heretofore taken and allowed to be taken by any justice of the peace; and they shall certify such as shall be taken, in relation to any crime not triable therein, to the next court of oyer and terminer having power to take cognisance thereof.

IV. To continue, or discharge the recognisance and obligations of persons bound to keep the peace, or to be of good behavior, taken as aforesaid, or certified into such court by any justice of the peace of such county, and to inquire of, hear and determine, in the manner hitherto practised and allowed, all complaints which shall be found thereon.

V. The courts of quarter sessions shall also have jurisdiction in cases of fines, penalties or punishments, imposed by any act of assembly, for offences, misdemeanors or delinquencies, except where it shall be otherwise expressly provided and enacted.

VI. The said courts shall also have and exercise such other jurisdiction and powers, not herein enumerated, as may have been heretofore given to them by law.

Whenever any indictment shall be found in any court of quarter sessions, for any crime or offence not triable therein, it shall be the duty of said court to certify the same into the court of oyer and terminer next to be holden in such county, there to be heard and determined in due course of law. When caused to be certified to the oyer and terminer.

The judges of the county courts of oyer and terminer and quarter sessions, and every of them, shall have power to direct their writs or precepts to all or any of the sheriffs or other officers of any of the counties, cities, boroughs or towns corporate of this commonwealth, to arrest and bring before them persons indicted for felonies and other offences, and amenable to the respective court; each of said courts shall have power to award process to levy and recover such fines, forfeitures and amercements, as shall be imposed, taxed or adjudged by them respectively; each of the said courts shall have full power and authority to establish such rules for regulating the practice thereof respectively and for expediting the determination of suits, causes and proceedings therein, as in their Powers of the courts.

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

32. Ibid. § 32.

(a) The 31st and 32d sections are transcripts from the 14th, 15th, 16th, 17th, 18th, 20th, 21st and 22d sections of the act of 16th June 1836, P. L. 790. It has been thought proper, although left unrepealed, to introduce them here, in order to render these bills a complete consolidation of our statute laws relating to crimes, punishments and criminal procedure. As questions of jurisdiction frequently present themselves in criminal courts,

the laws defining and establishing such jurisdiction have their proper place here. The laws in reference to the constitution of these courts are to be found in the "Act relative to the organization of the courts of justice," passed April 14, 1834, P. L. 333; these have not been interfered with. Report on the Penal Code 44.

(b) See 8 Pittsburgh Leg. J. 290.



discretion they shall judge necessary or proper: *Provided*, That such rules shall not be inconsistent with the constitution and laws of this commonwealth; each of the said courts is empowered to issue writs of subpoena, under their official seal, into any county of this commonwealth, to summon and bring before the respective court any person to give testimony in any cause or matter depending before them, under the penalties hitherto appointed and allowed, in any such case, by the laws of this commonwealth.

Writs of error and certiorari.

33. Every person indicted in any court of quarter sessions, or in any county court 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 consent shall be in writing, and certified on the said writ.(c)

#### D. OF THE TRIAL.

Persons under bail not to be placed in the criminal bar.

34. No person who may hereafter be arraigned on any indictment, and who shall be bound by recognisance to appear and abide by the judgment of the court, shall be placed within the prisoner's bar to plead to such indictment, or be confined therein during his trial; and all persons shall have an opportunity of a full and free communication with their counsel.(d)

Persons indicted for treason to have copy of indictment.

35. Every person indicted for treason shall have a copy of the indictment(e) and a list of the jury and the witnesses to be produced on the trial for proving such indictment, mentioning the names and places of abode of such jurors and witnesses, delivered to him three whole days before the trial.(g)

Peremptory challenges.

36. On the trial of any indictment for treason or misprision of treason, murder, manslaughter, concealing the death of a bastard child, rape, robbery, burglary, sodomy, malicious maiming and arson, the accused shall be at liberty to challenge, peremptorily, twenty of the jurors, and on the trial of all other indictments the accused shall be at liberty to challenge, peremptorily, four of the jurors.(h)

Challenges by the commonwealth.

37. The commonwealth shall have the right, in all cases, to challenge, peremptorily, four persons,(i) and every peremptory challenge beyond the number allowed by law in any of the said cases, shall be entirely void, and the trial of such person shall proceed as if no such challenge had been made.

How challenges are to be conducted.

38. All challenges in criminal proceedings shall be conducted as follows, to wit: the commonwealth shall challenge one person, and then the defendant shall challenge one person, and so alternately, until all the challenges shall be made; but if the commonwealth shall refuse to make any challenge, the defendant shall, nevertheless, have the right to challenge the full number allowed him by law.

How to be determined.

39. When a challenge for a cause assigned shall be made in any criminal proceeding, the truth of such cause shall be inquired of and determined by the court.(k)

Trial of persons jointly indicted, and joint challenges.

40. In all cases in which two or more persons are jointly indicted for any offence, it shall be in the discretion of the court to try them jointly or severally, except that in cases of felonious homicide, the parties charged shall have the right to demand separate trials; (l) and in all cases of joint trials, the accused shall have the right to the same

33. Act 51 March 1860, § 33. P. L. 439.  
34. *Ibid.* § 34.

35. *Ibid.* § 35.  
36. *Ibid.* § 36.

37. *Ibid.* § 37.  
38. *Ibid.* § 38.

39. *Ibid.* § 39.  
40. *Ibid.* § 40.

(a) A writ of error issued without a special allocatur will be quashed. 2 S. & R. 453. 2 Wh. 113. So, also, if the allocatur be obtained before sentence. 16 S. & R. 319.

(b) It is never granted on mere technical matters, not going to the merits. 2 Barr 244. 3 S. & R. 199. 3 Y. 39. 6 B. 403. 4 B. 424. 1 Wh. 525. There must be strong ground to believe that if the case be not removed, some important principle of law, or the plain justice of the case, will be violated. 4 Pittsburgh Leg. J. 668.

(c) This section is taken from the 7th section of the act of 13th April 1791, 3 Sm. 30; and the 9th section of the act of 16th June 1836, P. L. 787. Report on the Penal Code 44.

(d) This section is taken from the act of 25th March 1808, 4 Sm. 529. Report on the Penal Code 45.

(e) The caption is a portion of the indictment, and a copy of it must be furnished to the prisoner. 2 D. 342.

(g) The word "trial" here means the trying of the cause by the jury, and not the arraignment and pleading preparatory to such trial by the jury. 4 Mas. 232. This section is taken from the 29th section of the act of congress of 30th April 1790. Brightly's U. S. Dig. 221.

(h) The 36th, 37th, 38th and 39th sections are intended to supply the 1521, 153d, 154th, 155th and 156th sections of the act of 14th April 1834, P. L. 368. The changes therein, in reference to challenges, are, that by the 36th section of this act the number of challenges allowed the accused in treason, is twenty, whereas by the 152d section of the act of 1834, thirty-five challenges are allowed; and that by the 154th section of the act of 1834, the commonwealth is interdicted from challenging, without cause, in any case of felony, whereas by the 37th section of the present act, the commonwealth is only interdicted from challenging peremptorily in the cases enumerated in the 36th section, to wit: treason, misprision of treason, murder, manslaughter, concealing the death of a bastard child, rape, robbery, burglary, sodomy, malicious maiming and arson; and in all other felonies and misdemeanors, is allowed the same num-

ber of challenges as the defendant, to wit: four. The object of thus extending to the commonwealth the right of challenging, in the minor felonies, the same number of jurors as the defendant, arises from the fact, that by the present code a large number of offences, which were misdemeanors at common law, are now made felonies; hence, the excluding of the commonwealth from the right of challenge in any felony, is almost totally to deprive her of the right of challenge. In the practical administration of criminal justice, the right of the commonwealth to challenge four jurors peremptorily, is of the deepest importance; it is not an uncommon thing to find in a panel of jurors, one or more persons pledged to the defendant by personal or social sympathies, or influenced in his favor by worse motives; the right to peremptorily challenge four jurors, is the security of the public against such contingencies. The 39th section of the present act assigns to the court the authority of determining upon the truth and sufficiency of challenges for cause. Report on the Penal Code 45.

(i) This provision is not in conflict with the clause in the constitution, which provides "that trial by jury shall be as heretofore, and the right thereof shall remain inviolate." 1 Wr. 45.

(k) The power to challenge for cause may be exercised at any time before the oath is tendered to the jury. 11 H. 12. It is good cause of challenge that the juror has conscientious scruples on the subject of capital punishment. 17 S. & R. 155. Or that he has formed and expressed an opinion upon the evidence in the cause. 14 S. & R. 292. See 2 W. & S. 262. 1 Cranch C. C. 452. Or that the juror has been subpoenaed as a witness by the prisoner. 7 W. 585. Or that he is a tenant of one of the parties. 8 W. 304. Or that he had grossly misbehaved himself on a former occasion, declaring that he had tried to acquit any one the judge desired to have convicted; and that he was "a Paine man, and would as lief swear on a spelling book as on the Bible." 11 H. 12.

(l) See 12 C. 305

number of peremptory challenges to which either would be entitled if separately tried, and no more. (a)

41. All courts of criminal jurisdiction of this commonwealth shall be and are hereby authorized and required, when occasion shall render the same necessary, (b) to order a *tales de circumstantibus*, either for the grand or petit jury, (c) and all talesmen shall be liable to the same challenges, fines and penalties as the principal jurors: *Provided*, That nothing herein contained shall repeal or alter the provisions of an act passed the 20th day of April 1858, entitled, "An act establishing a mode of drawing and selecting jurors in and for the city and county of Philadelphia." (d)

42. No alien shall, in any criminal case whatsoever, be entitled to a jury *de medietate lingue*, or partly of strangers. (e)

43. The trial of all treason against the commonwealth, committed out of the jurisdiction of the state, shall be in the county where the offender is apprehended, or into which he shall first be brought. (g)

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

45. If any person shall become an accessory after the fact, to any felony, whether the same be a felony at common law, or by virtue of any act of assembly now in force, or that may be hereafter in force, he may be indicted and convicted as an accessory after the fact, to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether

41. Act 31 March 1860, § 41. P. L. 440.  
42. *Ibid.* § 42.

43. *Ibid.* § 43.  
44. *Ibid.* § 44.

45. *Ibid.* § 45.

(a) This section is new, and is introduced to settle a question in criminal practice, which has produced difficulty. At common law, upon a joint trial, each prisoner may challenge his full number, and every juror challenged as to one, is withdrawn from the panel as to all the prisoners on trial, and thus, in effect, the prisoners in such a case possess the power of peremptory challenge to the aggregate of the numbers to which they are respectively entitled. The embarrassments from defect of jurors, resulting from the exercise of this right by numerous defendants jointly indicted, led the courts, at a very early period, to determine that they had the power, against the will of the prisoners, to sever the panel, and try them severally, if they insisted upon their right of several challenges. This settled the question that prisoners, jointly indicted, could, against their wishes, be tried separately; but whether prisoners, jointly indicted, could demand a *separate* trial, presented another question; some insisting that they possess such a right; others contending that such severance is a matter of sound discretion, to be exercised by the court, with that due regard and tenderness to prisoners, which characterizes our criminal jurisprudence; and this latter we regard as the better opinion. In the section under consideration this doctrine has been adopted, except as to cases of joint indictments for felonious homicide, in which it is proposed to give the accused the positive right to demand separate trials; in cases of joint trials, it is also proposed to limit the number of the challenges, of all the prisoners, to the number each would be entitled to if separately tried, and no more. As prisoners jointly indicted for felonious homicide have, by this section, the right to sever in their trials, persons so circumstanced will not be affected by this latter provision, in cases of joint trial, as their being so tried is a matter resting entirely in their own choice. Report on the Penal Code 45.

(b) The court may direct a special venire to issue to two citizens, instead of the sheriff or coroner, whenever in their opinion, the nature of the case requires it. 15 Leg. Int. 325.

(c) It is an irregularity to call talesmen, unless it appear of record, that the regular panel was exhausted, and an order for talesmen made; but such irregularity, if not objected to, is cured by the verdict, under the 53d section. 10 H. 94.

(d) This section is a summary of the 144th, 145th, 146th, 147th and 148th sections of the act of 14th April 1834, P. L. 367; which sections have been left unrepealed, as they apply equally to civil as well as criminal proceedings. Report on the Penal Code 46.

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

(f) This section is new, and necessary in the event of trials of treason against the state hereafter taking place. Report on the Penal Code 46.

(h) The principle of this section, which prescribes the same punishment against accessories before the fact in felony, under the various synonymes of aiders, abettors, counsellors, comforters, &c., as against principals, is familiar to our criminal legislation; it is found in the 7th section of the act of 1718, 1 Sm. 113; in the 21st section of the act of 8th March 1780, 1 Sm. 499; in the 2d, 3d and 5th sections of the act of 5th April 1790, 2 Sm. 531; and in the 4th section of the act of 23d April 1829, 10 Sm. 431. There is, therefore, nothing new in the principle of this section, which is founded on the theory of the moral guilt of the accessory before the fact being equal to that of the principal offender. The new principle in the section is that which makes the accessory before the fact, guilty of a substantive offence, and which subjects him to punishment for his crime, without postponing it until the conviction of the actual perpetrator; or more precisely speaking, which abolishes in felonies the technical distinction now existing between accesso-

ries before the fact and principal offenders. This was always the law as regards misdemeanors in which there are no accessories, all being regarded by law as principals; in felony, however, except in certain cases about to be noticed, an accessory cannot be tried before the conviction or outlawry of his principal, unless tried with him. In felonies of frequent occurrence, this was found a great and serious evil, which called for and received partial legislative correction; as early as the act of the 31st May 1718, 1 Sm. 105, it was provided that persons harboring, concealing or receiving robbers, burglars, felons or thieves, or receiving or buying any goods or chattels that should have been feloniously taken or stolen by any such robbers, &c., knowing the same to be stolen, might be proceeded against as is therein directed; and that if any such principal felon could not be taken, so as to be prosecuted and convicted for such offence, that nevertheless it shall be lawful to prosecute and punish every such person buying or receiving any goods stolen by such principal felon, knowing the same to be stolen, although the principal felon should not be convicted of the felony. This, however, embraced only one class of accessories, to wit, receivers of stolen goods, in cases where the principal was not amenable to justice; afterwards, by the act of 23d September 1791, 3 Sm. 41, it was provided "in all cases of felonies of death, robbery and burglary, it shall be lawful to punish receivers of such felons, robbers and burglars, by a fine and imprisonment, although the principal felons, robbers and burglars cannot be taken, so as to be prosecuted and tried for said offences; which conviction and sentence of said receivers shall exempt them from being prosecuted as accessories after the fact in case the principal felon, robber or burglar shall afterwards be taken and convicted. This act extended only to accessories after the fact, in cases in which the principals could not be taken.

The act of 11th April 1825, 8 Sm. 438, was passed to avoid a difficulty which afterwards arose in the prosecutions of receivers of stolen goods, in cases in which the principals were amenable to justice. The act of 1718 was taken from the 4th section of 4th and 5th Anne, chap. 31, which only authorized proceedings against such receivers before the conviction or attainder of their principals, when such principals could not be taken. Foster, in his discourse on accomplices, § 6, p. 373, says on this point: "I know attempts have been made, under various shapes, to prosecute the receiver as for a misdemeanor, while the principal hath been in custody and amenable, but not convicted; but I think such devices illegal." The act of 1825 solved the difficulty, by declaring that receivers of property, knowing it to have been feloniously stolen, may be prosecuted, although the principal be not before convicted, and whether he is amenable to justice or not.

It will thus be seen, that all our legislation with regard to the trial of accessories to felonies, before the conviction of their principals, applies only to accessories after the fact, a class of offenders who have had no primary connection with the original crime, and whose guilt only consists in having given comfort and succor to the actual offender after its perpetration; except in cases of receivers of stolen goods, this offence is often almost venial, consisting frequently in parents and friends, influenced by the ties of blood, or the impulses of affection, giving aid and comfort to an offender whose crime they abominate and deplore. It seems strange that the common law privilege, which exempted accessories from liability to justice until the conviction or attainder of the principal, should be taken away in cases of accessories after the fact, and left in those of accessories before the fact, whose guilt is always as great, and often much greater, than that of the principal. The 45th section proposes putting our statute laws on the subject of accessories to felonies in harmony with justice and reason. Report on the Penal Code 46-8.



the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony, if convicted as an accessory, may be punished; and the offence of such person, howsoever indicted, may be inquired of, tried, determined and punished, by any court which shall have jurisdiction to try the principal felon, in the same manner as if the act by reason of which such person shall have become accessory, had been committed at the same place as the principal felony: *Provided always*, That no person who shall be once duly tried for any such offence, whether as an accessory after the fact, or as for a substantive felony, shall be liable to be again indicted or tried for the same offence. (a)

Felonious striking or poisoning in one county, and death in another.

46. If any person hereafter shall be feloniously stricken, poisoned or receive other cause of death in one county, and die of the same stroke, poisoning or other cause of death in another county, then an indictment found therefor by jurors of the county where the death shall happen, shall be as good and effectual in law, as well against the principal in such murder as against the accessory thereto, as if the stroke, poisoning or other cause of death had been given, done or committed in the same county where such indictment shall be found; and the proper courts having jurisdiction of the offence shall proceed upon the same as they might or could do in case such felonious stroke, poisoning or other cause of death, and the death itself thereby ensuing, had been committed and happened all in one and the same county. (b)

Felonious striking or poisoning in the state and death out of the state.

47. If any person shall be feloniously stricken, poisoned or receive other cause of death within the jurisdiction of this state, and shall die of such stroke, poisoning or other cause of death at any place out of the jurisdiction of this state, an indictment therefor found by the jurors of the county in which such stroke, poisoning or other cause of death shall happen as aforesaid, shall be as good and effectual, as well against the principal in any such murder, as against the accessory thereto, as if such felonious stroke, poisoning or other cause of death, and the death thereby ensuing, and the offence of such accessory, had happened in the same county where such indictment shall be found; and the courts having jurisdiction of the offence shall proceed upon the same, as well against principal as accessory, as they could in case such felonious stroke, poisoning or other cause of death, and the death thereby ensuing, and the offence of such accessory, had both happened in the same county where such indictment shall be found. (c)

Proof of offences committed near county lines.

48. In order to obviate the difficulty of proof as to all offences committed near the boundaries of counties, in any indictment for felony or misdemeanor committed on the boundary or boundaries of two or more counties, or within the distance of five hundred yards of any such boundary or boundaries, it shall be sufficient to allege that such felony or misdemeanor was committed in any of the said counties; and every such felony or misdemeanor shall and may be inquired of, tried, determined and punished in the county within which the same shall be so alleged to have been committed, in the same manner as if it had been actually committed therein. (d)

Proof of offences committed during journeys.

49. In order to obviate the difficulty of proof as to offences committed during journeys from place to place, in any indictment for felony or misdemeanor committed on any person or on any property, upon any stage coach, stage, wagon, railway-car or other such carriage whatever, employed in any journey, it shall be sufficient to allege that such felony or misdemeanor was committed within any county or place through any part whereof such coach, wagon, cart, car or other carriage shall have passed in the course of the journey during which such felony or misdemeanor shall have been committed; and in all cases where the centre or other part of any highway shall constitute the boundaries of any two counties, it shall be sufficient to allege that the felony or mis-

46. Act 31 March 1860, § 46. P. L. 441.

47. *Ibid.* § 47.

48. *Ibid.* § 48.

49. *Ibid.* § 49.

(a) This section is only an extension of the existing laws, which, as will be seen from the preceding remarks, subjected accessories after the fact, and receivers, to punishment before the conviction or attainder of their principals. It embraces such accessories not only in common law felonies, but those created, or which hereafter may be created, by statute; it authorizes the conviction of such offenders either with or after the conviction of the principals, or for a substantive offence, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice. It also provides for the case of a party becoming an accessory after the fact in one county to a felony committed in another; giving jurisdiction over the crime of such accessory to the courts of the county having jurisdiction over the crime of the principal offender. This provision supplies the 22d and 23d sections of the act of 1718, 1 Sm. 119, made, probably, to meet a doubt at common law, whether an accessory in one county to a felony in another, was indictable in either. Report on the Penal Code 48.

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

that in such cases the trial should take place in the county where the death happened. This statute is among those reported by the judges of the Supreme Court, as being in force in Pennsylvania; hence the expediency of this section to meet such a case, should it hereafter arise. Report on the Penal Code 49.

(c) In the case of a wound, or other cause of death, being given in this state, and the party receiving the same dying in another state (a thing which might very readily occur, as in the case of duels), by the existing law it is at least doubtful whether a prosecution for homicide could be maintained in either; Hawkins, book 1, chap. 31, §§ 11, 12. If a mortal injury, or poison is given or administered maliciously in the state, and death ensues therefrom out of the state, the act which caused the death, and the malice which influenced the act, the two great essential elements of felonious homicide, have been perpetrated and manifested within our jurisdiction; it seems, therefore, fitting, that in such cases, jurisdiction over the crime should be exercised by the state. The section is new, but manifestly necessary in any penal system claiming to be complete. Report on the Penal Code 49.

(d) The 48th and 49th sections are new; they are intended to obviate difficulties which occur in laying the county, where a crime has been committed, so near county lines, as to render it doubtful in which of two counties it has been actually perpetrated; and to obviate similar difficulties, where the crime has been committed during journeys or voyages by land or water, in carriages or vessels of any kind, which have passed through various counties in the journey or voyage during which the crime has been committed. The sections will be found of real practical value. Report on the Penal Code 49.

demeanor was committed in either of the said counties through, or adjoining to, or by the boundaries of any part whereof such coach, wagon, cart, car or other carriage shall have passed in the course of the journey during which such felony or misdemeanor shall have been committed; and in any indictment for any felony or misdemeanor, committed on any person or on any property on board any vessel whatsoever, employed in any voyage or journey on any navigable river, canal or inland navigation, it shall be sufficient to allege that such felony or misdemeanor was committed in any county or place through any part whereof such vessel shall have passed in the course of the voyage or journey during which such felony or misdemeanor shall have been committed; and in all cases where the side or bank of any navigable river or creek, canal or inland navigation, or the centre or other part thereof, shall constitute the boundary of any two counties, it shall be sufficient to allege that such felony or misdemeanor was committed in either of the said counties through, or adjoining to, or by the boundary of any part thereof, such vessel shall have passed in the course of the voyage or journey during which such felony or misdemeanor shall have been committed; and every such felony or misdemeanor committed in any of the cases aforesaid, shall and may be inquired of, tried, determined and punished in the county or place within which the same shall be so alleged to have been committed, in the same manner as if it had actually been committed therein.

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

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

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

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

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

Witnesses entitled to restitution to be competent.

53. No verdict in any criminal court shall be set aside, nor shall any judgment be arrested or reversed, nor sentence delayed, for any defect or error in the precept issued from any court, or in the venire issued for the summoning and returning of jurors, or for any defect or error in drawing, summoning or returning any juror, or panel of jurors, (c) but a trial, or an agreement to try on the merits, (d) or pleading guilty, or the general issue (e) in any case, shall be a waiver of all errors and defects in, or relative

Cure of defects in jury process by verdict.

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

51. Ibid. § 51.

52. Ibid. § 52.

53. Ibid. § 53.

(a) The 50th and 51st sections are new, and intended to facilitate the conviction of offenders, and avoid unnecessary delay in the administration of criminal justice. By the law as it now stands, if on the trial of an indictment for felony, it appears that some circumstance is wanted to establish the complete technical offence, the prisoner must be acquitted, although the proofs are perfect of an attempt to commit the crime; and on the other hand, where the indictment charges an attempt to commit a crime, and the proof establishes that the crime has actually been committed, the American courts have generally held that the prisoner must be acquitted, because the misdemeanor charged, is merged in the felony proved. The operation of the first of these doctrines is best exemplified by decided cases. Lord Hale, in his Pleas of the Crown, vol. 1, p. 508, thus recites one of these cases: "A. hath his keys tied to the strings of his purse; B., a cut-purse, takes his purse, with the money in it, out of his pocket, but the keys which were hanged to his purse strings, hanged in his pocket; A. takes B. with his purse in his hand, but the strings hanged to his pocket by the keys; it was ruled that this was no felony, for the keys and purse strings hanged in the pocket of A., whereby A. had still in law the possession of his purse, so that *licet, caput non asportavit*. So, where a thief went into a shop, took up some goods, intending to steal them, but before he had removed them from the spot on which they lay, discovered they were tied to the counter by a cord; upon being tried for stealing, it was held that the property never was either completely severed from the possession of the owner, nor completely in the possession of the prisoner, and he was acquitted." Sleight's Criminal Law 29. In regard to the other doctrine sought to be changed by this section, viz.: that a misdemeanor

charged is merged in a felony proved, it has been frequently held in this country that where, on an indictment for an assault, attempt or conspiracy, with intent to commit a felony, it appeared that the felony was actually committed, it was the duty of the court to charge the jury, that the misdemeanor had merged, and that the defendant must be acquitted. Wharton's American Criminal Law §§ 564, 2294. In England, however, this doctrine has been shaken, if not repudiated by the cases of *Rex v. Neale*, 1 Dennison's Cro. Cas. 36, and *Rex v. Button*, 11 Ad. & Ellis (N. S.) 829. The section under consideration will, if adopted, destroy the future operation of a subtle fiction, having no origin in substantial common sense. Report on the Penal Code 50.

(b) This section is taken from the act of 29th March 1809, 5 Sm. 48; and the 31st section of the act of 31st May 1718, 1 Sm. 123. Report on the Penal Code 51.

(c) See 2 S. & R. 300. 4 P. L. J. 512.

(d) A trial on the merits is a waiver of all irregularities and defects in the mode of summoning and returning the jurors. 5 C. 429. After a trial it is too late to object to mistakes in the process as to the Christian and surname of some of the jurors by whom the verdict was rendered. 10 H. 94. If a person, not on the panel, is called, and permitted to sit, the irregularity is cured by this section. 3 H. 236. But if a stranger answer to the name of one of the panel, and is sworn as a juror, it is a mistrial, and not within the statute. *Com. v. Spring*, 10 Leg. Int. 54-6. 1 Am. L. R. 424. See 4 P. L. J. 521.

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



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

Of the trial  
of prisoners  
committed.

54. If any person shall be committed for treason or felony, or other indictable offence, and shall not be indicted and tried some time in the next term, session of oyer and terminer, general jail delivery, or other court where the offence is properly cognisable, after such commitment, it shall and may be lawful for the judges or justices thereof,<sup>(b)</sup> and they are hereby required on the last day of the term, sessions or court, to set at liberty the said prisoner upon bail, unless it shall appear to them, upon oath or affirmation, that the witnesses for the commonwealth, mentioning their names, could not then be produced;<sup>(c)</sup> and if such prisoner shall not be indicted and tried the second term, session or court,<sup>(d)</sup> after his or her commitment, unless the delay happen on the application or with the assent of the defendant, or upon trial he shall be acquitted, he shall be discharged from imprisonment:<sup>(e)</sup> *Provided always*, That nothing in this act shall extend to discharge out of prison, any person guilty of, or charged with treason, felony or other high misdemeanor in any other state, and who by the constitution of the United States ought to be delivered up to the executive power of such state, nor any person guilty of, or charged with a breach or violation of the laws of nations.<sup>(g)</sup>

Witnesses in  
forgeries.

55. Upon the trial of any indictment for making or passing, and uttering, any false, forged or counterfeited coin, or bank note, the court may receive in evidence, to establish either the genuineness or falsity of such coin or note, the oaths or affirmations of witnesses who may, by experience and habit, have become expert in judging of the genuineness or otherwise, of such coin or paper, and such testimony may be submitted to the jury without first requiring proof of the handwriting or the other tests of genuineness, as the case may be, which have been heretofore required by law; and in prosecutions for either of the offences mentioned or described in the 164th, 165th, 166th and 167th sections of the "Act to consolidate, revise and amend the penal laws of this commonwealth,"<sup>(h)</sup> the courts shall not require the commonwealth to produce the charter of either of said banks, but the jury may find that fact upon other evidence, under the direction of the court.<sup>(i)</sup>

Witnesses  
not to be im-  
prisoned ex-  
cept in cer-  
tain cases.

56. No witness in any case who enters his or her recognisance, in such sum as the magistrate may demand, to appear and testify in such prosecutions as require his testimony, shall be committed to prison by the judge, alderman or magistrate before whom any criminal charge may be preferred: *Provided however*, That in all cases triable in the oyer and terminer, where a positive oath is made, reduced to writing and signed by the deponent, setting forth sufficient reasons or facts to induce the firm belief on the part of the judge, magistrate or alderman, that any witness will abscond, elope or refuse to appear upon the trial, that then and in such case the judge, magistrate or alderman may exact bail of said witness to testify.<sup>(k)</sup>

Bills of ex-  
ception and  
writs of error  
allowed.

57. Upon the trial of any indictment for murder or voluntary manslaughter,<sup>(l)</sup> it shall and may be lawful for the defendant or defendants to except to any decision of the court upon any point of evidence or law,<sup>(m)</sup> which exception shall be noted by the court, and filed of record as in civil cases,<sup>(n)</sup> and a writ of error to the supreme court may be taken by the defendant or defendants, after conviction and sentence.<sup>(o)</sup>

54. Act 31 March 1860, § 54. P. L. 443.

55. Ibid. § 55.

56. Ibid. § 56.

57. Ibid. § 57.

(a) This section is a transcript of the act of 21st February 1814, 6 Sm. 111. The original act has been left unrepealed, and has been introduced here in order to give relative completeness to the code of criminal procedure. Report on the Penal Code 51.

(b) The application must be made to the court in which the prisoners were indicted. 2 Wh 502. 3 Y. 204. 7 W. & S. 110.

(c) This section only applies where there has been wilful delay on the part of the commonwealth. 16 S. & R. 305. 7 W. 366. Not where the trial is delayed by the prisoner. 3 Y. 206. 16 S. & R. 304. 2 Wh. 501. 7 W. 366. 1 D. 9.

(d) A prisoner can only claim his discharge on the last day of the second term after his arrest, when there has been a competent and regularly constituted court before whom he could have been indicted and tried. 5 C. 129.

(e) The act was designed to prevent wrongful restraints of liberty growing out of the malice and procrastination of the prosecutor; but not to shield a prisoner, in any case, from the consequences of any delay made necessary by the law itself; and, therefore, where the array of grand jurors was quashed at two successive terms after the arrest of the prisoner, for informality in selecting and drawing them, he is not entitled to a discharge. 5 C. 129.

(g) This section is a transcript of the 3d section of the act of 18th February 1785, 2 Sm. 277. The words, "or other indictable offence," after the word "felony," have been introduced in order to harmonize the language of the law with the actual practice under it, which has been to extend the provisions of the 3d section of the habeas corpus act, not only to commitments for treason or felony, but to commitments for all criminal offences. Ex parte Walton, 2 Wh. 501. The only change in the proviso of this section is the substitution of the words, "the constitution of the United States," for the words, "the confederation," of the original act. The original section has also been left unrepealed, so as to avoid any unnecessary interference with this important law. The commissioners consider its introduction into this act is judicious, composing, as it does, so important an element in our criminal jurisprudence. Report on the Penal Code 51.

(h) See tit. "Crimes," pl. 173-6.

(i) This section is framed from the 3d section of the act of 4th May 1852, P. L. 574; and the 13th section of the act 25th March 1824, 8 Sm. 238. Report on the Penal Code 52.

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

(l) A bill of exceptions to the admission or rejection of evidence, on the trial of one charged by indictment with a criminal offence, other than murder or voluntary manslaughter, is not the subject of consideration on a writ of error, although the bill may have been sealed by the court below. 2 W. 285.

(m) The prisoner must show that a substantial error was committed on the trial, in the admission or rejection of evidence, by which he has been injured; it is not sufficient that an abstract or technical error has taken place. 5 C. 429.

(n) The supreme court is limited to a review of the points so noted and filed of record by the court below. 5 C. 429. 1 Wr. 108. The act does not authorize an exception to the charge of the court. Com. v. Jacoby, 6 Pittsburgh Leg. J. 178.

(o) Sections 57 to 61 are taken from the 1st, 2d, 3d, 4th and 5th sections of the act of 6th November 1856, P. L. 795. The changes made therein, consist in striking out the whole of the proviso to the 1st section, and so much of the 4th section as provides for the oath or affirmation required, being filed in the prothonotary's office of the proper district. The effect of the proposed amendment will be, to supersede the necessity of a party convicted of murder or manslaughter, making an oath that his application for a writ of error is not for the purpose of delay, and to correct the manifest inconsistency in the proviso, in authorizing a defendant, convicted of voluntary manslaughter, to enter bail to appear and abide the sentence of the court, when by the previous part of the section, no writ of error can issue until after conviction and sentence. The commissioners believe that the oath demanded will stop few, if any, persons convicted of murder or voluntary manslaughter, from suing out a writ of error, to obtain a reversal of their condemnations; they think that such a temptation to perjury should not be placed in the way of a party so situated. Experience shows that even in civil proceedings, such oaths have but little influence in preventing litigation; how much less must they

58. If during the trial upon any indictment for murder or voluntary manslaughter, the court shall be required by the defendant or defendants to give an opinion upon any point submitted and stated in writing, it shall be the duty of the court to answer the same fully, and file the point and answer with the records of the case. (a) Written opinions to be filed.

59. No such writ shall be allowed, unless special application be made therefor, and cause shown within thirty days after sentence pronounced; and if the supreme court be sitting in banc in any district, the application shall be made, and cause shown there; if the said court be not sitting, application may be made to, and cause shown before one of the judges of that court, and upon the allowance of such writ, the said court or judge shall fix a time and place for hearing the said case, which time shall not be more than thirty days thereafter; if the said court shall be at that time sitting in banc in any district of the state, the said court or judge, upon the allowance of any such writ, shall make all such proper orders, touching notice to the commonwealth, and paper-books, as may be considered necessary. Granting of writs of error regulated.

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

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

#### E. OF COSTS.

62. In all prosecutions, cases of felony excepted, if the bill of indictment shall be returned "ignoramus," the grand jury returning the same shall decide and certify on such bill whether the county or the prosecutor shall pay the costs of prosecution; and in all cases of acquittals (b) by the petit jury on indictments for the offences aforesaid, the jury trying the same shall determine, by their verdict, whether the county, (c) or the prosecutor, or the defendant shall pay the costs, (d) or whether the same shall be apportioned between the prosecutor and the defendant, and in what proportions; and the jury, grand or petit, so determining, in case they direct the prosecutor to pay the costs or any portion thereof, shall name him in their return or verdict; (e) and whenever the jury shall determine as aforesaid, that the prosecutor or defendant shall pay the costs, the court in which the said determination shall be made shall forthwith pass sentence to that effect, and order him to be committed to the jail of the county until the costs are paid, unless he give security to pay the same within ten days. (g) Power of grand and petit jurors over costs.

63. In all prosecutions where the petit jury trying the same shall acquit the defendant, and shall determine, by the verdict, that the prosecutor shall pay the costs (h) the defendant's bill for his subpoenas, serving the same, and attendance of his material and necessary witnesses, shall be included in the costs and paid accordingly. (i) Of the defendant's costs.

64. The costs of prosecution accruing on all bills of indictments charging a party with felony, returned "ignoramus" by the grand jury, shall be paid by the county; and the costs of prosecution accruing on bills of indictment charging a party with felony, shall, if such party be acquitted by the petit jury on the traverse of the same, be paid by Payment of costs generally.

58. Act 31 March 1860, § 58. P. L. 444.  
59. Ibid. § 59.

60. Ibid. § 60.  
61. Ibid. § 61.

62. Ibid. § 62.  
63. Ibid. § 63.

64. Ibid. § 64.

have in a criminal proceeding, where the matter in issue is life or liberty! The privilege given in the proviso, in a case of voluntary manslaughter, of entering bail to appear to abide by the sentence of the court, is utterly irreconcilable with the main section itself, which gives the writ of error after conviction and sentence; if the commissioners are permitted to speculate upon the causes of the incongruity between the section and its proviso, they would be inclined to suppose that the proviso was one of those amendments hastily made and adopted, which sometimes occur in rapid legislation. The only manner in which the proviso and the section can be reconciled, would be to suppose that the legislature intended, in case of conviction and sentence for voluntary manslaughter, to permit the defendant, suing out a writ of error, to go at large on bail until the final judgment of the court of errors; such a feature is entirely new in a system of criminal jurisprudence, based upon the common law. If such a privilege is to be given to a convicted felon, there seems no good reason that it should be exclusively extended to felonious homicide; as has been heretofore remarked, the line between murder and voluntary manslaughter is often so nicely characterized, that it requires much technical acumen to discriminate the differences between them; surely in a community in which law ought to protect life by every possible means, a party convicted by the verdict of a jury of his peers, of voluntary and felonious homicide, should not be permitted to go at large, while the sentence against him remains unreversed and unrepelled. We ought not, in our anxiety to guard the rights of the offender, to forget those of the community, an error which seems gradually insinuating itself into penal legislation and administration; the reasoning on this subject might be extended, but the commissioners think they have said enough to recommend their proposed modification of this act to legislative favor. Report on the Penal Code 52.

(a) This section does require the court to write out its charge to the jury. Com. v. Jacoby, 6 Pittsburgh Leg. J. 178.

(b) If the act be charged to have been done feloniously, the jury have no power over the costs. 6 W. 530. Nor where on

an indictment for a felony, a count for a misdemeanor is joined. 2 C. 154. The statute extends to the case of a defective indictment. 4 B. 194. 4 S. & R. 127. And to an acquittal on a plea of the statute of limitations. 2 C. 171. The jury cannot convict one of two defendants, and acquit the other, and direct the latter to pay the costs. 13 S. & R. 301. The court may set aside a verdict of acquittal, so far as it imposes costs on the prosecutor. 2 Gr. 66.

(c) If the jury acquit the defendant, and say nothing as to the costs, the county is not liable. 3 P. R. 365.

(d) This does not include the costs of a former bill, on which judgment was arrested. 2 C. 171.

(e) No person can be sentenced to pay costs as prosecutor, unless named by the jury. 7 W. 485. But where the grand jury ignored a bill for assault and battery, and directed the person upon whom it was alleged to have been committed, to pay the costs, it was held sufficient, although they omitted to designate him as prosecutor. Com. v. Carr, Quarter Sessions, Phila., 23 October 1847. MS. The act does not apply to persons concerned in prosecutions in their official capacity; 2 Am. L. R. 243; 11 Leg. Int. 58; and hence, in a prosecution for keeping a disorderly house, the jury cannot impose the costs on the constable who made the return. Com. v. Barr, Quarter Sessions, Lancaster, January 1848. MS.

(g) See 2 P. R. 240. 13 S. & R. 303. This section is taken from the 1st and 2d sections of the act of 8th December 1804. 4 Sm. 204; and the act of 12th April 1859. P. L. 528. The only change made in these laws is, that the like privilege of giving security for the payment of costs in ten days is given to the defendant, who, although acquitted, is ordered to pay the costs, as is given to the prosecutor in case he is ordered to pay the costs. Report on the Penal Code 53.

(h) If the jury acquit the defendant, and direct the costs of prosecution to be paid by the county, the latter is not liable for the attendance of the defendant's witnesses. 12 C. 317.

(i) This section is taken from the act of 9th February 1820, 5 Sm. 87. Report on the Penal Code 53.



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

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

#### F. GENERAL PROVISIONS.

Insane prisoners. Jury to find the fact of insanity. Defendant to be detained in custody. 66. In every case in which it shall be given in evidence upon the trial of any person charged with any crime or misdemeanor, that such person was insane at the time of the commission of such offence, and he shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether he was acquitted by them on the ground of such insanity; and if they shall so find and declare, the court before whom the trial is had shall have power to order him to be kept in strict custody, in such place and in such manner as to the said court shall seem fit, at the expense of the county in which the trial is had, so long as such person shall continue to be of unsound mind. (h)

Where defendant is found insane upon arraignment. 67. The same proceedings may be had, if any person indicted for an offence shall, upon arraignment, be found to be a lunatic, by a jury lawfully impanelled for the purpose; or if, upon the trial of any person so indicted, such person shall appear to the jury, charged with such indictment, to be a lunatic, the court shall direct such finding to be recorded, and may proceed as aforesaid.

Where prisoner brought up to be discharged appears to be insane. 68. In every case in which any person charged with any offence shall be brought before the court to be discharged for want of prosecution, and shall by the oath or affirmation of one or more credible persons, appear to be insane, the court shall order the district attorney to send before the grand jury a written allegation of such insanity in the nature of a bill of indictment; and thereupon the said grand jury shall make inquiry into the case, as in cases of crimes, and make presentment of their finding to said court thereon; and thereupon the court shall order a jury to be impanelled to try the insanity of such person; but before a trial thereof be ordered, the court shall direct notice thereof to be given to the next of kin of such person, by publication or otherwise, as the case requires, and if the jury shall find such person to be insane, the like proceedings may be had as aforesaid.

Insane defendant to be delivered to friends, &c. 69. If the kindred or friends of any person who may have been acquitted as aforesaid on the ground of insanity, or in the default of such, the guardians, overseers or supervisors of any county, township or place, shall give security in such amount as shall be satisfactory to the court, with condition that such lunatic shall be restrained from the commission of any offence by seclusion or otherwise, it shall be lawful for the court to make an order for the enlargement of such lunatic, and his delivery to his kindred or friends, or as the case may be, to such guardians, overseers or supervisors.

How expenses to be paid in such cases. 70. The estate and effects of every such lunatic shall, in all cases, be liable to the county for the reimbursement of all costs and expenses paid by such county in pursuance of such order; but if any person acquitted on the grounds of insanity, shall have no estate or effects, the county, township or place to which such lunatic may be chargeable under the laws of this commonwealth relating to the support and employment of the poor, shall, after notice of his detention aforesaid, be liable for all costs and expenses as aforesaid, in like manner as if he had become a charge upon any township not liable for his support under the laws aforesaid.

Civil actions against felons. 71. In all cases of felony heretofore committed, or which may hereafter be committed, it shall and may be lawful for any person injured or aggrieved by such felony, to have and maintain his action against the person or persons guilty of such felony, in like manner as if the offence committed had not been feloniously done; and in no case whatever, shall the action of the party injured, be deemed, taken or adjudged to be merged in the felony, or in any manner affected thereby. (i)

Executions upon sentences of retribution. 72. The imprisonment awarded as part of the punishment of any offender, shall not stop or avoid the awarding or taking out of execution to levy such respective sums recovered against them, as such offenders refuse or neglect to pay, when such writs are taken out, which executions shall be directed to the sheriff or coroner of the proper

65. Act 31 March 1860, § 65. P. L. 445.  
66. Ibid. § 66.

67. Ibid. § 67.  
68. Ibid. § 68.

69. Ibid. § 69.  
70. Ibid. § 70.

71. Ibid. § 71.  
72. Ibid. § 72.

(a) See 10 C. 440.

(b) This includes convictions for drunkenness and vagrancy. 4 C. 173. 5 C. 38. Provided the defendants be sentenced to hard labor, and the commitments follow the sentences as recorded. 12 C. 349. The case of a prosecutor on a bill returned ignoramus, is not within the act; nor that of a defendant acquitted, but ordered to pay the costs by the petit jury; nor where the prosecutor is ordered to pay costs on an acquittal. 4 S. & R. 541. Nor where the case is determined by nolle prosequi. 12 S. & R. 94. 6 H. 493. Or the indictment is quashed. 3 R. 487. But it extends to cases where the party may be discharged under the insolvent laws; or where judgment has been arrested, or reversed on error. 12 S. & R. 95. Or where the defendant has been pardoned after conviction. 4 S. & R. 449.

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

witness, for contempt. 2 S. & R. 292.

(d) Unless the discharge be a legal one, the county is not liable. 6 P. L. J. 237.

(e) This section is a consolidation of the 11th and 15th sections of the act of 23d September 1791, 3 Sm. 43-4; and the 13th section of the act of 28th March 1814, 6 Sm. 229; and the 1st section of the act of 20th March 1797, 3 Sm. 281; and embraces the cases provided for by them. Report on the Penal Code 53.

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

(h) Sections 66 to 70 are taken from the 58th, 59th, 60th, 61st and 62d sections of the act of 13th June 1836, P. L. 603. Report on the Penal Code 54. See 6 C. 522. 10 C. 184.

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

county, requiring him to levy the sums due upon such recoveries as aforesaid, of the lands and tenements, goods and chattels of such offenders, returnable to the next term or session of the court where such conviction was had, which shall be executed accordingly; (a) and the lands, goods and chattels thereby seized shall be sold and conveyed by the said officers, and such sales shall be as available and effectual in law as any other sales of land taken and sold for the payment of debts, by virtue of writs of execution awarded out of the courts of common pleas in the respective counties. (b)

73. If any person who hath been, or shall be legally indicted in any court of criminal jurisdiction within this commonwealth, of treason, felony of death, robbery, burglary, Outlawry. sodomy or buggery, or as accessories before the fact to any of the same offences, did not or will not appear to answer to such indictment, or having appeared, shall escape before trial, the same indictment, record and proceedings shall be removed by writ of certiorari Certiorari. into the supreme court of this commonwealth, and it shall and may be lawful for the same court to award a writ of capias, directed to the sheriff of the county where the fact shall be charged to have been committed; and if the party indicted shall be supposed, Capias. by the indictment, to inhabit or be conversant in any other county, then also to the sheriff of such county; which writ or writs shall be delivered to the said sheriff or sheriffs, at least two months before the day of the return thereof, commanding the said sheriff or sheriffs to take the person so indicted as aforesaid, if he may be found in his or their bailiwicks, and him safely keep, so that he may have his body before the justices of the said supreme court, at the next supreme court to be holden for the said commonwealth, to answer to the said indictment, or prosecute his traverse thereupon, as the case may be, and to be further dealt with as the law shall direct; and if the same sheriff or sheriffs shall make return to the same writ or writs of capias, that the person indicted as aforesaid, cannot be found in his bailiwick, then, after such return, a second writ of capias Alias capias. may issue out of the said supreme court, and be delivered at least three months (c) before the return day thereof, to the sheriff of the county where the fact shall be charged to have been committed; and in case the party shall be supposed, by the indictment, to inhabit or be conversant in any other county, then another writ of capias shall also issue, and be delivered at least three months before the return day thereof, to the sheriff of such county; which writ or writs of capias shall be returnable before the justices of the same court, (d) on the first day of the second term next after the teste of the said second writ of capias, so that a term shall intervene between the teste of the return days of the same writ or writs, whereby the said sheriff or sheriffs shall be commanded to take the said person so indicted as aforesaid, if he may be found in his or their bailiwicks, and him safely keep, so that he may have his body before the justices of the said supreme court at the day of the return thereof, to answer or prosecute his traverse as aforesaid; but if he cannot be found in his or their bailiwicks, then to cause public proclamation to be Proclama- tion. made on three several days (e) in one of the courts of quarter sessions of the peace to be held for the said counties respectively, between the teste and return days of the same writ or writs, that the party so indicted shall appear before the said justices of the said supreme court, at a supreme court to be holden at the time and place contained in the same writs, to answer such indictment or prosecute his traverse thereof, as the case may be, or through default thereof, he will at the return of the same writ or writs be outlawed, and attainted of the crime whereof he was indicted as aforesaid; and the said second writ of capias, directed to the sheriff of the county where the crime hath been, or shall be charged to have been committed, shall contain a further clause commanding the said sheriff, in case the person indicted as aforesaid cannot be found in his bailiwick, to cause public advertisement to be made in one or more of the public newspapers of Advertise- ment. this state, once a week, in six succeeding weeks, between the teste and return of the said second writ of capias, specifying therein the coming of the said second writ of capias to his hands, with the teste thereof, and the time and place of return to be made thereof, naming the person indicted as aforesaid, with his addition of degree, mystery (g) and place of abode, (h) as contained in the writ, stating the nature of the offence charged against him, and commanding him to appear before the justices of the said supreme court, at the day and place directed by the said second writ of capias, to answer to the said indictment, or prosecute his traverse thereof, as the case may be, or through default thereof at the return of the said second writ of capias, he will be outlawed and attainted of the crime whereof he shall have been indicted as aforesaid; and if upon the return Attainder of the same writ or writs last mentioned, by the said sheriff or sheriffs, that the directions of the said writ or writs had been fully complied with and pursued, and the person indicted as aforesaid shall not yield himself to one of the said sheriffs, so that he may have his body before the justices of the said supreme court at the day and place as directed by the said writ or writs, or having surrendered himself, shall escape from his custody, or having been bailed on his surrender or caption, shall not appear, so that through want of his appearance at the time and place the said supreme court shall appoint for his trial, no trial of his offence can be had, the justices of the said supreme court shall in either of these cases pronounce and declare the said person indicted as

73. Act 31 March 1860, § 73. P. L. 447.

(a) A conveyance made to elude the provisions of this section, would be fraudulent and void at common law. 5 B. 114.

(b) This section is taken from the 30th section of the act of 31st May 1718, 1 Sm. 122. Report on the Penal Code 54.

(c) See 1 D. 88, 92.

(d) 1 D. 88, 92.

(e) 1 D. 88, 92.

(g) 2 D. 92.

(h) 2 D. 92. 1 D. 60.



**Accessories.** aforesaid, and not appearing at the time and place appointed for his trial as aforesaid, to be outlawed and attainted of the crime whereof he shall have been indicted as aforesaid; the said supreme court to pronounce the judgment of outlawry against the principal offender, previously to the declaration of outlawry against the accessory, against whom, in all other respects, it shall be lawful to carry on the proceedings together, and at the same time the said supreme court shall declare the legal punishment for the same crime; and wherever imprisonment shall be a part of the sentence for any of the said offences, the term thereof shall commence from the time the person outlawed shall, subsequent to his outlawry, actually be in the custody of the sheriff of the county where the offence was or shall be committed, which sentence shall be fully and particularly entered upon the records of the said supreme court; and the said sentence of outlawry shall have the legal effect of a judgment upon verdict or confession against the person so outlawed, for the offence whereupon he shall have been outlawed, unless and until the same outlawry shall be afterwards avoided by the judgment of the same court, on plea pleaded in the nature of a writ of error.

**Sentence.**

**Effect of outlawry.**

**How execution to be awarded.**

When any person outlawed as aforesaid, shall be taken either by *capias utlagatum*, or otherwise, or being in the sheriff's custody, shall be brought to the bar of the supreme court, the court shall, upon the suggestion and prayer of the attorney-general, award execution(a) to be done upon him, unless the prisoner shall plead either *ore tenus*, or in writing, as his counsel shall advise, that he was not the person who was outlawed, or shall assign errors, in fact or in law, sufficient to prevent the award of execution, in which case the court shall proceed to determine the same either by an inquest or by their own judgment, agreeably to law; and the prisoner shall by such plea have all the benefit and advantage of all legal matters in his favor, as if he or she had brought a writ of error and had assigned the several matters pleaded as errors: *Provided*, If any person outlawed shall within the space of one year next after the outlawry pronounced against him, yield him to one of the justices of the supreme court, and offer to traverse the indictment whereon the said outlawry shall be pronounced as aforesaid, that then he shall be received to the same traverse; and being thereupon found not guilty, by the verdict of a jury, of the offence for which he shall have been outlawed as aforesaid, he shall be clearly acquitted and discharged of the said outlawry, and of all penalties and forfeitures by reason of the same, as fully as if no such outlawry had been had, anything hereinbefore contained to the contrary thereof notwithstanding.

**When outlawry may be reversed.**

**Costs.**

All the costs and charges of the said proceedings to outlawry shall be borne and paid by the county where the crime is laid to have been committed: *Provided always*, That if the person or persons so outlawed shall have real or personal estate, the same or so much thereof as shall be necessary, shall be sold in the manner provided by the seventy-second section of this act, and the net proceeds of such sales shall be applied to the payment of the said costs and charges, or so far as the same shall extend, in exoneration of the county.(b)

**Sentences of separate or solitary confinement.**

74. Whenever any person shall be sentenced to imprisonment at labor by separate or solitary confinement, for any period not less than one year, the imprisonment and labor shall be had and performed in the state penitentiary for the proper district: *Provided*, That nothing in this section contained shall prevent such person from being sentenced to imprisonment and labor, by separate or solitary confinement, in the county prisons now or hereafter authorized by law to receive convicts of a like description: *And provided also*, That no convict shall be sentenced by any court of this commonwealth, to either of the penitentiaries thereof, for any term which shall expire between the fifteenth of November and the fifteenth of February of any year.(c)

**Sentences of less than one year, and simple imprisonment.**

75. No person shall be sentenced to imprisonment at labor, by separate or solitary confinement, for a period of time less than one year, except in the counties where, in the opinion of the court pronouncing the sentence, suitable prisons have been erected for such confinement and labor; and all persons sentenced to simple imprisonment for any period of time, shall be confined in the county jail where the conviction shall take place: *Provided*, That in the counties where suitable prisons for separate or solitary confinement at labor do not exist, and the sentence shall be for less than one year, simple

74. Act 31 March 1860, § 74. P. L. 449.

75. *Ibid.* § 75.

(a) 1 D. 87, 91.

(b) This section is taken from the 1st, 2d and 3d sections of the act of 23d September 1791, 3 Sm. 37, and is nearly a transcript thereof. They form in themselves as good a system of outlawry as can now be suggested, and are so skillfully and ably drawn, as to require no amendment of importance. Although proceedings in outlawry have been rarely resorted to in our state, yet they are indispensably necessary in every complete system of criminal jurisprudence. Report on the Penal Code 54.

(c) Whilst the 74th and 75th sections, except the proviso to the 74th section, are new in form, no material alteration is made in the law as it now stands. The 74th section requires that sentences of imprisonment at labor by separate or solitary confinement for a period of time not less than one year, shall be performed in the state penitentiary of the proper district, or in such county prisons as are now, or may hereafter be authorized to receive convicts of a like description; and the 75th section prohibits sentences of imprisonment at labor by separate or solitary confinement for a less period of time than one year, except in the counties where suitable prisons have been or shall hereafter be erected for such confinement and

This section also provides that in all cases where the sentence is for simple imprisonment only, the offender shall be confined in the county where the conviction shall take place. The sections taken together require: 1. That all persons sentenced to simple imprisonment, shall be confined in the county where the offender is convicted. 2. That no person shall be sentenced to imprisonment at labor by separate or solitary confinement for a less period than one year, except in the counties where, in the opinion of the court passing the sentence, prisons are provided suitable for such confinement and labor. 3. That all imprisonment at labor by separate or solitary confinement, where the sentences exceed one year, shall be in the state penitentiary for the proper district, except in the counties in whose prisons convicts of a like description are authorized to be imprisoned, and in those counties, such convicts may be sent to the county prisons as heretofore. The provision contained in the last proviso to the 74th section, is copied from the 1st section of the act of 18th February 1847, P. L. 126. Report on the Penal Code 54. In New York, a similar law to that contained in this proviso, was held to be merely directory, and a failure to comply with its requirements, not to avoid the sentence. 1 Parker 374

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, for any crime of which he shall have been convicted, the said punishment shall be inflicted upon him within the walls or yard of the jail of the county in which he shall have been convicted; and it shall be the duty of the sheriff or coroner of the said county to attend and be present at such execution, to which he shall invite the presence of a physician, the district attorney of the county, and twelve reputable citizens, who shall be selected by the sheriff; and the said sheriff shall, at the request of the criminal, permit such ministers of the gospel, not exceeding two, as he may name, and any of his immediate relatives, to attend and be present at such execution, together with such officers of the prison, and such of the sheriff's deputies as the said sheriff or coroner, in his discretion, may think it expedient to have present; and it shall be only permitted to the persons above designated to witness the said execution: *Provided*, That no person under age shall be permitted, on any account, to witness the same. And after the execution, the said sheriff or coroner shall make oath or affirmation, in writing, that he proceeded to execute the said criminal, within the walls or yard aforesaid, at the time designated by the death warrant of the governor; and the same shall be filed in the office of the clerk of the court of oyer and terminer of the aforesaid county, and a copy thereof published in two or more newspapers, one, at least, of which shall be printed in the county where the execution took place.<sup>(a)</sup>

77. All indictments which shall hereafter be brought or exhibited for any crime or misdemeanor, murder and voluntary manslaughter excepted, shall be brought or exhibited within the time and limitation hereafter expressed, and not after; <sup>Limitation of prosecutions.</sup> (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: <sup>(c)</sup> *Provided however*, That if the person against whom such indictment shall be brought or exhibited, shall not have been an inhabitant of this state, or usual resident therein, during the said respective terms for which he shall be subject and liable to prosecution as aforesaid, then such indictment shall or may be brought or exhibited against such person at any period within a similar space of time during which he shall be an inhabitant of, or usually resident within this state: *And provided also*, That indictments for misdemeanors committed by any officer of a bank, or other corporation, may be commenced and prosecuted at any time within six years from the time the alleged offence shall have been committed.<sup>(d)</sup>

78. All fines imposed upon any party, by any court of criminal jurisdiction, shall be decreed to be paid to the commonwealth; but the same shall be collected and received, for the use of the respective counties in which such fines shall have been imposed as aforesaid, as is now directed by law.<sup>(e)</sup> <sup>Fines to be decreed to be paid to the state, for the use of the county.</sup>

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

77. *Ibid.* § 77.

78. *Ibid.* § 78.

(a) This section is taken from the act of 10th April 1834, P. L. 234. Report on the Penal Code 55.

(b) The finding of an informal presentment is not sufficient to take the case out of the statute. 1 Cranch C. C. 485. Nor will a former indictment, on which a nolle prosequi was entered. 3 McLean, 469.

(c) The limitation need not be specially pleaded; it may be taken advantage of on the general issue. 4 C. 259. See 3 Cranch C. C. 442. 5 Cranch C. C. 38, 60, 368.

(d) This section considerably extends the existing laws relating to the limitation of criminal prosecutions; these only relate to misdemeanors, in all of which, prosecutions must be commenced within two years, if the alleged offender is accessible to justice, except in forgeries, perjuries and misdemeanors by bank officers, the limitations in the latter cases being six years; the present section extends the principle to all crimes, murder and voluntary manslaughter excepted. Where the alleged offender is accessible to justice, prosecutions should not be unnecessarily delayed; such delays do not often take place from worthy motives; charges are often kept suspended over the heads of the accused to subvert the ends of the accuser, and the accused kept in a state of moral slavery, to which no human being should be subjected; it is true, that stale prosecutions are

looked upon with an unfavorable eye by courts and juries, but the very existence of this feeling in criminal tribunals is a strong argument in itself in favor of reasonable limitations in criminal prosecutions. In the more serious class of felonies and misdemeanors, the limitation has been extended to five years; in those of less malignity, the limitation of two years has been adopted. The existing laws on this subject are the 1st section of the act of 10th April 1848, P. L. 428; the 7th section of the act of 16th April 1849, P. L. 664; the 36th section of the act of 25th April 1850, P. L. 575; the act of 10th March 1852, P. L. 124; and the act of 24th April 1857, P. L. 305. The act of 1852, which provides for a general limitation of two years in all cases of misdemeanors, forgeries and perjuries excepted, may be regarded as having repealed all antecedent laws; the act of 1857, though purporting by its title to be a repeal of the act of 1852, is only a modification thereof, extending the limitation in cases of prosecutions for misdemeanors of bank or other corporation officers to five years. Report on the Penal Code 55.

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



## Cumberland Road.

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Road accepted from U. S. 1. The surrender by the United States of so much of the Cumberland road as lies within the state of Pennsylvania, is hereby accepted by this state; and the commissioners to be appointed under this act are authorized to erect toll-gates on the whole or any part of said road, at such times as they may deem it expedient and proper to do so.

Appointment of superintendents. 2. At the first session happening after the passage of this act, it shall be the duty of the court of quarter sessions of Washington county to appoint a suitable person to be superintendent of that section of the Cumberland road within this commonwealth which lies between the Monongahela river and the Virginia state line; [and it shall also be the duty of the court of quarter sessions of Fayette county, at the first session of the said court happening after the passage of this act, to appoint a suitable person to be superintendent of that section of the Cumberland road within this commonwealth which lies between the Monongahela river and the Maryland state line;](a) which appointments shall severally continue for two years, if they shall discharge the duties hereinafter prescribed in a proper manner; and in case of the death, resignation or removal, the vacancy shall be filled by the same courts of the proper county: The said superintendents shall be sworn, in open court, to discharge the duties of their trust with honesty and fidelity; and shall, before entering upon the duties of their respective trusts, give bond, in such sum and with such security as the said respective courts may deem sufficient; the bonds to be given in the name of the commonwealth, and shall be conditioned for the faithful discharge of their trust in all things.

Term. Vacancies, how filled. Oath of office. Bond. 3. The governor of this commonwealth shall appoint one person to be superintendent of said road, in Fayette and Somerset counties, for the term of two years from the date of said appointment, at a salary not exceeding two hundred dollars per annum, to be paid out of the tolls collected upon said road, whose duties shall be those of superintendent of said road, as now directed by the law of this commonwealth, authorizing the court of Fayette county to appoint a superintendent, approved the 22d day of April 1856.

Powers of the superintendents. 4. Each of the said superintendents so appointed, shall have over their respective sections of said road all the powers heretofore conferred upon commissioners of said road, and all the powers conferred upon superintendents by the fourth section of the act to which this is a supplement,(b) and also all the powers which have heretofore been conferred upon trustees authorized to be appointed for said road.

Compensation. 5. For compensation, the said superintendents shall each receive a certain per centage of the gross revenues of their respective sections, which per centage shall be ascertained and allowed by the court, at the end of each year; at which time it shall be the duty of the said superintendents to make a full and just exhibit of the receipts and expenditures on their respective sections, to the court from which he received his appointment; which accounts, before they are certified, shall receive the consideration and examination of the court, and for this purpose the court may appoint an auditor, if necessary.

Accounts. Toll-gates to be erected. 6. For the purpose of keeping so much of the said road in repair as lies within the state of Pennsylvania, and paying the expenses of collection and other incidental expenses, the commissioners shall cause to be erected on so much of the said road as passes within this state, at least six gates; and as soon as said gates and toll-houses shall be erected, it shall be the duty of the toll-collectors, and they are hereby required to demand and receive for passing the said gates, the tolls hereafter mentioned; and they may stop any person riding, leading or driving any horse, cattle, sulky, chair, phaeton,

1. Act 1 April 1835, § 3. P. L. 102.  
2. Act 22 April 1856, § 1. P. L. 523.

3. Act 1 May 1861, § 1. P. L. 678.  
4. Act 22 April 1856, § 2. P. L. 523.

5. Ibid. 3.  
6. Act 4 April 1831, § 2. P. L. 419.

(a) See *infra* 3.

(b) See act 8 April 1848. P. L. 395-7



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

Id. § 28.  
1 Va. Cas. 151-2.

26. When any person is convicted of two or more offenses, before sentence is pronounced for either, the confinement to which he may be sentenced upon the second, or any subsequent conviction, shall commence at the termination of the previous terms of confinement.

Code Va., p. 815,  
§ 29.  
10 Gratt. 755.

27. When a person is convicted of selling, or offering or exposing for sale, at retail, spirituous liquors, wine, porter, ale, or beer, or drink of like nature, and it is alleged in the indictment or presentment on which he is convicted, and admitted, or by the jury found, that he has been before convicted of the like offense, he shall be fined as provided in the third section of chapter thirty-two, and may, at the discretion of the court, be confined in jail not exceeding six months.

Acts of 1868, p.  
124, ch. 149, § 1.

28. No criminal prosecution for any felony or misdemeanor shall be maintained in the courts of this state against any person for any act done in the suppression of the late rebellion; and it shall be a sufficient defense to such prosecution, to show that such act was done in obedience to the orders, or by the authority, of any civil or military officer of this state, or of the re-organized government of Virginia, or of the government of the United States; or that said act was done in aid of the purposes and policy of said authorities, in retarding, checking, and suppressing the said rebellion.

## CHAPTER CLIII.

### FOR PREVENTING THE COMMISSION OF CRIMES.

SEC.

1. Conservators of the peace; power to bind to good behavior.
2. } Duty of, on complaint that a crime is in-
3. } tended.
4. Proceedings when accused appears.
5. Right of accused to appeal.
6. } Power of court upon such appeal, and when
7. } the accused is committed.

SEC.

8. Person going armed with deadly weapon, when required to give recognizance, etc.
9. Affray, etc., in the presence of constable.
10. In presence of justice; duty of justice where person brought before him, etc.
11. Proceedings where person suspected of unlawful retailing of spirituous liquors.

Code of Va., p.  
817, § 1.  
Const. art. 7, § 9.  
Acts of 1863, p.  
234, ch. 132, § 1.

1. Every justice and constable shall be a conservator of the peace, within his county. As such conservator, every justice shall have power to require from persons not of good fame, security for their good behavior for a term not exceeding one year.

Code Va., p. 817,  
§ 2.

2. If complaint be made to any justice, as such conservator, that there is good cause to fear that a person intends to commit an offense against the person or property of another, he shall examine on oath the complainant, and any witnesses who may be produced, reduce the complaint to writing, and cause it to be signed by the complainant.

Id. p. 818, § 3.  
Munf. 458.

3. If it appear proper, such justice shall issue a warrant, reciting the complaint, and requiring the person complained of forthwith to be apprehended and brought before him or some other justice.

4. When such person appears, if the justice, on hearing the parties, consider that there is not good cause for the complaint, he shall discharge the said person, and may give judgment in his favor against the complainant for his costs. If he consider that there is good cause therefor, he may require a recognizance of the person against whom it is, and give judgment against him for the costs of the prosecution, or any part thereof; and, unless such recognizance be given, he shall commit him to jail, by a warrant, stating the sum and time in and for which the recognizance is directed. The justice giving judgment under this section for costs may issue a writ of fieri facias thereon, if an appeal be not allowed; and proceedings thereupon may be according to the two hundred and twenty-seventh section of chapter fifty.

5. A person from whom such recognizance is required may, on giving it, appeal to the circuit court of the county; and in such case the officer from whose judgment the appeal is taken shall recognize such of the witnesses as he thinks proper.

6. The court may dismiss the complaint, or affirm the judgment, and make what order it sees fit as to the costs. If it award costs against the appellant, the recognizance which he may have given shall stand as a security therefor. When there is a failure to prosecute the appeal, such recognizance shall remain in force, although there be no order of affirmance. On any appeal the court may require of the appellant a new recognizance, if it see fit.

7. Any person committed to jail under this chapter may be discharged by the circuit court, or the judge thereof in vacation, upon such terms as may be deemed reasonable.

8. If any person go armed with a deadly or dangerous weapon, without reasonable cause to fear violence to his person, family, or property, he may be required to give a recognizance, with the right of appeal, as before provided, and like proceedings shall be had on such appeal.

9. If any person shall, in the presence of a constable and within his county, make an affray, or threaten to beat, wound, or kill another, or to commit violence against his person or property; or contend with angry words to the disturbance of the peace; or improperly or indecently expose his person; or appear in a state of gross intoxication in a public place; such constable, as such conservator, may, without warrant or other process, or further proof, arrest such offending person and carry him before some justice of the township in which such offense is committed, who, upon hearing the testimony of such constable and other witnesses, if any are then and there produced, if, in his opinion the offense charged be proved, shall require the offender to give a bond or recognizance, with security, to keep the peace and be of good behavior for a term not exceeding one year.

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



mitted in the presence of a justice within his county, or the offender being brought before him, the commission thereof be proved to his satisfaction, he may, besides requiring a bond or recognizance with security, as provided in the preceding section, impose a fine upon the offender not exceeding five dollars. If such bond or recognizance be not then and there given, or such fine be not then and there paid, the said justice shall commit the offender to the jail of his county, there to remain until such bond or recognizance be given, and such fine be paid; but no imprisonment under this section shall continue more than ten days, at the end of which the sheriff or jailor shall discharge the prisoner, unless he has been commanded by sufficient authority to detain him for some other cause.

Code of Va., p.  
818, § 10.  
Acts of 1865, p.  
57, ch. 61.

11. If any justice suspect any person of selling, by retail, wine, or ardent spirits, or a mixture thereof, contrary to law; or of selling, or offering or exposing for sale, any intoxicating liquor, or keeping open any distillery, bar, office, stall, or room in his possession, or under his control, at which such liquor had theretofore usually been sold, or permitting any person to drink any intoxicating liquor at the same, on the day of an election, and within two miles of the place of such election, or during the night succeeding such day, contrary to the eleventh section of chapter five, such justice shall summon the person suspected of such offense, and such witnesses as he may think proper, to appear before him; and upon the person so suspected appearing, or failing to appear, if the justice, on examining the witnesses under oath, find sufficient cause, he shall direct the prosecuting attorney for the county to institute a prosecution against the person so suspected, and shall recognize the material witnesses, or cause them to be summoned, to appear at the next term of the circuit court of the county. Such justice may also require the person suspected to enter into recognizance to keep the peace and be of good behavior for a time not exceeding one year. If recognizance be given by the person so suspected, the condition thereof shall be deemed to be broken, if during the time for which it is given, such person shall sell, by retail, wine, or ardent spirits, or a mixture thereof, contrary to law, or violate in any particular the eleventh section of chapter five.

## CHAPTER CLIV.

### OF INQUESTS UPON DEAD BODIES.

SEC.

1. Duty of justice upon being notified of death by violence, etc.
2. Warrant and summons, how executed.
3. Jury formed; their oath.
4. How witnesses compelled to attend; how evidence taken.
5. Inquisition.
6. Inquisition, evidence, etc., returned; witnesses recognized.

SEC.

7. Justice to issue warrant for the arrest of accused, if not in custody.
8. When deceased a stranger, body to be buried, etc.; costs, how paid.
9. Justice may require physicians to attend inquest.
10. Penalty on justice for neglect of duty.
11. Inquest may be taken on Sunday.

days' imprisonment.

jail nor less than one day nor more than ten days, or both, in the discretion of the court or jury before whom the trial is had.

12 Aug., 1870;  
took effect 12  
Oct., 1870. Vol. 21,  
part 1, p. 63.  
Persons not to  
bear arms at public  
assemblies.  
Social intercourse  
and elections not to be  
made dangerous.

#### AN ACT REGULATING THE RIGHT TO KEEP AND BEAR ARMS.

Art. 6512.

Kinds of weapons  
prohibited.

Fine \$50 to \$500.  
Notes, 111, 167.

Scalp-lifting  
country excepted.

Armed officials.

ART. 6511. [1] If any person shall go into any church or religious assembly, any school-room or other place where persons are assembled for educational, literary, or scientific purposes, or into a ball room, social party, or other social gathering, composed of ladies and gentlemen, or to any election precinct on the day or days of any election, where any portion of the people of this state are collected to vote at any election, or to any other place where people may be assembled to muster or to perform any other public duty, or any other public assembly, and shall have about his person a bowie-knife, dirk, or butcher-knife, or firearms, whether known as a six-shooter, gun, or pistol of any kind, such person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than fifty or more than five hundred dollars, at the discretion of the court or jury trying the same: *Provided*, That nothing contained in this section shall apply to locations subject to Indian depredations: *And provided further*, That this act shall not apply to any person or persons whose duty it is to bear arms on such occasions in discharge of duties imposed by law.

12 April, 1871;  
took effect 12  
June, 1871. Vol.  
21, part 2, p. 25.  
Carrying arms a  
misdemeanor,  
punishable by  
fine and forfeiture,  
unless, &c.  
Patriots and mili-  
tiamen excepted.  
Art. 6511.

#### AN ACT TO REGULATE THE KEEPING AND BEARING OF DEADLY WEAPONS.

Fine \$25 to \$100  
for first offense.

Imprisonment  
for second of-  
fense.  
Notes 111, 167.

People at home  
and officials ex-  
cepted.

Legislators not  
"civil officers."

Art. 6512.  
Justification  
must be immedi-

ART. 6512. [1] Any person carrying on or about his person, saddle, or in his saddle-bags, any pistol, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife, or any other kind of knife manufactured or sold for the purpose of offense or defense, unless he has reasonable grounds for fearing an unlawful attack on his person, and that such ground of attack shall be immediate and pressing; or unless having or carrying the same on or about his person for the lawful defense the state, as a militiaman in actual service, or as a peace officer or policeman, shall be guilty of a misdemeanor, and, on conviction thereof, shall, for the first offense, be punished by fine of not less than twenty-five nor more than one hundred dollars, and shall forfeit to the county the weapon or weapons so found on or about his person; and for every subsequent offense may, in addition to such fine and forfeiture, be imprisoned in the county jail for a term not exceeding sixty days; and in every case of fine under this section the fines imposed and collected shall go into the treasury of the county in which they may have been imposed: *Provided*, That this section shall not be so construed as to prohibit any person from keeping or bearing arms on his or her own premises, or at his or her own place of business, nor to prohibit sheriffs or other revenue officers, and other civil officers, from keeping or bearing arms while engaged in the discharge of their official duties, nor to prohibit persons traveling in the state from keeping or carrying arms with their baggage: *Provided further*, That members of the legislature shall not be included under the term "civil officers" as used in this act.

ART. 6513. [2] Any person charged under the first section of this act, who may offer to prove, by way of defense, that he was



in danger of an attack on his person, or unlawful interference with his property, shall be required to show that such danger was immediate and pressing, and was of such a nature as to alarm a person of ordinary courage; and that the weapon so carried was borne openly and not concealed beneath the clothing; and if it shall appear that this danger had its origin in a difficulty first commenced by the accused, it shall not be considered as a legal defense.

ate and pressing danger;

and weapon not concealed.

Impending danger.

ART. 6514. [3] If any person shall go into any church or religious assembly, any school-room, or other place where persons are assembled for amusement, or for educational or scientific purposes, or into any circus, show, or public exhibition of any kind, or into a ball-room, social party, or social gathering, or to any election precinct on the day or days of any election, where any portion of the people of this state are collected to vote at any election, or to any other place where people may be assembled to muster, or to perform any other public duty, (except as may be required or permitted by law,) or to any other public assembly, and shall have or carry about his person a pistol, or other firearm, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife, or any other kind of knife manufactured and sold for the purposes of offense and defense, unless an officer of the peace, he shall be guilty of a misdemeanor, and, on conviction thereof, shall, for the first offense, be punished by a fine of not less than fifty, nor more than five hundred dollars, and shall forfeit to the county the weapon or weapons so found on his person; and for every subsequent offense may, in addition to such fine and forfeiture, be imprisoned in the county jail for a term of not more than ninety days.

Attending public meetings armed an offense to be punished in like manner. Society protected and attempted civilization.

Character of arms prohibited.

Fine \$50 to \$100 for first offense, and imprisonment for perseverance.

ART. 6515. [4] This act shall not apply to nor be enforced in any county of the state which may be designated in a proclamation of the governor as a frontier county, and liable to incursions of hostile Indians.

Governor may exempt frontier counties by proclamation.

ART. 6516. [5] All fines collected under the provisions of this act shall be paid into the treasury of the county, and appropriated exclusively to the keeping in repair and maintenance of public roads, and all weapons forfeited to the county under the provisions of this act shall be sold as may be prescribed by the county court, and the proceeds appropriated to the same purpose.

Art. 6517. All fines under this act must be paid into county treasury.

ART. 6517. [6] It shall be the duty of all sheriffs, constables, marshals, and their deputies, and all policemen and other peace officers, to arrest any person violating the first or third sections of this act, and to take such person immediately before a justice of the peace of the county where the offense is committed, or before a mayor or recorder of the town or city in which the offense is committed, who shall investigate and try the case without delay. On all such trials the accused shall have the right of a trial by jury, and of appeal to the district court; but, in case of appeal, the accused shall be required to give bond, with two or more good and sufficient sureties, in a sum of not less than one hundred, nor more than two hundred dollars, if convicted under the first section, and in a sum of not less than two hundred, nor more than one thousand dollars, if convicted under the third section of this act; said bond to be payable to the state of Texas, and approved by the magistrate, and conditioned that the defendant will abide the judgment of the district court that may be rendered

Peace officers to arrest offenders, &c.

Jury trial and appeal allowed. Appeal bond.

Payable to State.



- Forfeiture. in the case; and in case of forfeiture the proceedings thereon shall be as is or may be prescribed by law in similar cases; and all moneys collected on any bond or judgment upon the same, shall be paid over and appropriated as provided in the fifth section of this act.
- Art. 6516.
- Art. 6517.  
Officer failing to  
arrest to be dis-  
charged.  
Arts. 6512, 6514.
- And fined not  
more than \$500.
- District courts to  
have concurrent  
jurisdiction.
- Governor to pub-  
lish the act.
- ART. 6518. [7] Any officer named in the sixth section of this act who shall refuse or fail to arrest any person whom he is required to arrest by said section on his own information, or where knowledge is conveyed to him of any violation of the first or third sections of this act, shall be dismissed from his office on conviction in the district court, on indictment or information, or by such other proceedings or tribunal as may be provided by law, and, in addition, shall be fined in any sum not exceeding five hundred dollars, at the discretion of the court or jury.
- ART. 6519. [8] The district courts shall have concurrent jurisdiction under this act, and it is hereby made the duty of the several judges of the district courts of this state to give this act especially in charge to the grand juries of their respective counties.
- ART. 6520. [9] It is hereby made the duty of the governor to publish this act throughout the state; and this act shall take effect and be in force from and after the expiration of sixty days after its passage.

## TITLE XIII.—OF OFFENSES AGAINST PUBLIC POLICY AND ECONOMY.

Arts. 2035-2038.

## CHAPTER I.—ILLEGAL BANKING AND PASSING SPURIOUS MONEY.

## AN ACT CONCERNING PRIVATE CORPORATIONS.

2 Dec., 1871; took  
effect from pas-  
sage. Vol. 21, part  
3, p. 82.  
Officers to pub-  
lish semi-annual  
returns; punish-  
ment for failure.  
Arts. 5932-6011.

How recovered.

ART. 6521. [79] Every such corporation shall semi-annually, in the months of July and January, publish in one or more newspapers in the county where such corporation shall have its place of business, a statement, verified by the oath of its president or secretary, setting forth its actual financial condition, and the amount of its property and liabilities, under a penalty of five hundred dollars to the state, to be recovered by indictment against the president, cashier, or directors, and shall also deposit a copy of said statement, verified as aforesaid, in the office of the secretary of state.

Arts. 2043.

## CHAPTER III.—OF SELLING TO INDIANS.

31 Aug., 1866.  
Art. 6347 for cap-  
tion.  
Selling liquor to  
Indians.

Who may pun-  
ish.

ART. 6522. [408] If any person shall give or barter, or cause to be sold, given, or bartered, any ardent spirits, or any spirituous or intoxicating liquors, or firearms, or ammunition, to any Indian of the wild or unfriendly tribes, he shall be fined not less than ten nor more than one hundred dollars. Justices of the peace and mayors shall have jurisdiction under this article.

## CHAPTER IV.—GAMING.

11 May, 1871;  
took effect from  
passage. Vol. 21,  
part 3, p. 84.  
Arts. 2046, 2054.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO ADOPT AND ESTABLISH A PENAL CODE FOR THE STATE OF TEXAS," APPROVED AUGUST 26, A. D. 1856, AND TO REPEAL AN ACT ENTITLED "AN ACT TO AMEND ARTICLES 412 AND 418 OF AN ACT TO ADOPT AND ESTABLISH A PENAL CODE FOR THE STATE OF TEXAS," APPROVED DECEMBER 16, A. D. 1863.

Keeping a gam-  
ing table or bank  
punished.

ART. 6523. [412] If any person shall keep or exhibit, for the purpose of gaming, any gaming table or bank, of any name or

or order of the magistrate, and shall also stand as a security for any costs which shall be ordered by the court appealed to, to be paid by the appellant.

SEC. 14. *Party committed, how discharged.*—Any person committed for not finding sureties or refusing to recognize as required by the court or magistrate, may be discharged by any judge or justice of the peace, on giving such security as was required.

SEC. 15. *Recognizances to be transmitted to district court.*—Every recognizance taken in pursuance of the foregoing provision shall be transmitted by the magistrate to the district court for the county, on or before the first day of the next term, and shall be there filed or recorded by the clerk.

SEC. 16. *When person may be ordered to recognize, without process.*—Any person who shall in the presence of any magistrate mentioned in the first section of this chapter, or before any court of record, make an affray or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person, who in the presence of such court or magistrate shall contend with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace, and being of good behavior, for a term not exceeding six months, and, in case of a refusal, may be committed as before directed.

SEC. 17. *Carrying dangerous weapons, how punished.*—Whoever goes armed with a dirk, dagger, sword, pistol or pistols, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury or violence to his person, or to his family or property, may, on complaint of any other person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.

SEC. 18. *Judgment on recognizance remitted, when.*—Whenever upon an action brought on any such recognizances, the penalty thereof is adjudged forfeited, the court may remit such portion of the penalty on the petition of any defendant, as the circumstances of the case render just and reasonable.

SEC. 19. *Surety in recognizance may take and surrender principal—new recognizance may be given.*—Any surety in a recognizance to keep the peace, or for good behavior, or both, has authority and right to take and surrender his principal, and upon such surrender shall be discharged and exempted from all liability for any act of the principal subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person so surrendered may recognize anew with sufficient sureties, before any justice of the peace for the residue of the term, and thereupon shall be discharged.



3. If any judge or justice have notice of a riotous, tumultuous, or unlawful assembly in the county in which he resides, and fail to proceed immediately to the place of such assembly, or as near as he may safely, or fail to exercise his authority for suppressing it and arresting the offenders, he shall be fined not exceeding one hundred dollars.

4. If any person engaged in such assembly, being commanded as aforesaid to disperse, fail to do so without delay, any such judge or justice may require the aid of a sufficient number of persons, in arms or otherwise, and proceed, in such manner as he may deem expedient, to disperse and suppress such assembly, and arrest and secure those engaged in it.

5. If by any means, taken under authority of this chapter, to disperse any such assembly, or arrest and secure those engaged in it, any person present, as spectator or otherwise, be killed or wounded, any judge or justice exercising such authority, and every one acting under his order, shall be held guiltless; and if the judge or justice, or any person acting under the order of either of them, be killed or wounded in taking such means, or by the rioters, all persons engaged in such assembly shall be deemed guilty of such killing or wounding.

6. If any rioter pull down or destroy, in whole or in part, any dwelling house, or assist therein, he shall be confined in the penitentiary not less than one nor more than five years; and though no such house so be injured, every rioter, and every person unlawfully or tumultuously assembled, shall be confined in jail not more than one year and fined not exceeding one hundred dollars.

7. If a person carry about his person any revolver or other pistol, dirk, bowie knife, razor, slung shot, billy, metallic or other false knuckles, or any other dangerous or deadly weapon of like kind or character, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than two hundred dollars, and may, at the discretion of the court, be confined in jail not less than one nor more than twelve months; and if any person shall sell or furnish any such weapon as is hereinbefore mentioned to a person whom he knows, or has reason, from his appearance or otherwise, to believe to be under the age of twenty-one years, he shall be punished as hereinbefore provided; but nothing herein contained shall be so construed as to prevent any person from keeping or carrying about his dwelling house or premises, any such revolver or other pistol, or from carrying the same from the place of purchase to his dwelling house, or from his dwelling house to any place where repairing is done, to have it repaired, and back again. And if upon the trial of an indictment for carrying any such pistol, dirk, razor or bowie knife, the defendant shall prove to the satisfaction of the jury that he is a quiet and peaceable citizen, of good character and standing in the community in which he lives, and at the time he was found with such pistol, dirk, razor or bowie knife, as charged in the in-

(See Acts 1872-3,  
ch. 226, § 168.)  
Acts 1882, ch.  
135.  
7 Gratt. 597.  
34 W. Va. 74.

dictment, he had good cause to believe and did believe that he was in danger of death or great bodily harm at the hands of another person, and that he was in good faith, carrying such weapon for self-defence and for no other purpose, the jury shall find him not guilty. But nothing in this section contained shall be so construed as to prevent any officer charged with the execution of the laws of the State, from carrying a revolver or other pistol, dirk or bowie knife.

Acts 1866, p. 23.

8. If any person shall wilfully disturb, molest or interrupt any literary society, school, or society formed for intellectual improvement, or any other school or society organized under the laws of this State, or any school, society, or meeting formed or convened for improvement in music, either vocal or instrumental, or for any moral and social amusement, the person so offending shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than five dollars, and may be imprisoned in the county jail not exceeding ten days. (See ch. 149, sec. 19, of this code.)

Acts 1882, ch. 135.

9. If two or more persons under the name of "Red Men," "Regulators," "Vigilance Committee," or any other name or without a name combine or conspire together for the purpose of inflicting any punishment or bodily injury upon any other person or persons, or for the purpose of destroying, injuring, or taking and carrying away any property, real or personal, not their own, every such person, whether he has done any act in pursuance of such combination or conspiracy or not, shall be guilty of a misdemeanor and fined not less than fifty, nor more than five hundred dollars, and may, at the discretion of the court, be confined in jail not less than one nor more than twelve months.

Id. 25 W. Va. 685.

10. If any person, in pursuance of such combination or conspiracy as is mentioned in the next preceding section, shall inflict any punishment or bodily injury upon another person, or shall destroy, injure, or take and carry away, any property, real or personal, not his own, he shall be guilty of a felony, and confined in the penitentiary not less than two nor more than ten years. And if, on the trial of an indictment under this section, it be proved that two or more persons, the defendant being one, were present, aiding and abetting in the commission of the offence charged therein, it shall be presumed that such offence was committed in pursuance of such combination or conspiracy, in the absence of satisfactory proof to the contrary. And all persons who shall be present, aiding and abetting, at the commission of any offence mentioned in this section, shall be deemed conspirators within the meaning of this, and the next preceding section.

Acts 1882, ch. 135.

11. No person called as a witness for the State on the trial of any person for an offence mentioned in either of the two next preceding sections, shall be excused from answering any question which may be asked him as such witness, and which would be otherwise legal and proper, on the ground that the answer to such question would or might degrade him, or expose him to punishment; but no such wit-



Factor appropriating cotton taken from bale.

§ 3266. Any factor, commission merchant, or agent, having the control of cotton, who appropriates to his own use any cotton taken from any bale under his control, with intent to defraud the owner thereof, must, on conviction, be punished, as if he had feloniously stolen such cotton.

Adulterating sugar.

§ 3267. Any person who mixes any foreign matter or thing with sugar, so as to deteriorate the quality thereof with intent to injure or defraud, must, on conviction, be fined not less than fifty or more than two hundred dollars, and may be imprisoned not more than three months.

Making or emitting bills for circulation.

§ 3268. Any person, private corporation, or association, who without authority of law, makes or emits any paper to answer the purposes of money, or for general circulation, such person, and each individual of such corporation or association, on conviction, must be fined not less than twenty or more than one hundred dollars, and may be imprisoned not more than twelve months.

Signing bills for circulation.

§ 3269. Any person in this state who signs any paper to be put in circulation as money, except under the authority of this state, or countersigns the same, must, on conviction, be fined in a sum not less than one hundred or more than five hundred dollars; and the signature of such person to any such paper must be taken as genuine, unless the fact of signing be denied on oath by the defendant.

Passing such paper.

§ 3270. Any person who passes or circulates any paper issued to answer the purposes of money, without authority of law, must, on conviction, be fined not less than twenty or more than one hundred dollars.

Passing bills under five dollars.

§ 3271. Any person who passes or circulates in this state, any bank bill of a less denomination than five dollars, not issued under the authority of this state, must, on conviction, be fined not exceeding fifty dollars.

Indictment for.

§ 3272. An indictment under the preceding section, which charges that the defendant did pass or circulate a bank bill under the denomination of five dollars, not issued under the authority of this state, is sufficient, without describing such bank bill; and proof that such bill on its face purported to be issued by the authority of any other state, or country, or by any bank, or corporation out of this state, or by any bank or corporation known to be out of this state, is sufficient without further proof.

Concealed weapons.

§ 3273. Any one who carries concealed about his person a bowie knife, or knife or instrument of the like kind or description by whatever name called, or air gun, must, on conviction, be fined not less than fifty or more than three hundred dollars.

The same.

§ 3274. Any one who carries concealed about his person a pistol, or any other description of fire arms, not being threatened with, or having good reason to apprehend an attack, or travelling, or setting out on a journey, must, on conviction, be fined not less than fifty nor more than three hundred dollars.



§ 3275. In an indictment under the preceding section, it is sufficient to charge that the defendant carried concealed about his person a pistol or other description of fire arms; and the excuse must be made out by the defendant, to the satisfaction of the jury.

Indictment  
for.

Excuse.

§ 3276. Any person, who in any newspaper, handbill, or other advertisement, written or printed, publishes or proclaims any person as a coward, or uses any other opprobrious or abusive language for not accepting a challenge to fight a duel, or for not fighting a duel, must, on conviction, be fined not less than two hundred or more than five hundred dollars, and imprisoned not less than six or more than twelve months.

Publishing  
another as a  
coward, &c.

§ 3277. The publisher or printer of any such newspaper, or handbill, or other publication, may be required to testify against any defendant indicted under the preceding section; and refusing to give evidence, must be fined five hundred dollars, and imprisoned until such fine is paid, and also imprisoned until he shall testify.

Printer to  
give evi-  
dence.

Penalty for  
refusing.

§ 3278. Any person who sells and delivers any poisonous substance, without having the word "poison" written or printed on the label attached to the vial, box or parcel in which the same is sold; or sells and delivers any tartar emetic, laudanum or morphine, without having the common name thereof, written or printed upon a label attached to the vial, box or parcel, containing the same, must, on conviction, be fined not more than one hundred dollars.

Selling poi-  
sons without  
labels.

§ 3279. Any person who sells to any slave, or free child under ten years of age, any drug, poisonous in its nature, without an order in writing from the owner or master of such slave, or the parent, guardian, or person standing in that relation to such child, designating the drug, either by name or by its effects, must, on conviction, be fined not more than two hundred dollars, and may be imprisoned not more than three months.

Selling poi-  
sons to slaves  
or children.

§ 3280. Any licensed retailer or other person, keeping fermented, vinous or spirituous liquors for sale, who sells, gives or delivers to any student of any college, or pupil of any school or academy, or to any other person for the use of such student or pupil, any of such liquors, knowing the use for which it was intended, without the consent of the parent or guardian, or the person having the charge of such student or pupil, such retailer, or the person so selling, giving or delivering, must, on conviction, be fined not less than fifty or more than five hundred dollars.

Selling or  
giving liquor  
to students,  
&c.

§ 3281. Any licensed retailer or other person who sells, gives, or delivers to any minor any of the liquors specified in the preceding section, after notice from the parent, guardian, or person in charge of such minor, forbidding such sale, gift, or delivery, must, on conviction, be fined not less than fifty or more than five hundred dollars.

To minors.

§ 3282. Any licensed retailer, who, after taking the affidavit prescribed in section 1057, knowingly sells any vinous

Licensed re-  
tailer trad-

ing with  
slaves.

or spirituous liquors to any slave; or knowingly sells to or purchases from any slave any article or commodity, without the permission of the master or overseer of such slave; or knowingly permits the same to be done by his partner, clerk, or any other person about his premises; or knowingly permits any gaming to be carried on on his premises, must, on conviction, be imprisoned in the penitentiary not less than two or more than five years.

Selling or  
giving liquor  
to slaves.

§ 3283. Any person who sells, gives, or delivers to any slave any vinous or spirituous liquor, except on an order in writing, signed by the overseer or master of such slave, specifying the quantity to be sold, given, or delivered, must, on conviction, be fined not less than fifty dollars.

The same.

§ 3284. The provisions of the above section apply to licensed retailers as well as other persons.

Trading with  
slaves.  
19 Ala., 19.

§ 3285. Any person who sells to or buys or receives from any slave, any other article or commodity of any kind or description, without the consent of the master, owner, or overseer of such slave, verbally or in writing, expressing the articles permitted to be sold to, or bought or received from such slave, first obtained, must, on conviction, be fined in not less than ten or more than two hundred dollars, and may be imprisoned not more than six months.

Evidence on  
indictment.

§ 3286. Upon the trial of indictments under the preceding and section 3283, evidence that the slave was seen in the night time, or on Sunday, going into a place where spirituous or vinous liquors or merchandize are sold, with an article of traffic, and coming out without the same; or that such slave was seen at such time, or on such day, immediately after coming out of such place, in possession of spirituous or vinous liquor, or merchandize of any kind, is presumptive evidence of the guilt of the defendant.

Employing  
slave or free  
negro to  
draw off or  
sell.

§ 3287. Any person keeping spirituous liquor for sale, who employs any slave or free person of color in drawing off or selling such liquor, must, on conviction, be fined not less than twenty-five or more than fifty dollars.

Duty of mag-  
istrate in re-  
lation to laws  
against re-  
tailing or  
trading with  
slaves.

§ 3288. Any justice or magistrate, whenever he has good reason to believe, or upon information on oath that any of the laws of this state against retailing or trading with slaves have been violated by any person, must forthwith issue a warrant of arrest against such person, and if the evidence proves the offence, must bind him over to answer therefor at the next circuit court, and on his failing to give bond must commit him.

Permitting  
slave or free  
negro to  
sample cot-  
ton.

§ 3289. Any person who employs or knowingly permits any slave or free person of color to sample any cotton, must, on conviction, be fined not less than fifty or more than one thousand dollars.

Owner may.

§ 3290. In indictments under the preceding section, the defendant may show in defence he was the owner of the cotton.

Prosecuting  
suits in the  
name of an-

§ 3291. Any person who prosecutes a suit in any of the courts in this state, in the name of another person, without



his consent, must, on conviction, be fined not less than five hundred dollars. other. Exceptions.

§ 3292. The provisions of the preceding section do not apply to a person having the beneficial interest using the name of the person having the legal right, in cases where he cannot bring the action in his own name. Refusing to obey summons of officer.

§ 3293. Any person summoned by any sheriff, or other officer having authority, for the purpose of enabling such officer to make an arrest, or to execute any duty devolving upon him under any law in relation to public offences, who refuses obedience to such summons, must, on conviction, be fined not less than fifty or more than three hundred dollars. Duty of the officer.

§ 3294. It is the duty of the officer summoning such person to present the offender to the next grand jury, and failing so to do, he must, on conviction, be fined not less than twenty dollars.

## ARTICLE VII.

### *Offences against slaves.*

SEC.	SEC.
3295. Causing death of by whipping, is murder in the first degree.	3298. Indictments under preceding section.
3296. Causing death by whipping, &c., without intention to kill, murder in the second degree.	3299. Defendant entitled to a jury two-thirds of whom are slave holders.
3297. Inflicting or allowing cruel punishment, &c., failing to provide food, raiment, attention in sickness, &c.	3300. Assaults by any other person than the master.

§ 3295. Any person who with malice aforethought causes the death of a slave, by cruel whipping or beating, or by any inhuman treatment, or by the use of any weapon in its nature calculated to produce death, is guilty of murder in the first degree. Death of a slave by whipping, &c.

§ 3296. Any owner, overseer, or other person having the right to correct any slave, who causes the death of such slave by cruel whipping or beating, or by any other cruel or inhuman treatment, or by the use of any instrument in its nature calculated to produce death, though without any intention to kill, is guilty of murder in the second degree, and may be guilty of murder in the first degree. Without intention to kill.

§ 3297. Any master, or other person standing towards the slave in that relation, who inflicts, or allows another to inflict on him any cruel punishment, or fails to provide him with a sufficiency of healthy food, or necessary clothing, or to provide for him properly in sickness or old age, or treats him in any other way with inhumanity, on conviction thereof must be fined not less than twenty-five or more than one thousand dollars. Cruel punishments; not feeding or clothing, &c.

§ 3298. In indictments under the preceding section, it is sufficient to charge that the defendant did inflict on a slave Indictments.

## Division 9.—Offences against the Public Peace and Tranquility.

be made; *And provided, also*, that the only questions to be submitted to and determined by the jury in trials for forcible entry, or forcible detainer, shall be the possession and the force, without regard to the merits of the title on either side. Title not examinable.

§ 4413. SEC. XV. Any person having or carrying about his person, unless in an open manner and fully exposed to view, any pistol, (except horseman's pistols,) dirk, sword in a cane, spear, bowie-knife, or any other kind of knives, manufactured and sold for the purpose of offence and defence, shall be guilty of a misdemeanor, and, on conviction, shall be punished by fine or imprisonment, or both, at the discretion of the court. Carrying concealed, deadly weapons.

§ 4414. SEC. XVI. All other offences against the public peace, not provided for in this Code, shall be prosecuted and indicted as heretofore, and the punishment, in every case, shall be by fine or imprisonment in the common jail of the county, or both, at the discretion of the court. Other offences vs. public peace.

## TENTH DIVISION.

## OFFENCES AGAINST THE PUBLIC MORALITY, HEALTH, POLICE AND DECENCY.

SECTION.	SECTION.
4415. Bigamy.	4435. Vagrants.
4416. Punishment on married person.	4436. Common rogues.
4417. On unmarried person.	4437. Nuisances.
4418. Incest.	4438. Disinterring bodies.
4419. Adultery.	4439. Bastardy.
4420. Lewdness.	4440. Retailing without license.
4421. Lewd houses.	4441. Illegal marrying.
4422. Disorderly houses.	4442. Illegal voting.
4423. Gaming houses.	4443. Buying or selling votes.
4424. Gaming tables.	4444. Minor voting.
4425. Gambling.	4445. Adultery with negro.
4426. Gaming with minors.	4446. Whipping wife.
4427. Gaming with clerks and bank off'r's.	4447. Interfering with religious worship.
4428. Players—witnesses.	4448. Retailing near church.
4429. Judge's charge.	4449. Working slaves on Sabbath.
4430. Suspected houses.	4450. Running freight trains on Sunday.
4431. Unwholesome provisions.	4451. Violating Sabbath.
4432. Unwholesome bread, &c.	4452. Fines from Sabbath-breakers.
4433. Spreading small pox.	4453. Bonds in case of vagrancy.
4434. Violating quarantine.	4454. Att'y or Sol'r—duty in such case.

§ 4415. SEC. 1. Polygamy, or bigamy, shall consist in knowingly having a plurality of husbands, or wives, at the same time. Polygamy and bigamy.

shall be responsible for the payment of the expenses of his retention in jail.

*Rewards for the Apprehension of Escaped Prisoners.  
Act of February 1, 1860.*

SECTION 1. When any person shall make his escape from any county of this Territory after having been sentenced by the court to suffer any penalty, it shall be the duty of the court to inform immediately the governor thereof, giving a description of such fugitive.

§ 2. The governor is hereby authorized to offer a reward, to be paid out of the funds of the Territory, to any person who shall find and deliver such fugitive: *Provided*, that such reward shall be at the will of the governor.

*Reward for Accused Persons. Act of 1874, Ch. 12.*

SECTION 1. In cases of murder or other felony, when the person or persons accused of the crime shall be at large, the governor, when in his judgment it shall be necessary to secure the apprehension of the accused, shall be authorized to issue his proclamation offering a reward, not exceeding five hundred dollars, for the apprehension and delivery of the accused to the proper office.

§ 2. The auditor of public accounts is hereby authorized to draw a warrant on the treasury of the Territory, in favor of the person entitled to a reward, under the provisions of the preceding section, for the amount thereof, upon the presentation by such person of his account certified and approved by the governor.

*Deadly Weapons. Act of 1869, Ch. 32*

SECTION 1. It shall be unlawful for any person to carry deadly weapons, either concealed or otherwise, on or about their persons within any of the settlements of this Territory, except it be in the lawful defense of themselves, their families or their property, and the same being then and there threatened with danger, or by order of legal authority, or on their own landed property, or in execution of an order of court.

§ 2. Deadly weapons, in the meaning of this act, shall be construed to mean all kinds and classes of pistols,



whether the same be a revolver, derringer, repeater, or any other kind or class of pistol; any and all kinds of bowie knives, daggers, poniards, butcher knives, dirk knives and all such weapons with which cuts can be given or by which wounds can be inflicted by thrusting, including sword canes and such sharp-pointed canes with which deadly thrusts can be given, and all kinds of slung-shots, and any other kinds of deadly weapon, by whatever name it may be called, by which a dangerous wound can be inflicted.

§ 3. The penalty for the violation of the preceding sections of this act shall not be less than ten dollars nor more than fifty dollars for each offense, or not less than ten days' imprisonment nor more than fifty days' imprisonment in the county jail, or both; such fine and imprisonment in the discretion of the jury trying the case.

§ 4. Any person who shall draw a deadly weapon on another, or who shall handle a deadly weapon in a threatening manner at or towards another, in any part of this Territory, except in the lawful defense of himself, his family, or his property, or by order of legal authority, upon conviction thereof before the proper tribunal, shall, for each offense, be fined in a sum not less than twenty-five dollars nor more than seventy-five dollars, or by imprisonment in the county jail for a term of not less than twenty days or more than sixty days, or be punished by both such fine and imprisonment, in the discretion of the jury trying the cause.

§ 5. Any person who shall draw or use any deadly weapon in any ball, dance, or other public gathering of the people, or near where any election authorized by law is being held in any part of the Territory, except it be in the lawful defense of himself, his family, or his property, or in obedience to legal authority, shall, upon conviction before the proper tribunal, be punished by a fine not less than fifty dollars nor more than one hundred dollars for each offense, or by imprisonment in the county jail for a term of not less than one month nor more than three months for each offense, or by both such fine and imprisonment, in the discretion of the jury trying the cause.

§ 6. Justices of the peace, as well as the District Court, shall have jurisdiction of all offenses under the preceding sections of this act; and in all cases of prosecution under this act, in which a plea of guilty shall be entered, the court shall proceed to hear and determine the case, and

shall assess the penalty, upon conviction, without the intervention of a jury, unless the accused shall demand a trial by jury. [As amended, 1876, Ch. 35.]

§ 7. A conviction of any person under this act shall not be a bar to a prosecution and conviction of the same person for an assault and battery, aggravated assault, assault with a deadly weapon, assault with intent to kill, or murder, manslaughter, or other crime, and where the words "weapons" or "deadly weapons" are used in this act, such word or words shall be construed to mean the weapons described in section two of this act.

§ 8. It shall not be necessary, in the trial of any cause arising under the provisions of this act, to prove that the person charged was not in the lawful defense of himself, his family or his property; but the accused must prove to the satisfaction of the jury that the act charged was done in the lawful defense of himself, his family, or his property, before the jury can acquit.

§ 9. Any lawful voter of the Territory may without a warrant arrest parties who may violate the preceding sections of this act, and take such persons before a justice of the peace of the county in which the offense was committed, for complaint and trial, and such trial shall be had as soon as possible, giving due time for summoning witnesses.

§ 10. All fines collected by virtue of the preceding sections of this act shall go, one-third to the Territory, one-third to the county in which the offense was committed, and one-third to the person or attorney who, on the part of the Territory, procured the conviction.

§ 11. Persons traveling may be permitted to carry arms within settlements or towns of this Territory, for one hour after arriving in such settlements or town, and while going out of such towns or settlements; and sheriffs and constables of the various counties of this Territory and their lawfully appointed deputies may carry weapons in the legal discharge of the duties of their respective office, when the same may be necessary, but it shall be for the jury to decide from the evidence whether such carrying of weapons was necessary or not, and for an improper carrying or using deadly weapons by any officer mentioned in this section, he shall be punished as other persons are punished for a violation of the preceding sections of this act.

§ 12. It shall be the duty of the keeper of each and

## CHAPTER 52.

AN ACT to Prevent the Carrying of Fire Arms and Other Deadly Weapons.

*Be it enacted by the Council and House of Representatives of the Territory of Wyoming:*

Carrying weapons within city, town or village limits, prohibited.

SECTION. 1. That hereafter it shall be unlawful for any resident of any city, town or village, or for any one not a resident of any city, town or village, in said Territory, but a sojourner therein, to bear upon his person, concealed or openly, any fire arm or other deadly weapon, within the limits of any city, town or village.

Non - resident to be first notified.

SEC. 2. That if any person not a resident of any town, city or village of Wyoming Territory, shall, after being notified of the existence of this act by a proper peace officer, continue to carry or bear upon his person any fire arm or other deadly weapon, he or she, shall be deemed to be guilty of a violation of the provisions of this act and shall be punished accordingly.

Violation of this act a misdemeanor.

SEC. 3. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than five dollars nor more than fifty dollars, and, in the default of the payment of any fine which may be assessed against him, shall be imprisoned in the county jail for not less than five days nor more than twenty days.

Penalty.

In force.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved, December 2nd, 1875.

SEC. 3. This Act shall take effect from and after its passage.

Approved March 18, 1889.

No. 12.

AN ACT

Concerning the Transaction of Judicial Business on Legal Holidays.

*Be it enacted by the Legislative Assembly of the Territory of Arizona:*

SECTION 1. No Court of Justice shall be open, nor shall any Judicial business be transacted on any Legal Holiday, except for the following purposes:

1. To give, upon their request, instructions to a Jury when deliberating on their verdict.

2. To receive a verdict or discharge a Jury.

3. For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature; provided, that the Supreme Court shall always be open for the transaction of business; and provided further, that injunctions, attachments, claim and delivery and writs of prohibition may be issued and served on any day.

SEC. 2. All Acts and parts of Acts in conflict with this Act are hereby repealed.

SEC. 3. This Act shall be in force and effect from and after its passage.

Approved March 18, 1889.

No. 13.

AN ACT

Defining and Punishing Certain Offenses Against the Public Peace.

*Be it Enacted by the Legislative Assembly of the Territory of Arizona:*

SECTION 1. If any person within any settlement, town, village or city within this Territory shall carry on or about his person, saddle, or in his saddlebags, any pistol, dirk, dagger, slung shot, sword cane, spear, brass knuckles, bowie knife, or any other kind of knife manufactured or sold for purposes of offense or defense, he shall be punished by a fine of not less than twenty-five nor more than one hundred dollars; and in addition thereto, shall forfeit to the County in which he is convicted, the weapon or weapons so carried.

SEC. 2. The preceding article shall not apply to a person in actual service as a militiaman, nor as a peace officer

around the head of Panther Creek, to the divide between Hat Creek and Ellis Creek, thence on the divide between Hat and Ellis Creeks in an easterly direction to the Salmon River, thence up the main channel of said Salmon River to the place of beginning.

SEC. 2. This act to take effect and be in force, from and after its passage.

Approved February 4, 1889.

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## CARRYING DEADLY WEAPONS.

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### AN ACT

#### REGULATING THE USE AND CARRYING OF DEADLY WEAPONS IN IDAHO TERRITORY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That it is unlawful for any person, except United States officials, officials of Idaho Territory, County officials, Peace officers, Guards of any jail, and officers or employees of any Express Company on duty, to carry, exhibit or flourish any dirk, dirk-knife, sword, sword-cane, pistol, gun or other deadly weapons, within the limits or confines of any city, town or village or in any public assembly of Idaho Territory. Every person so doing is guilty of a misdemeanor and is punishable by fine not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for a period of not less than twenty days nor more than fifty days, or by both such fine and imprisonment.

SEC. 2. One half of all fines collected under the provisions of this act shall be paid to the officer making the arrest, which amount shall be payment in full for his services. The other one half shall be paid into the Common School Fund of the county, after deducting the necessary costs of the prosecution of the case.

SEC. 3. All acts or parts of acts in conflict with this act are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved February 4, 1889.



to repeal all acts inconsistent herewith,' and acts supplementary and amendatory thereof, and to repeal all acts and parts of acts inconsistent herewith," be and the same are hereby amended so as to read as follows:

### TITLE III.

Additional  
powers of  
council.

SEC. 8. The common council in addition to the powers and duties specially conferred upon them in this act, shall have the management and control of the finances, rights and interests, and all property, real and personal, belonging to the city, and make such orders and by-laws relating to the same as they shall deem proper and necessary; and they shall have the power within said city to enact, make, continue, establish, modify, amend and repeal such ordinances, by-laws and regulations as they may deem desirable within said city, for the following purposes:

Vice.

First. To prevent vice and immorality, to preserve peace and good order, to regulate the police of the city, to prevent and quell riots, disturbances and disorderly assemblages;

Disorderly  
houses.

Second. To restrain and prevent disorderly and gaming houses, and houses of ill-fame, all instruments and devices used for gaming, and to prohibit all gaming and fraudulent devices, and regulate or restrain billiard tables and bowling alleys;

Liquors.

Third. To forbid and prevent the vending or other disposition of liquors and intoxicating drinks in violation of the laws of the State, and to forbid the selling or giving to be drunk any intoxicating liquors to any child or young person without

Auctions.

the consent of his or her parents or guardian and to prohibit, restrain and regulate the sale of all goods, wares and personal property at auction, except in cases of sale authorized by law, and to fix the fees to be paid by and to the auctioneers;

Exhibitions.

Fourth. To prohibit, restrain, license and regulate all sports, exhibitions of all natural or artificial curiosities, caravans of animals, theatrical exhibitions, circuses or other public performances and exhibitions for money;

Nuisances.

Fifth. To abate or remove nuisances of every kind, and to compel the owner or occupant of any grocery, tallow-chandler shop, butcher's stall, soap factory, tannery, stable, privy, hog pen, sewer or other offensive or unwholesome house or place, to cleanse, remove or abate the same from time to time, as often as they may deem necessary for the health, comfort and convenience of the inhabitants of the city. To compel the owner, lessee or agent to remove buildings that are liable to fall by reason of being burnt, decayed or not properly erected;

Dangerous  
buildings.

Location  
of slaughter  
houses.

Sixth. To direct the location of all slaughter houses, markets and buildings for storing gunpowder or other combustible materials, and to regulate the manner of keeping the same;

Seventh. To regulate, restrain or prohibit the buying, selling, carrying and using of firearms, weapons, gunpowder, fire-crackers or fireworks, manufactured or prepared therefrom, or from other combustible material, and the exhibition of fireworks, and the discharge of firearms, and the lights in barns, stables and other buildings, and to restrain and prohibit the making of bonfires in streets, yards, alleys and other public places; Firearms, combustibles, etc.

Eighth. To prevent the encumbering of streets, sidewalks, crosswalks, lanes, alleys, bridges, aqueducts, wharves or slips in any manner whatever; Encumbering streets.

Ninth. to prevent and punish horse racing and immoderate riding or driving in any street, and to authorize the stopping and detaining of any person who shall be guilty of immoderate riding or driving in any street; and to prevent any person from leaving a horse or horses or other animal standing upon the streets of said city without being securely tied, held or fastened so as to prevent their escape; Horse racing.

Tenth. To determine and designate the routes and grades of any railroad to be laid in said city, and to regulate the use of locomotives, engines and cars upon the railroads within the city; to compel such railroads to erect and maintain safety gates at street crossings; Railroad grades, etc.

Eleventh. To regulate, restrain or prohibit bathing in any public water, and to provide for (cleansing) cleaning Saginaw river of driftwood and other obstructions; Bathing, etc.

Twelfth. To restrain and punish drunkards, vagrants, mendicants, street beggars and persons soliciting alms or subscriptions for any purpose whatever; Drunkards, vagrants, etc.

Thirteenth. To establish one or more pounds, and to restrain, regulate or prohibit the running at large of horses, cattle, swine and other animals, geese and poultry, and to authorize the impounding and sale of the same for the penalty incurred and the cost of their keeping and impounding; Pounds.

Fourteenth. To regulate or prevent the running at large of dogs; to impose taxes upon the owners of dogs and to punish dog fights and those engaged in aiding and abetting the same, in the streets and elsewhere in said city. To provide for the issuing of licenses to the owners and keepers of dogs, and to compel the owners and keepers thereof to pay for and obtain such licenses; to require them to be muzzled and to authorize the killing of dogs not licensed or running at large in violation of the ordinances of the city; and to authorize the killing of dogs impounded, which shall not be redeemed within the time prescribed by the ordinance regulating the same; Dogs.

Fifteenth. To prohibit any person from bringing and depositing within the limits of said city any dead carcass or other unwholesome or offensive substance, and to require the removal and destruction thereof, if any person shall have on his premises such substance or any putrid meats, fish, hides Carcasses, etc.

vocations and trades, professions or callings, which are licensed by the State of Texas or which are taxed by said State; provided, that no tax assessed on such occupation, trade, vocation, profession or calling shall be more than one-half the amount levied thereon by said State, and said commission shall have the power to prescribe penalties against all persons pursuing any occupation, vocation, trade, profession or calling so taxed, without having first paid the tax due, and secured a proper license therefor.

(w) *Riots.*—Power to prevent and suppress riots, affrays, noise, breach of the peace, assaults, disturbances or disorderly assembly in any public or private place within the limits of said city, and to provide punishment therefor; to prohibit and restrain the firing of guns, and pistols in the city limits, and to prohibit and restrain the carrying of pistols.

(x) *Racing.*—To prevent and prohibit and suppress horse racing, immoderate or careless riding or driving in the streets of said city, or in any public place therein, to suppress racing in the streets of said city by means of animals or vehicles.

(y) *Streets.*—To regulate the use of all streets, alleys, parks, squares, sidewalks and public grounds within said city, and to prevent and suppress all encroachments on said streets, sidewalks, alleys or parks or other public places, and to prevent and suppress all obstructions of every kind and character on the said streets, sidewalks, alleys, parks and other public grounds within said city.

(z) *Saloons.*—Power to close drinking saloons, dramshops and other public places where intoxicating liquors are sold or given away, and to close any theater or variety show when necessary or expedient; to make and enforce all needful regulations for saloons, dramshops and other places where intoxicating liquors are sold or given away. The said commission shall have the power to prescribe by ordinance that no intoxicating liquors shall be sold or given away within the corporate limits of the said city, in any certain prescribed district in said corporation in which there are more residences than business houses, said districts to be accurately defined by said ordinances.

Said commission shall have the power to cancel and forfeit any city license issued by said City of Marshall to the owner or proprietor of any saloon or other place where intoxicating liquors are sold, under such license, within the limits of said city upon conviction of the person owning such license, of any offense against the laws of Texas, or of the City of Marshall pertaining to such liquor business, or to the sale of liquor under such license, and after forfeiture of such license by said commission, no other license for the sale of spirituous, vinous or malt liquors shall be issued or sold by the said city unto such convicted person for the period of two years.

(aa) *Theaters.*—Power to permit, regulate or forbid theaters, balls, variety shows and other public amusements, and to suppress the same whenever the preservation of order, tranquility or public safety may require.

(bb) *Ticket Scalpers.*—To prevent and prohibit the sale by any other person than a duly authorized agent, of any non-transferable ticket, pass,

## ORDINANCES OF.

all the charges and remove the same for the period of twenty-four hours after the service of such notice, the said officer shall proceed to sell the same at public auction, first giving two days notice, by not less than five hand-bills conspicuously posted, of the time and place of said sale, which said notice shall also contain a brief description and the name of the owner or custodian thereof, if known.

SEC. 4. If the owner or custodian shall not be known to said officer he shall immediately advertise the same for sale for at least three days prior to such sale, by three handbills conspicuously posted in said city, which said notice shall contain a description of the swine to be sold, where the same were taken up, the time and place of said sale.

SEC. 5. The officer's fees for proceedings under this ordinance shall be as follows, to-wit: One dollar per head for impounding the necessary expenses for keeping; twenty-five cents for each notice served, and twenty per cent of sales for selling.

SEC. 6. From the proceeds of the sale of each hog or lot of swine belonging to one individual the officer shall pay the fees and expenses as hereinbefore provided for, and the balance if any there be, shall be paid to the city treasurer and be kept by him as a separate fund and shall only be paid out by warrant duly drawn and made payable to the party justly entitled thereto.

SEC. 7. This ordinance shall take effect and be in force from and after its passage and approval.

Approved, April 16, A. D. 1872.

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ORDINANCE No. 7.

An Ordinance prohibiting the carrying of fire arms and concealed weapons.

SECTION 1. *Be it ordained by the Mayor and Councilmen of the city of Nebraska City,* That it shall be, and it is hereby declared to be unlawful for any person to carry, openly or concealed, any musket, rifle, shot gun, pistol, sabre, sword, bowie knife, dirk, sword cane, billy, slung shot, brass or other metallic knuckles, or any other dangerous or deadly weapons, within the corporate limits of Nebraska City, Neb.; *Provided,* that nothing herein contained shall prevent the carrying of such weapon by a civil or military officer, or by a soldier in the discharge of his duty, nor by any other person for mere purposes of transportation from one place to another.

SECTION 2. Upon complaint before the Police Judge that an offence in violation of this ordinance has been committed, he shall inquire into the circumstances of the case to determine whether the charge is well founded, and exercise his own discretion as to the dismissal thereof. If the complaint shall be made good, and the

## CHAPTER 108.

## CARRYING PISTOLS, BOWIE-KNIVES, ETC.

## SECTION

1. Penalty imposed for carrying pistols, bowie-knives, etc.
2. Duty of the police to arrest all persons carrying such weapons.
3. Penalty imposed on police officer for failing to arrest persons carrying deadly weapons.

## SECTION

4. Police Commissioners instructed to increase number of patrolmen to thirty-four.
5. Provisions against carrying deadly weapons do not extend to police officers.

SECTION 1. That every person found carrying a pistol, bowie-knife, dirk-knife, slung-shot, brass knucks or other deadly weapon, shall be deemed guilty of a misdemeanor, and, upon conviction of such first offense, shall be fined from ten to fifty dollars, at the discretion of the court, but upon conviction of every such subsequent offense, shall be fined fifty dollars; *Provided, however,* That no ordinary pocket-knife and common walking-canes shall be construed to be deadly weapons.

SEC. 2. That it shall be the duty of every police officer who sees any person or persons with, or knows of any person carrying, such deadly weapons, to immediately arrest every such person, that they may be dealt with according to the provisions of this act.

SEC. 3. That every police officer who may refuse or neglect to immediately arrest every such person seen with or known to be carrying such deadly weapons, shall be deemed guilty of dereliction of duty, and, upon conviction thereof, shall be dismissed from service, and any two respectable citizens shall be deemed competent to prefer charges to the proper authorities against such police officer for such dereliction of duty.

SEC. 4. To the end that the provisions of this act may be more fully carried out, the Police Commissioners be, and are hereby, instructed to increase the number of patrolmen to thirty-four, to be uniformed, paid and controlled in accordance with the present police law.

SEC. 5. It is expressly understood that the provisions of this act relating to carrying such deadly weapons as are mentioned in the preceding sections, do not extend to police or other officers, or persons that are entitled by law to carry



such deadly weapons, nor does it extend to the act of handling or moving such deadly weapons in any ordinary business way.

SEC. 6. That all laws and parts of laws in conflict with this act are hereby repealed, and this act to take effect from and after its passage, the public welfare requiring it.

Approved December 26, 1873.

## CHAPTER 109.

### SABBATH.

#### SECTION

1. No water-craft to unload on Sunday.
2. No vehicle to be laden on Sunday.
3. No grocery or other place of ordinary business to be kept open on the Sabbath; tavern-

#### SECTION

- keepers and apothecaries excepted.
4. Vendors of ice, ice-cream, soda water, cigars and tobacco excepted.
5. No games allowed on Sunday.

SECTION 1. That if any owner or owners of any steamboat, keel-boat, barge or other water-craft, should load or unload, or cause to be laden or unladen, any such steamboat, keel-boat, barge or other water-craft, on the Sabbath day, within the limits of the corporation of Nashville, unless by the written permission of the Mayor, every person so offending shall forfeit and pay, on conviction thereof, not less than twenty-five nor more than fifty dollars for every such offense.

SEC. 2. That if any person or persons shall load, or cause to be laden, any wagon, cart or dray on the Sabbath day, with any article or package of merchandise, cotton, tobacco or any produce of the country, or unload, or cause to be unladen, any such wagon, cart or dray, or shall receive into his, her or their house, store or warehouse, any such article or package of merchandise, cotton, tobacco, or produce of the country, every person so offending shall forfeit and pay the sum of one dollar for each and every offense.

SEC. 3. That no person or persons shall be allowed to keep his, her or their grocery, dram-shop, confectionery or other place of ordinary business open on the Sabbath day, nor to sell any spirituous liquors on said day, or to deal out the same

the city limits for the purpose of seeing that said ordinance is not violated. That before entering, said Marshal or policeman shall first inform the owner, or person having control of said back yard, the purpose of such entry, and any such owner or person having charge or control of the same, who shall refuse or resist such entry shall thereupon be arrested, and upon conviction thereof, shall be fined in a sum not more than twenty-five dollars, nor less than five, or imprisonment not more than ten days. Approved Nov. 22, 1869.

34 Every owner or occupant of every store, hotel, bar-room, or public house of any kind, as also each and every person occupying a house having two rooms or more facing the street, shall hang a light outside of the door of his or their building, the first two and a half hours of every dark night, under a penalty of two dollars for the first offence and five dollars for each and every subsequent offence.

35 Every person who shall draw any species of fire-arms, or any sword or sword-cane, or knife, or dirk, or other deadly weapon upon the person of another within the limits of this city, unless in lawful defence of person or property, shall be fined not to exceed one hundred dollars, and imprisonment at the discretion of the Mayor, not to exceed ten days.

36 In future, no persons, except peace officers, and persons actually traveling, and immediately passing through Los Angeles city, shall wear or carry any dirk, pistol, sword in a cane, slung-shot, or other dangerous or deadly weapon, concealed or otherwise, within the corporate limits of said city, under a penalty of not more than one hundred dollars fine, and imprisonment at the discretion of the Mayor, not to exceed ten days.

It is hereby made the duty of each police officer of this city, when any stranger shall come within said corporate limits wearing or carrying weapons, to, as soon as possible, give them information and warning of this ordinance; and in case they refuse or decline to obey such warning by depositing their weapons in a place of safety, to complain of them immediately.

37 No person shall ride any mule, horse or other animals within the fire limits of this city, at a furious rate, or at a greater speed than eight miles per hour. Nor shall any person drive any wagon, carriage, or other vehicle, at a greater speed than as above stated. Nor shall any person leave any horse or mule, saddled or harnessed, loose in the aforesaid limits.

## ORDINANCE No. 268.

An Ordinance relating to the carrying of deadly weapons.

*Be it ordained by the Mayor and Councilmen of the city of Salina :*

SECTION 1. That it shall be unlawful for any person to carry on or about his person any pistol, bowie knife, dirk, or other deadly or dangerous weapon, anywhere within the limits of the city of Salina, save and except as hereinafter provided.

SEC. 2. This ordinance shall not apply to cases when any person carrying any weapon above mentioned is engaged in the pursuit of any lawful business, calling or employment and the circumstances in which such person is placed at the time aforesaid, are such as to justify a prudent man in carrying such weapon, for the defense of his person, property or family, nor to cases where any person shall carry such weapon openly in his hands, for the purpose of sale, barter, or for repairing the same, or for use in any lawful occupation requiring the use of the same.

SEC. 3. Any person violating any of the provisions of this ordinance shall, upon conviction thereof before the police court, be fined in any sum not less than twenty-five nor more than one hundred dollars.

SEC. 4. This ordinance shall take effect and be in force from and after its publication in pamphlet form.

Approved June 24th, 1879

WM. BERG, Mayor.

Attest: E. E BOWEN, City Clerk.

I hereby certify the above and foregoing to be a true copy of an ordinance passed by the mayor and councilmen of the city of Salina on the 24th day of June, 1879. See page 97 of the Journal B for the record of the final vote on its passage.

[CITY SEAL.]

E. E. BOWEN, City Clerk.



three months, or to both such fine and imprisonment.

§ 5. Any person who shall immoderately ride or <sup>Immoderate driving and riding.</sup> drive any horse or other animal whether attached to a private or public ambulance or other vehicle in any avenue, street, alley or lane in the city, shall be subject to a fine of not less than five nor more than fifty dollars, or to imprisonment in the peni- <sup>Penalty.</sup> tentiary of the county for not less than ten nor more than thirty days.

§ 6. Any person who shall solicit alms in the <sup>Soliciting alms.</sup> city for any purpose whatever, without permission from the mayor, shall be subject to a fine of two <sup>Penalty.</sup> dollars or to imprisonment in the penitentiary of the county for ten days for each offense.

§ 7. Any person who shall carry about his or her <sup>Carrying of deadly weapons.</sup> person any dirk, bowie knife, sword or spear cane, pistol, revolver, slung shot, jimmy, brass knuckles, or other deadly or unlawful weapon, or shall use any deadly or unlawful weapon, with intent to do bodily harm to any person, shall be subject to a fine of not less than twenty-five nor more than one <sup>Penalty.</sup> hundred dollars, or to imprisonment in the penitentiary of the county for not less than thirty days nor longer than three months, or to both such fine and imprisonment.

§ 8. Any person who shall ring any gong or bell <sup>Ringling of gongs and bells.</sup> or cry any auction in any street, lane {or alley, or upon any sidewalk, or upon any piazza, step or

## UNLAWFUL CARRYING OF ARMS.

AN ORDINANCE Prohibiting and Punishing the Unlawful Carrying of Arms.

SECTION 1. Be it ordained by the City Council of the City of Dallas, that if any person in the City of Dallas shall carry on or about his person, saddle, or in his saddle-bags, any pistol, dirk, dagger, slungshot, sword-cane, spear, or knuckles made of any metal or hard substance, bowie knife, or any other kind of knife manufactured or sold for purposes of offense or defense, he shall be punished by fine of not less than twenty-five nor more than two hundred dollars and shall be confined in the city prison not less than twenty nor more than sixty days.

SEC. 2. That the preceding section shall not apply to a person in actual service as a militiaman, nor to a peace officer, or policeman or person summoned to his aid, nor to a revenue or other civil officer engaged in the discharge of official duty, nor to the carrying of arms on one's own premises or place of business, nor to persons traveling, nor to one who has reasonable ground for fearing an unlawful attack upon his person, and the danger is so imminent and threatening as not to admit of the arrest of the party about to make such attack upon legal process.

SEC. 3. That all Ordinances or parts of Ordinances in conflict with this Ordinance be and the same are hereby repealed.

SEC. 4. That this Ordinance take effect from and after its passage.

Approved July 18, 1887.



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ORDINANCE NO. 11.

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An ordinance relating to the public peace.

Be it ordained by the town council of the incorporated town of Checotah:

Section 1. That it shall be a misdemeanor to do or cause to be done any of the following acts, and any person convicted thereof shall be fined not more than Twenty Five dollars.

Section 2. To be connected with or participate in any masked ball not authorized by the mavor of the town.

Section 3. To wear or carry any pistol of any kind whatever, or any dirk, butcher knife or bowie knife, or a sword, or a spear in a cane, brass or metal knuckles or a razor, slung shot, sand bag, or a knife with a blade over three inches long, with a spring handle, as a weapon.

Section 4. To be drunk or in a state of intoxication in any public or private place within the town limits.

Section 5. To use rude, boisterous, offensive, obscene or blasphemous language in any public place, or to make, aid, countenance, or assist in making any improper noise, disturbance, breach of the peace or diversion, or conduct one's self in a disorderly manner in any public place, or in any other place within the town limits.

Section 6. To keep a disorderly house or place of public resort in the open air, or by making or causing to be made therein, loud or improper noises, or by collecting therein or permit the collection therein, or allow to remain therein, drunken, disorderly and noisy persons to the annoyance of others and the disturbance of the neighborhood, or to give admission, or cause to be given admission therein, to women of known ill repute or prostitutes, or fail to remove or expel such persons after being notified of their character.

Section 7. To employ any device, noise or performance tending to the collection of persons on the streets or other places to the obstruction of the same, or to exhibit any tricks or legerdemain or other devices of like kind, or perform with bells, or

City for any such purpose, shall forfeit and pay a penalty of not less than ten, nor more than fifty dollars for every such offense.

SEC. 192. Every person who shall carry in said City, any steel or brass knuckles, pistol, or any slung shot, stiletto or weapon of similar character, or shall carry any weapon concealed on his person without permission of the Mayor or Superintendent of Police in writing, shall, on conviction, pay a penalty of not less than five, nor more than fifty dollars for every such offense.

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### JURORS OF THE CITY COURT.

Section.

193. Penalty for neglecting to serve as juror when summoned.

*Be it ordained by the Court of Common Council of the City of New Haven:*

SEC. 193. If any person chosen, drawn and summoned to serve on a jury at any session of the City Court of said City, in accordance with the provisions of the Charter of said City, shall make default of appearance, according to the direction of the summons, which shall have been duly served upon him, and returned to Court, he shall forfeit and pay a penalty of five dollars, unless on cause shown, said City Court shall excuse him therefrom.

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### LAMPS.

Section.

194. Court of Common Council may order lamps to be set up.

Section.

195. Unauthorized interference with lamps prohibited, etc.; penalty.

*Be it ordained by the Court of Common Council of the City of New Haven:*

SEC. 194. The Court of Common Council is hereby authorized to cause to be set up such lamps in the streets and public places in said City, for the purpose of

more than one hundred dollars for each and every offense.

SEC. 4. If any person shall expose for sale in any market, house, shop or elsewhere in this city, any emaciated, tainted or putrid meat or provision, which from these or other causes may be deemed unwholesome, every such person, on conviction, shall forfeit and pay a penalty of five dollars for each offense.

SEC. 5. No person shall steam, or boil, or in any way render any offal, tainted or damaged lard or tallow, or steam, boil or render any animal substance in such a manner as to occasion any offensive smell, or which by steaming, boiling or otherwise rendering will so taint the air so as to render it unwholesome to the smell within the limits of the city. Any person who shall violate the provisions of this section, shall, on conviction, be fined in a sum not less than ten dollars nor more than one hundred dollars.

## ARTICLE VII.

### CARRYING FIRE ARMS AND LETHAL WEAPONS.

SECTION 1. It shall be unlawful for any person in said city to keep or bear upon the person any pistol, revolver, knife, slungshot, bludgeon or other lethal weapon, except the officers of the United States, of the State of Wyoming, of Carbon County and of the City of Rawlins.

SEC. 2. Any person convicted of a violation of the preceding section shall be fined not exceeding one hundred dollars, or imprisoned in the city jail not exceeding thirty days.

SEC. 3. Persons not residing in said city shall

be notified of this Ordinance by the police or any citizen, and after thirty minutes from the time of notification, shall be held liable to the penalties of this article, in case of its violation.

SEC. 4. The city marshal and policemen of the city shall arrest, without warrant, all persons found violating the provisions of this article, and are hereby authorized to take any such weapon from the person of the offender and to imprison the offender for trial, as in case of violations of other Ordinances of said city.

SEC. 5. This ordinance shall be in force and take effect from and after its passage.

Revised, passed and adopted March 3, 1893.

CHAS. E. BLYDENBURGH,  
President of Board.

Approved,  
JOHN C. DAVIS,  
Mayor.





## SECTION.

80. Selling Wearing Apparel by Club Drawing.
81. Stealing Parts of a House.
82. Moving Houses with Unpaid Tax.
83. Time for Hauling Slops Along Street.
84. Dead Animals, Disposition of.
85. Traction and Threshing Engine on Paved Streets.
86. Manure not to be Thrown in Streets or Alleys; Limits; Provisions to Make Pen for.
87. Privy Vaults to be Cleaned and not to be Transferred.
88. Stables and Water Closets to be on Line of Alley.
89. Secondhand and Junk Dealers; Buying from Minors; Description book; Night Purchases.
90. Leaving Holes for Stagnant Water.
91. Advertisement on Street Poles.
92. Bicycle Riding Regulated; Sidewalks, Speed, Dismounting, by Threes, Alarm Bell.
93. Obstructing Streets or Walks; How Used by Merchants and Builders; Gutters not to be Obstructed; Debris to be Cleared.
94. Red Night Lights on Building Material on Street.

## SECTION.

95. Hitching to Fire Hydrant or Pole with Alarm Box.
96. Ball Playing in Streets.
97. Running Water into Streets.
98. Throwing Rubbish into the Street.
99. Projections Over the Sidewalks.
100. Stringing Banners Across Streets.
101. Crowds Upon Sidewalks, Streets and Crossings.
102. Obstructing Crossings with Engines or Cars.
103. Digging and Leaving Holes in the Street.
104. Breaking Horses Upon Streets.
105. Leaving Horse, Mule or Ox on Street After Midnight.
106. Auction Sales not on Certain Streets.
107. Height of Telegraph, Telephone and Light-Wires, (20 ft.)
108. Building Lines Located by Engineer; Cellar-way Excavation; Power of Mayor and Council to Permit or Remove; Nuisance Declared and Abated; Penalty; Proviso for Parking Fence.
109. Injuring Shade or Ornamental Trees.
110. Public Vehicles; Limits Prohibited.
111. Take Effect.

**ORDINANCE NO. 1641.**

AN ORDINANCE relating to certain public offenses and fixing the penalty therefor.

*Be it ordained by the Mayor and Councilmen of the City of Wichita:*

***Drawing Deadly Weapons Upon Another.*** SECTION 1. That any person, not an officer of the law in the execution of his duty, who shall in the city of Wichita, draw a pistol, revolver, knife or any other deadly weapon upon another person shall upon conviction, be fined not less than twenty-five dollars nor more than one hundred dollars.

***Carrying Unconcealed Deadly Weapons.*** SEC. 2. Any person who shall in the city of Wichita carry unconcealed, any fire-arms, slungshot, sheath or dirk knife, or any other weapon, which when used is likely to produce



death or great bodily harm, shall upon conviction, be fined not less than one dollar nor more than twenty-five dollars.

***Using or Carrying Bean Snapper.*** SEC. 3. Any person who shall, in the city of Wichita, use or carry concealed or unconcealed, any bean snapper or like articles shall upon conviction be fined in any sum not less than one dollar nor more than twenty-five dollars.

***Carrying Concealed Deadly Weapons.*** SEC. 4. Any person who shall in the city of Wichita, carry concealed about his person any fire-arm, slungshot, sheath or dirk knife, brass knuckles, or any weapon, which when used is likely to produce death or great bodily harm, shall upon conviction, be fined in any sum not exceeding one hundred dollars.

***Disturbing the Peace.*** SEC. 5. Any person who shall in the city of Wichita, disturb the peace of the city, or any lawful assembly of persons, or of any neighborhood, family, person, or persons, shall upon conviction, be fined in any sum not exceeding one hundred dollars.

***Cursing and Using Violent Language.*** SEC. 6. Any person who shall in the city of Wichita, curse, swear, quarrel or use violent or threatening language, or make any great noise, so as to disturb the peace of any person or neighborhood shall, upon conviction be fined in any sum not exceeding twenty-five dollars.

***Assault and Battery.*** SEC. 7. Any person who shall, in the city of Wichita, assault and beat or wound another, shall be deemed guilty of an assault and battery and shall, upon conviction, be fined in any sum not exceeding one hundred dollars, or imprisonment in the city jail not exceeding three months.

***Provoking Another to Breach of Peace.*** SEC. 8. Any person who shall, in the city of Wichita, by signs, words or gestures, provoke or attempt to provoke another to commit assault and battery or other breach of the peace, shall, upon conviction, be fined in any sum not less than three dollars, nor more than twenty-five dollars.

***Aiding Resistance or Escape from Officer.*** SEC. 9. Any person who shall, in the city of Wichita, in any

## ORDINANCE NO. 20.

### UNLAWFULLY CARRYING ARMS.

Be it ordained by the city council of the city of McKinney:

Sec 1. If any person in the limits of the city of McKinney shall carry on or about his person. saddle, or in his saddle bags, any pistol, dirk, dagger, slung-shot, sword-cane, spear or nuckles made of any metal or of any hard substance Bowie knife or any other knife manufactured or sold for the purposes of offense or defense, he shall be punished by fine not less than twenty-five nor more than two hundred dollars.

Sec. 2. The preceding section shall not apply to a person in actual service as a militiaman, nor to a peace officer or a policeman or person summoned to his aid, nor to a revenue or other civil officer engaged in the discharge of official duty, nor to the carrying of arms on one's own premises or place of business, nor to persons traveling, nor to one who has reasonable ground for fearing an unlawful attack upon his person, and the danger is so imminent and threatening as not to admit of the arrest of the party about to make such attack, upon legal process.

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## ORDINANCE NO. 21.

### INDECENT PUBLICATION AND EXPOSURES.

Be it ordained by the city council of the city of McKinney:

That if any person within the limits of the city of McKinney, shall make, publish or print any indecent and obscene print, picture or written composition manifestly designed to corrupt the morals of the youth, or shall designedly make any obscene and indecent exhibition of his own or the person of another in public, he shall be fined not exceeding one hundred dollars.

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SEC. 2. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.  
Passed December 12, 1871.

JAMES D. RICHARDSON,  
*Speaker of the House of Representatives.*  
JOHN C. VAUGHN,  
*Speaker of the Senate.*

Received at Executive Office December 15, 1871, and approved December 15, 1871.

JOHN C. BROWN,  
*Governor.*

## CHAPTER XC.

AN ACT to preserve the peace and prevent homicide.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That it shall not be lawful for any person to publicly or privately carry a dirk, sword cane, Spanish stiletto, belt or pocket pistol or revolver other than an army pistol, or such as are commonly carried and used in the United States Army, and in no case shall it be lawful for any person to carry such army pistol publicly or privately about his person in any other manner than openly in his hands, and any person guilty of a violation of the provisions of this section, shall be guilty of a misdemeanor, and subject to presentment or indictment, and, on conviction, shall pay a fine of not less than ten, nor more than fifty dollars, and may be imprisoned in the county jail not more than three months: *Provided, however*, the Court may commute the imprisonment altogether, and in lieu thereof, require the person convicted to give bond with approved security in not less than the sum of five hundred dollars, conditioned that he keep the peace for six months after such conviction.

Not lawful  
to carry dirk  
sword cane,  
stiletto, or  
pistol.

To do so a  
misdemeanor

Proviso.

SEC. 2. *Be it further enacted*, That it shall be the duty of all peace officers in the State, including Sheriffs, Deputy Sheriffs, Constables, Coroners, and Justices of the Peace, to see that the first section of this Act be strictly enforced, and it is hereby made their duty to report without delay any violation thereof, to the grand juries of their respective counties, and it shall be the duty of the grand juries to send for witnesses in all cases where they have good reason to believe there has been a violation

Duty of  
peace officers

## LIII.—CARRYING WEAPONS.

## SECTION

1907. Of what kind prohibited; exceptions.  
 1908. Weapons excepted, how to be carried; unlawful carrying a misdemeanor.  
 1909. Sale of weapons a misdemeanor; exception.  
 1910. Unlawful sale or carrying, how punished.

## SECTION

1911. Justices failing to proceed against offenders, how punished.  
 1912. Officer failing to make arrest, how punished.  
 1913. In what courts offenders to be prosecuted.

SECTION 1907. Any person who shall wear or carry in any manner whatever as a weapon any dirk or bowie knife, or a sword, or a spear in a cane, brass or metal knucks, razor, or any pistol of any kind whatever, except such pistols as are used in the army or navy of the United States (jjj), shall be guilty of a misdemeanor. *Provided*, that officers whose duties require them to make arrests, or to keep and guard prisoners, together with the persons summoned by such officers to aid them in the discharge of such duties, while actually engaged in such duties, are exempted from the provisions of this act. *Provided, further*, that nothing in this act be so construed as to prohibit any person from carrying any weapon when upon a journey or upon his own premises (\*\*).

SEC. 1908. Any person, excepting such officers or persons on a journey and on their premises as are mentioned in section 1907, who shall wear or carry any such pistol as is used in the army or navy of the United States, in any manner except uncovered and in his hand, shall be deemed guilty of a misdemeanor (kkk).

SEC. 1909. Any person who shall sell, barter or exchange, or otherwise dispose of, or in any manner furnish to any person, any dirk or bowie knife, or a sword or a spear in a cane, brass or metal knucks, or any pistol of any kind whatever, except such as are used in the army or navy of the United States, and known as the navy pistol, or any kind of cartridge for any pistol, or any person who shall keep any such arms or cartridges for sale, shall be guilty of a misdemeanor.

SEC. 1910. Any person convicted of a violation of any of the provisions of this act shall be punished by a fine of not less than fifty nor more than two hundred dollars.

SEC. 1911. Any justice of the peace in this state, who, from his own knowledge or from legal information, knows, or has reasonable grounds to believe, any person guilty of a violation of the provisions of this act, and shall fail or refuse to proceed against such person, shall be deemed guilty of a non-feasance in office, and, upon conviction thereof, shall be punished by the same fine and penalty provided in section 1910, and shall be removed from office (\*).

SEC. 1912. Any officer in this state whose duty it is to make arrests, who may have personal knowledge of any person carrying arms contrary to the pro-

(jjj) See *Wilson v. State*, 33—557; *Holland v. State*, *Id.*, 560.

(\*\*) An indictment need not negative the exceptions. *Walker v. State*, 35—386.

(kkk) SECS. 1907 and 1908 are not unconstitutional. *Halle v. State*, 38—564.

(\*) See *State v. Graham*, 38—519.