# **Statutory Appendix**

## **English statutes and royal proclamations**

Add. 1
Add. 2
Add. 3
Add. 4
Add. 10
Add. 12
Add. 15
Add. 17

## American enactments of the Statute of Northampton

1694 Mass. Laws 12, no. 6	Add. 19
1699 N.H. Laws 1	Add. 22
1786 Va. Laws 33, ch. 21	Add. 28
1792 N.C. Laws 60 ch. 3	Add. 29
1795 Mass. Laws 436, ch. 2	Add. 33
1801 Tenn. Laws 710, § 6	Add. 34
1821 Me. Laws 285, ch. 76, § 1	Add. 35
1852 Del. Laws 330, ch. 97, § 13	Add. 41
1859 N.M. Laws 94, § 2	Add. 49

# Other colonial-era American laws

1686 N.J. Law	s 289, ch. 9		Add. 54
---------------	--------------	--	---------

# American laws in the 19th and early 20th centuries

1836 Mass. Laws 750, § 16	Add. 56
1838 Wisc. Laws 381, § 16	Add. 60
1841 Me. Laws 709, ch. 169, § 16	Add. 61
1846 Mich. Laws 690, ch. 162, § 16	Add. 62
1847 Va. Laws 127, ch. 14, § 15	Add. 65
1851 Minn. Laws 526, ch. 112, § 18	Add. 68

1853 Or. Laws 218, ch. 16, § 17	Add. 72
1854 Ala. Laws 588, § 3272	Add. 75
1857 D.C. Laws 567, ch. 141, § 15	Add. 79
1861 Ga. Laws 859, § 4413	Add. 84
1861 Pa. Laws 248, 250, § 6	Add. 85
1869 N.M. Laws 312, § 1	Add. 104
1870 S.C. Laws 403, no. 288, § 4	Add. 107
1870 W. Va. Laws 702, ch. 153, § 8	Add. 110
1871 Tex. Laws 1322, art. 6512	Add. 113
1873 Minn. Laws. 1025, § 17	Add. 116
1875 Wyo. Laws 352, ch. 52, § 1	Add. 117
1889 Ariz. Laws, ch. 13, § 1	Add. 118
1889 Idaho Laws 23, § 1	Add. 119
1891 W. Va. Laws 915, ch. 148, § 7	Add. 120
1901 Mich. Laws 687, § 8	Add. 122
1903 Okla. Laws 643, ch. 25, art. 45, § 584	Add. 124
1906 Mass. Sess. Laws 150 § 1	Add. 125
1909 Ala. Laws 258, no. 215, §§ 2, 4	Add. 126
1909 Tex. Laws 105	Add. 128
1911 Mass Acts 568, ch. 548	Add. 129
1913 Haw. Laws 25, act 22, § 1	Add. 131
1913 N.Y. Laws 1627	Add. 132
1919 Mass. Acts 156, ch. 207	Add. 136
1922 Mass. Acts 560	Add. 142
1923 Cal. Laws 701, ch. 339	Add. 144
1923 Conn. Laws 3707, ch. 252	Add. 152
1923 N.D. Laws 379, ch. 266	Add. 156
1923 N.H. Laws 138, ch. 118	Add. 161
1925 Ind. Laws 495, ch. 207	Add. 165

1925 Mich. Laws 473, no. 313	Add. 172
1925 N.J. Laws 185, ch. 64	Add. 176
1925 Or. Laws 468, ch. 260	Add. 181
1925 W. Va. Laws 25	Add. 189
1936 Mass Acts 289 ch. 302, § 131	

## American ordinances

Nebraska City, Neb., Ordinance no. 7 (1872)	Add. 200
Nashville, Tenn., Ordinance ch. 108 (1873)	Add. 201
Los Angeles, Cal., Ordinance nos. 35-36 (1878)	Add. 203
Salina, Kan., Ordinance no. 268 (1879)	Add. 204
Syracuse, N.Y., Ordinances ch. 27 (1885)	Add. 205
Dallas, Tex., Ordinance (1887)	Add. 206
Checotah, Okla., Ordinance no. 11 (1890)	Add. 207
New Haven, Conn., Ordinances § 192 (1890)	Add. 208
Rawlins, Wyo., Rev. Ordinances art. 7 (1893)	Add. 209
Wichita, Kan., Ordinance no. 1641 (1899)	Add. 211

## 13° EDWARDI, I. Circ. Agatis.

A.D.1285.

102 Right of Tithes 1 and Patronage.

Delamation.

And if Debate hang in a Spiritual Court for the Right of Tithes, having his Original from the Right of the Patronage, and the Quantity of the same Tithes do pass the fourth part of the value of the Benefice, a Prohibi-tics abult 2000 tion shall lie.

Also if a Prelate enjoin Penance pecuniary to any Man for his Sin, if the Money be demanded before Pre-Pecuniary Penance. Amends for Violence to a Clerk.

Man for his Sin, if the Money be demanded before Pre-lates, a Prohibition shall lie. And if any lay violent Hands on a Clerk or Lay-Brother for the (') Peace broken, Amends shall be made before the King, and for the Excommunication before a Bishop or Prelate; and if a Corporal Penance be en-joined, which (') the Offender will (') redeem by giving Money to the Prelate, or to the Party givered, a Prohibition shall not lie.

In Causes of Defamation, Prelates may freely correct the King's Prohibition notwithstanding; first enjoining a Corporal Penance, which, if the Party will redeem, the Prelate may lawfully receive the Money, though the Prohibition be shewed.

' King's •

Item si contencio sit (') de jure decimaz, origine fiens de jure patronatus, & eas decimas q ntitas excedat quartam partem ecctie, locu net Regia prohibicio.

Item si Prelatus imponat pena pecuniariam alicui p põõo & petat illam pecuniam, locu het Regia phibicio, si coram Prelatis pecunia exigat'.

Item si quis manus violentes injecit in clicum, (') p (') pace Dñi Regis debent emende fieri coram Rege; p excoicacione vero coram (\*) Epo, & si imponat' pena corporalis, quam si reus velit redime dando Plato vel leso pecuniam potest, nec in thib3 locus est phibicói.

In diffamacioniby [liboa'] corrigant Prelati regia prohibicione non obstante, [licet porrigat'.\*] in Curia Christianitetis

\* vel conversum, 1 libere

 violata 4 prelato vel 4 libere
 <sup>4</sup> prius injungendo penam corporalem, quam si reus redimere velit libere recipiat prelatus pecuniam, licet prohibitio porrigatur.

### Statuta Civitatis London.

#### STATUTES FOR THE CITY OF LONDON.

None shall walk the Streets armed, after Curfew, &c.

THESE be the Articles which Our Lord the King doth command to be well kept in his City of London, for the keeping and maintenance of his Peace.

First, Whereas many Evils, as Murders, Robberics, and Manslaughters have been committed heretofore in the City by Night and by Day, and People have been beaten and evil intreated, and divers other Mischances have befallen against his Peace ; It is enjoined that none be so hardy to be found going or wandering about the Streets of the City, after Curfew tolled at St. Martins le Grand, with Sword or Buckler, or other Arms for doing Mischief, or whereof evil suspicion might arise; nor any in any other Manner, unless he be a great Man or other lawful Person of good repute, or their certain Messenger, having their Warrants to go from one to another, with Lanthern in hand. And if any be found going about contrary to the Form aforesaid, unless he have cause to come late into the City, he shall be taken by the Keepers of the Peace and be put into the place of confinement appointed for such Offenders; and on the morrow he shall be brought and presented before the Warden, or the Mayor of the City for the Time being, and before the Aldermen; and according as they shall find that he hath offended, and as the Custom is, he shall be punished.

Taverns shall not be open after Curfew, &c.

And Whereas such Offenders as aforesaid going about by Night, do commonly resort and have their Meetings and hold their evil talk in Taverns more than elsewhere, and there do seek for shelter, lying in wait, and watching their time to do Mischiel ; It is enjoined that none do keep a Tavern open for Wine or Ale, after the tolling of the aforesaid Curlew; but they shall keep their Tavern shut after that hour, and none therein drinking or resorting; Neither shall any Man admit others in his House except in common Taverns, for whom he will not be answerable unto the King's Peace. And if any Taverner be found doing the contrary, the first time he shall be put in pledge by his Tavera drinking cup, or by other good pledge there found, and he amerced fortypence ; and if he be found a second time offending, he shall be amerced half a mark ; and the third time Ten Shillings ; and the fourth time he shall pay the whole Penalty double, that is to say, Twenty Shillings : And the fifth time he shall be forejudged of his Trade for ever.

Ex magno Rot. Stat. in Turr. Lond. m. 42, in Cedula. TES sont les Articles le queus nre Seign' le Rey J Comaunde q bien seient gardez en sa Citee de Loundres, p' sa pes garder e meyntenir. Primeremet p' ceo q multz des mals com des murdres, Robberyes, e homycides ont este fetz ca en arrere deinz la Citee de nuyt e de Jour, e gentz Batues e mal tretes, e aut's divses aventures de mal avenuz encontre sa pes; Defendu est q nul seit si hardi estre trove alaunt ne wacraunt p my les Ruwes de la Citee, aps Coeverfu psone a Seint Martyn le g'nt, a Espeye ne a Bokuyler ne a autre arme p' mal fere, ne dount mal supecion poet avenir; ne en autre mane nule, sil ne seit g'nt Seign' ou altre prodome de bone conysaunce, ou lour Pteyn message q de els serra garaunty q vount li un a lautre p conduyte de Lumere. E si nul seit trove alant encontre la fourme avantdite, ou q il seit encheson de tart venir en vyle, seit p's p les Gardeyns de la pes e seit mys en Le Tonel, la quel p' tiels meffesours est assigne, e Lendemeyn seit amene e psente devant le Gardeyn ou le Meyre de la Citee q p' tens serra, e devant les Aldermans, e solong ceo q il troveront qil eit trespasse e a ceo seit coustumers seit puny. E pur ceo q tiels meffesours avauntditz, alant nutauntre, communalment ont lour Recet e lour Covynes, e font lour mauveyses purparlances en taverne plus q aillours, e illoekes querent umbrage attendanz e geitant lor tens de mal fere ; Defendu est q nul ne tiegne taverne overte de Vyn no de Cerveyse aps le Coeveríu avantdit psone; mes q il tiegne sa taverne close aps cel houre, e nul leinz Bevaunt ne recettant ne en sa mesoun hors de Communes tavernes nul ne recette p' quy il ne voillit estre respoignant a la pes le Rey, E si nul taivner seit trove q autrement faceo, primerement seit degage p soen Hanap de la Tavne, ou p altre bon gage leinz trove, e seit airicye a quaraunte deniers; E si altre fiez seit trove q ceo faceo, seit anicye a demy mark e a la tierce fiez a dys souz; e a la quarte fiez paie tute la peyne double, cest asav vynt souz. E la quynte fiez seit forsjugge del mestier p' tutz jourz.

Doc: 26-2

170

### 7° Edwardi. II.

A.D.1313.

That non-Return of Piers de

THE King to All who these Letters shall see or hear, Greeting. Know Ye that in our Parliament at Westminster, the Sunday next after the Feast of St. Matthew the Apostle, in the Seventh year of our Reign; for certain and expedient Causes, It was provided and granted by Us, and by the Archbishops, Bishops, Abbots, Priors, Earls, and Barons, and all the Commonalty of our Realm, there being at our command, with one accord assented and agreed; That no one, of what estate or condition soever he be, in any time to come be challenged, taken, nor imprisoned, hindered, molested, nor aggrieved, nor into judgement brought by Us, nor by any other at our Suit, nor at the Suit of any other whomsoever, in our Court nor elsewhere, by reason of the return of Monsieur Piers de Gavaston into England, nor of any Aid, Maintenance, Adherance, nor of any Counsel nor Receipt of him, nor Alliance made with him, or for him, by writing or otherwise, nor by reason of tarrying in his Company or Service in any time passed heretofore. And We will that this Grant and Accord be affirmed and established in all its Points, and that each of them be holden and kept for ever. In Witness whereof, &c. Given as above.

E Roy, a tuz ceux, qi cestes lies Pront, ou orront De codem L'Saluiz. Sachetz, qen nre plement, comence a negotio. Westmoistier le dimeynch pachein aps la feste de Seint Matheu le Apostle, en lan de nre regne septisme, p cteines & covenables enchesons, p'veu est & g'nte p no<sup>9</sup>, & p - - Ercevesqs, Evesqs, Abbes, Priours, Contes & Barons, & tote la comunalte de nre roiaume, illoeqs a nre maundement, uniement assentuz & acorde; q nul de quel estat, ou condicion qil soit, en nul temps avenir, soit chalange, p's, ne enp'sonetz, empeschez, molestez, ne grevez, nen juge-ment menez, p no<sup>9</sup>, ne p autre a nie suite, ne a suite

Ex Rot. Pat. 7 Ed. II. P. s.m. 14. in Cedula.

dautri, qi qil soit, en nie Court ne nulle pt aillors, p encheson du revenir de monf Piers de Gavaston en Englerre, ne de eide, meintenaunce, aerdaunce, ne de conseil, ne de recette de li, ne dalliaunce fait a li, ou por li, p escrit ou autrement, ne p'encheson de demorer en sa compaignie, ne en svice, en nul temps passe cea en arrieres. E volons q ce g'nt & acord soit ferm & estable en touz sez pointz, & chescun de eux soit tenu & garde a ppetuite. En tesmoign, &c. Don ut sup'.

• This follows on the Patent Roll immediately after the Article given in the Note in page 160. In the Old Printed Copies this Article is initialed "Ne quis occasionetur pro reditu Petri de Gaveston." It begins "Edwarde par la grace de dieu &cc. as toutz ceux" and ends "Done a Weftm le vii. jour de Novembre lan de nostre reigne feptifime."

## Statutu sup' Aportam'to Armor'.\* A STATUTE FORBIDDING BEARING OF ARMOUR.

The King forbida the

THE King [to the Justices of his Bench, '] sendeth Greeting. Whereas of late before certain Per-sons deputed to treat upon sundry Debates had between Us and certain great Men of our Realm, amongst other things it was accorded, That in our next Parlia-ment after, Provision [shall '] be made by Us, and the common assent of the Prelates, Earls, and Barons, that in all Parliaments, [Treatises.] and other Assem-blics, which should be made in the Realm of England [for ever,'] that every Man shall come without all Force and (') Armour, well and paceably, to the Honour of Us, and the Peace of Us and our Realm; and now in our [next] Parliament at Westminster, after the said Treatise, the Prelates, Earls, Barons, and the Commo-naty of our Realm, there assembled [to take'] Advice Treatise, the Prelates, Earls, Barons, and the Commo-nalty of our Realm, there assembled [to take'] Advice of this Business, have said, that to Us it belongeth, and our part (<sup>4</sup>) is, through our Royal Seigniory, straitly to defend [Force'] of Armour, and all other Force against our Peace, at all Times when it shall please Us, and to punish them which shall do contrary, accord-ing to [our "] Laws and Usages of our Realm; and (") hereunto they are bound to aid Us as their Sovereign Lord at all Seasons, when need shall be: We com-and your that us cause these Things to be read afore you in the said [Bench,"] and there to be enrolled. Given at Westminster, the thirtieth day of October.

And It was commanded to Sir Roger Brabazon and his Fellows, Justices assigned to hold the King's Pleas before him, that these things they do cause to be read before them, and there to be enrolled.

And It was commanded to the Justices of the Bench, that these things they do cause to be read before them in the said Bench, and there to be enrolled.

* to the Lieutenas	a, the Treasurer and the Barons o	f the Exchequer.
• should • without	<ul> <li>Treaties</li> <li>Old Translations omit.</li> </ul>	at all times, taking
* it	* wearing	"the
" tbat	" Enchequer	

Ex Rot. Pat. 7 Ed. II. P. 1. m. 14. in Cedula.

E Roy, au Lieutenant, le Tresorier, & as Barons L del Eschekier, Salutz. Come nadguaires devant cteines psones deputees a treter s' ascun debatz, euz, entre no9 & ascun de g'ntz de nre Roiaume, entre autres choses feust acordez, q en nre pchein plement aps, p'veaunce se feist p no9 & le comun assentement des Prelatz, Contes, & Barons, q en touz plementz, tretementz, & autres assembletz, q se ferront en roiaume Denglevre a tuz jours, q home veigne santz tote force & saunz armes, bien & peisiblement al honur de no9, & a la pays de no9 & de nre roiaume; et ja en nre [pchein'] plement a Westin aps le ditz tretiz, les Prelatz, Contes, Barons, & la Co. munalte de nie Roiaume illocqs assemblez, eu avisement de ceste bosoigne, no<sup>9</sup> aient dit q a no<sup>9</sup> apent, & devons p nie roiale Seignurie, defendre [portement'] darmes, & tote autre force contre nie pais, a totes les foiz q nous plerra, & punir ceux q contre vendront, selonc les leys & les usages de nre roiaume ; E q a ce sont il tenuz de no<sup>9</sup> aider come leur bon Seign', totes les foiz q mester sra; Vo9 mandons q cestes choses facetz lire devant vo9 en le dit Eschekier, & illocus enrouler. Don a Westin le xxx. jour Doftobř.

¶ Et maunde est a Sire Rogier le Brabanzon & ses compaignons, Justices a les pletz le Roy devant lui tenir assignetz, § cestes choses facent lire devant eux, & illogs enrouler.

I Et maunde est as Justices du Bank, q cestes choses facent lire devant eux, en dit Bank, & illoeqs enrouler.

\* Old Printed Copies omit, \* fortement Old Printed Cobies.

. This Title is in the Margin of the Roll. In the Old Printed Copies this is intituled " Statutum de Defensione portandi Arma ;" and is ascribed to the Seventh Year of King Edward I. The English Title is from the Old Translations.

2º EDW. III. Stat. Northampt. c. 2-5.

A.D.1328.

258

Justices of Assise and Gaol-delivery-

Oyers and Terminers,

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

miners shall not be granted but before justices of the one Bench or the other, or the Justices Errants, and that for great [hurt,] or horrible Trespasses, and of the King's special Grace, after the Form of the Statute thereof ordained in Time of the said Grandfather, and near otherwise none otherwise. ITEM, It is enacted, That no Man great nor small, of ITEM, It is enacted, That no Man great nor small, of what Condition socver he be, except the King's Ser-vants in his presence, and his Ministers in executing of the King's Precepts, or of their Office, and such as be in their Company assisting them, and also [upon a Cry made for Arms to keep the Peace, and the same in such places where such Adts happen,'] be so hardy to come before the King's Justices, or other of the King's Ministers doing their office, with force and arms, nor bring no force in affray of the peace, nor to go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere, upon pain to forfeit their 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 Baili-wicks, 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 Holices, considers, and waters of the react winds, their Wards, shall have Power to execute this AC. And that the Justices assigned, at their coming down into the Country, shall have Power to enquire how such Officers and Lords have exercised their Offices in this Case, and to punish them whom they find that have not done that which pertained to their Office. ITEM, Because the Peace cannot be well kept without

37 Ed. I. c. 3. Grandfather to our Lord the King that now is, wherein

Granature to our Lora us and that now is, whether 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 Gools: Wherefore it is enacted, That

shall deliver the Gaols: Wherefore it is enacted, flaat such [Justices'] shall not be made against the Form of the said Statute; and that the Assises, Attaints, and Certifications be taken before the Jústices commonly assigned, which should be good Men and lawful, hav-ing Knowledge of the Law, and none other, after the Form of another Statute made in the Time of the said

[King Edward the First ; ] and that the Oyers and Ter-

1V. The Statute of Lincoln, 9 Edw. II. concerning Sheriffs, &c. confirmed.

V. The Statute Westminster the Second, (3 Ldw. I. chapter 30, concerning the Delivery of Writsto the Sheriff, confirmed.

ITEM, Because the Peace caunate 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 Lincoh, 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 Sheriff's and Bailiff's of Fee shall cause their Counties and Bailiwicks to be kept by such as have Lands therein

ITEM, Where it was ordained by the Statute of West-minster 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 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 butter of Arriter thell hour source to encourse the encourse the the Justices of Assiscs shall have power to enquire thereof at every Man's Complaint, and to award Damages, as having respect to the Delay, and to the loss and peril that might happen

that might happen 'Commissions' Grandfahre 'upan n Predvantion of Dreit of Jinnt in time of Proce, and that in Places sucher such Dreit arts to charg.-See Lib, Rub, Sen: Weath, for 122 b. a Writ reciting a Grant of K. Richard I. "of Jonncafita simt in Angt in v, placias I ndy Sark & Witch's Int Warkwich & Kenelingworth : Ib's Nanford & Warneford: Int Brakele & Mirsb?: Int' Blie & Tykchilt. Its of pas fre uie ui infinger, n' potestas Ju-ticiaria minorabit' Nee de frestis nTis dapnil inferett." of the King

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

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

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

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

A.D.1351-2.

## 25° EDW. III. Stat. 5. c.1, 2.

In Margine Rotuli.

319

## Statutu apud Westm in p'liamento in festo S'ci hillarii anno regni Regis E. t'cii vicesimo qinto tento, f'em.

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.

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

U plement somonz a Westm, en la feste de Seint A Hiller lan du regne nre Seign' le Roi Edward Denglerre vintisme quint, & de France douzisme, nre d' le Roi del assent des Prelatz, Ducs, Countes, Barons, & de tout la comunalte de son Roialme Denglerre, au dit plement somons, al hon' de Dieu & de Seinte Eglise, & en amendement de son dit Roialme, ad ordeine & establi les choses soutzescriptes.

En p'mes, p'ce q tresg'untz & tresout'geouses damages & grevances sont faites au poeple p les pno's & p'veo's des vitailles p' les hosteux nre l' le Roi, ma dame la Roigne, & de lo' enfantz, Si est acorde & assentuz en le dit plement, q les pno's & p'veio's des bledz p' les ditz hosteux les pignent p mesure rase, selonc ceo  $\widetilde{q}$  home use pmy le Roialme. Et  $\widetilde{q}$ touz bledz, feyns, litere & bestaill, & touz auts vitailles & choses quecüqes, queles sont aprendre p' meis-mes les hosteux, soient p'sez a la Proie value, p les Conestables & auts bons gentz des villes ou tieles prises se feront, sanz ce q p manaces, ou duresces soient les preisours chacez a mettre autre pris q lour Sement ne voet, & come curt coement en les pscheins marchees : et q entre les Purveours et ceux des queux les biens Bront prises, en la psence des Conestables & preisours, soient tailles tantost faites, saunz ceo q les gentz des queux les biens Bront prises soient aillours traitz ou t'vaillez; & meismes les tailles ensealez des seals les pnours des choses issint prises, p les queles tailles gre soit fait as ceux des queux les choses Bront issint prises : et si nul pnour ou P'veour p' les ditz hosteux face p autre mane, soit meintenant arestu p la villee ou la prise sra faite, et mesne a la pscheine gaole, et si de ceo soit atteint, soit la fait de lui come de laron, si la quantite des biens le demand; solonc ceo qen un estatut fait en temps meisme nie f' le Roi lan de son regne quint, & en un autre estatut fait en temps laiel nie Seign' le Roi s' tieles prises, est contenuz plus au plein : et q desore soit contenuz es comissions des tieux P veours et pnours, lentent et la peine contenuz en cest estatut : et q nule comission soit faite forsq, soulement souz les g'nt ou prive sealx le Roi; ne q nul home soit tenuz de obeier a autre comis-sion nen autre mane q nest dit en avant; et q meisme lestatut tiegne lieu en toutz pointz devs chescun pnour & p'veour, de chescune mane des vittailles en chescune ptie du Roialme de quele condition qil soit.

Auxint p'ceo q divses opinions ount este einz ces heures qeu cas, q'nt il avient doit estre dit treson, & en quel cas noun, le Roi a la requeste des Seign's & de la Cõe, ad fait declarissement q 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 Commonality 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 Third nuderwitten. T the Parliament summoned at Westminster in the hings underwritten. the

FIRST, Forasmuch as great and outrageous damage and grievance hath been done to the People by the Takers and Purveyors of Victuals, for the Houses of our Sovereign Lord the King, the Queen, and their Children; It is accorded and assented in the said Parlia-ment. That the Takers (1) of Come for the said Parlia-Children; It is accorded and assented in the said Parila-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 Victuals and Things, which shall be taken for the said Houses, shall be [taken'] burds user Value bu the Cornerble and either sord by the very Value, by the Constable and other good People of the Towns where such Taking shall be made, reopie of the Jowns where such laking 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 rouneth in the next Markets. And that betwixt the Purveyors and them whose Goods shall be taken in the presence of the Constables and Praisers, Tallies be made incontinently, without that that the Papole whose Goods shall be taken that be down 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 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 Commissions of such Takers and Purveyors, the Intent and Pain limited in this Statute shall be contained : and fain imited in this Statute stant 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 Itake place in all Points against every Taker and Pur-veyor of every Manner of Vidual in every part of the Realm, of what Condition scover he be. ITEM, Whercas 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

and Pureryours

\* praysed I immediately \* any other Commyssions, or in other manner MS. Tr. 2. \* what case should be adjudged 'Freason, and what not ;

Corn shall be taken by Purveyors by Measure striked Things taker

by Purveyore shall be appraised at the very Value.

> Tallies of the Goods taken.

Punishment for undue Purveyance 5 E. III. c. 2.

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

11. Declaration what Offences shall be adjudged Treason

320

25° Epw. III. Stat. 5. c.2, 3.

Compassing C the Death of F the King, Queen, or the Bon 1, the Cited of C Queen, or the Cited of C Queen, or the C Queen, or the C Queen, or the C Ring's eldest D Daughter 1 unmarried, or his eldest C Son's Wife 1 lerying War 1 adhering to Son's Wife 1 beams 1 Beaks or 1 Money 1 Limporting C Counterfeiting the King's Money 1 Judges in Execution of the King a shall have the Forfeiture of all the Offender's Lands. New Cuertions of the Londs. New Supersons a shall be decided in Parliament.

Certain Offences not Treason. In such Cases already happened, the Chief

the Chief Lords shall have the Escheata. Saving the King's Year and Waste.

Scire facias to Terretenants, Scc.

III. Challenge of an Indictor upon an Inquest.

doth compass or imagine the Death of our Lord the King, or of our Lady his [Queen '] or of their eldest Son and Heir; or if a Man do violate the King's [Companion,'] or the King's eldest Daughter unmarried, or the Wife (') the King's eldest Daughter unmarried, and no levy War against our Lord the King in his Realm, or be adherent to the King's Enemies in his Realm, or be adherent to the King's Enemies in his Realm, or be adherent to the King's Enemies in his Realm, or be adherent to the King's Enemies in his Realm, giving to them Aid and Comfort in the Realm, or elsewhere, and thereof be [probably'] attainted of open Deed by [Uhe People'] of their Condition : And if a Man counterfeit the King's Great or Privy Seal, or his Money; and if a Man bring false Money into this Realm, counterfeit to the Money of England, as the Money called Lushburgh, or other, like to the said Money of England, knowing the Money to be false, to merchandise or make Payment in Deccit of our said Lord the King and of his People; and if a Man slea the Chancellor, Treasurer, or the King's Justices of the one Bench or the other, Justices in Eyre, or Justices of the enements holden of other; also ding their Offices: And it is to be understood, that in the Cases above rehearsed, [Itht] ought to be judged Treason which extends to our Lord the King, and his Royal Majesty : And of such Treason the Forfeiture of the Escheats pertaineth to our Sovercign Lord, as well of the Lands and Tene-ments holden of other, as of himself : And moreover there is another manner of Treason, that is to say, when a Servant slayeth his Master, or a Wife her Husband, or when a Man secular or Religious slayeth his Prelate, to whom he oweth Faith and Obedience; and [of such Treason the Escheats ought to pertain <sup>6</sup>] to every Lord of his own Fee: And because that many other like Treason the Escheats ought to pertain "] to every Lord of his own Fee: And because that many other like Cases of Treason may happen in Time to come, which a Man cannot think nor declare at this present Time; a Man cannot think nor declare at this present Time; It is accorded, That if any other Case, supposed Trea-son, which is not above specified, doth happen (') before any Justices, the Justices shall tarry without any going to Judgement of the Treason, till the [Cause'] be shewed [and declared before the King and his Parlia-ment,"] whether it ought to be judged Treason or [other"] Felony. And if percase any Man of this Realm ride armed [coverly"] or secretly with Men of Arms against any other, to slay him, or rob him, or take him, or retain him till he hath made Fine or Ran-som for to have his Deliverance; it is not the Mind of take him, or retain him till be hath made Fine or Ran-som for to have his Deliverance, it is not the Mind of the King nor his Council, that in such Case it shall be judged Treason, but shall be judged Felony or Trespass, according to the Laws of the Land of old Time used, and according as the Case requireth. And if in such Case, or other like, before this Time any Justices have judged Treason, and for this Cause the Lands and Te-nements have comen into the King's hands as Forfeit, the Chief Lords of the Fee shall have the Eschetts of the Tenements holder of them, whether that the same the chief Lords of the Fee shall have the Escheats of the Tenements holden of them, whether that the same Tenements be in the King's hands, or in others, by Gift or in other Manner; Saving always to our Lord the King the Year, and the Waste, and the Forfeitures of Chattels, which pertain to him in the Cases above named; and that [the Writs "] of Scire facias be granted in such Case against the Land:tenants, without other Original, and without allowing [any Protection "] in the said Suit; and that of the Lands which be in the King's hands, Writs be granted to the Sheriffs of the Counties where the Lands be, to deliver them out of the King's hands without Delay. the King's hands without Delay.

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

' Wife	' of
proveably MS. Tr. 2.	• People
* such Manner of Treason givetb	Forfeiture of Escheats

- 7 of new, MS. Tr. 2. Case
- before the King in his Parliament, and it be declared " else." oten h
- "else "openly "Writs "the Protection of our Lord t
- "Writs "the Protection of our Lord the King

3 it

q'nt home fait compasser ou ymaginer la mort nre Seign' le Roi, ma dame sa compaigne, ou de lour fitz primer & heir; ou si hôme violast la compaigne le Roi, ou leisnesce filt le Roi nient marie, ou la compaigne leisne fitz & heir du Roi; & si home leve de guerre contre nre dit Seign' le Roi en son Roialme, ou soit aherdant as enemys nie Seign' le Roi en le Roialme, donant a eux eid ou confort en son Roialme ou p aillours, & de ceo pvablement soit atteint de ovt faite p gentz de lour condicion : et si home contreface [les g'nt ou prive sealx le Roi,'] ou sa monoie, et si home apport faus monoie en ceste Roialme contrefaite a la monoie Denglevre, sicome la monoie appelle [Lucynburgh'] ou autre semblable a la dite monoie Dengletre, sachant la monoie estre faus, p' marchander, ou paiement faire en deceit nre dit Seign' le Roi & son poeple; et si home tuast Chanceller, Tresorer, ou Justice nre Seign' le Roi del un Baunk ou del autre, Justice en Eir & des assises & toutes aul's Justices assignez a oier & Pminer esteiantz en lours places en fesantz lours offices : ct fait a entendre qen les cases suisnomez doit estre ajugge treson [q sestent'] a nre Seign' le Roi & a sa roial majeste; et de tiele mahle de treson la forfait'e des eschetes apptient a nie Seign' le Roi, si bien des Pres & tenz tenuz des aufs, come de lui meismes : et ovesq, ceo il yad autre make de treson, cest assavoir q'nt un Pvant tue son meistre, une feme q tue son baron, q'nt home seculer ou de religion tue son Prelat, a qi il doit foi & obedience; & tiele make de treson donn forfait'e des eschetes a chescun Seign' de son fee ppre : et p' ceo q plusurs aufs cases de semblable treson p'ront escheer en temps a venir, queux hôme ne p'ra penser ne declarer en psent, assentu est q si autre cas supposee treson q nest especifie p amount aviegne de novel devant ascunes Justices, demoerge la Justice saunz aler au juggement de treson, tanq, p devant nre Seign' le Roi [en '] son plement soit le cas monstree & desclarre le quel ceo doit estre ajugge treson ou autre felonie. Et si p cas ascun hôme de cest Roialme chivach arme descovert ou secrement od gentz armees contre ascun autre, p' lui tuer ou derober, ou p' lui ondre & retenir tangil face fyn ou raunceon p' sa deliverance avoir, nest pas lentent du Roi & de son conseil q en tiel cas soit ajugge treson, einz soit ajugge felonie ou Pspas solone la lei de la Pre auncienement usee, & solonc ceo q le cas demand : et si en tieu cas, ou autre semblable devant ces heures, ascune Justice eit ajugge treson, & p celle cause les Pres & tenz soient devenuz en la main nre Seign' le Roi come forfaitz, eient les chiefs Seign's de fee lours eschetes des tenz de eux tenuz, le quel q les tenz soient en la main nre Seign' le Roi, ou en la main des auls, p donn ou en autre mane; Sauvant totefoitz a nre Seign' le Roi lan & le wast, & aul's forfait'es des chateux q a lui attenent en les cases suisnomez; et q briefs de Scire fac vs les Pres tenantz soient g'ntez en tieu cas, saunz autre originale & saunz allower la pteccion nie Seign' le Roi en la dite seute; et q de les Pres q sont en la main le Roi, soit g'nte brief as viscontes des Countees la ou les Pres Bront de ostier la main le Roi saunz outre delaie. Auxint acorde est, q nul enditour soit mys en en-

quest s' la delivance del endite de Pspas ou de felonie, sil soit chalange p tiele cause p celui qest endite. Le grant scal le Roi, Ret. Parl. 25 E. 3. P. II. nu. vij. (17.)

le grant seal le Roi, Rat. Parl. 25 E. 3. P. II. nu. vij. (17.)
Lusseburgh Rat. Parl.
& Rat. Parl.
& Rat. Parl.

Doc: 26-2

25° EDW. III. Stat. 5. c. 4-10.

Estre ceo, come contenu soit en la g'nt Chre des franchises Dengletre q nul soit pris ne emprisone, ne ouste de son frank teñ ne de ses franchises ne de ses franches custumes, sil ne soit p lei de la Pre; Acorde est, assentu & establi, q nul desore soit pris p peticion ou suggestion faite a nre Seign' le Roi ou a son conseill, sil ne soit p enditement ou psentement des bones & loialx du visnee ou tiele fait se face, & en due mane, ou pces fait sur brief original a la cõe lei; ne q nul soit ouste de ses franchises ne de son frakten sil ne soit mesne duement en respons, & forjugge dyceles p voie de lei; et si rien soit fait al encontr soit redresse & tenue p' nul.

Ensement acorde est & establi, q executours des executours eient accion des dettes, acomptes, & des biens emportez du primer testatour, & execucion des estatutz marchantz & reconissances faites en court de record au pmer Testatour, en meisme la mahe come le pmer testatour avoit sil foust en vie, auxibien daccions de temps passe, come de temps avenir, en toutz cases ou juggementz ne sont pas renduz unqore entre tieux executours des executours; mes q les juggementz a contire en temps passe, estoisent en lour force; et q meismes les executours des executours respoignent as auls de tant come ils averont recovi des biens du Pmer testatour, sicome les Pmers executours ferroient sils feussent en pleine vie.

Auxint acorde est & assentu, q nul pnour de buche ou de maerisme al oeps nre Seign' le Roi, p' oveyns ne p' auts choses faire, coupe, ne abate les arbres de nully cressantz entour ou dedeinz sa mansion; et si nul face au cont ire face gre a la ptie du damage au treble, & eit la prisone dun an, & soit forjugge de son office.

Estre ceo est acorde & establi, q nul Forester ne Gardein des forestes, ou des chaces, ne nul autre Ministre, ne face ne coille put'e ne nul autre coillect des vitailles ne de nul autre chose, p colour de son office contre nully volunte, deinz lour baillie ne dehors, forspris ce qest due dauncien droit.

Auxint acorde est & assentu, q nul home soit arte de trover gentz darmes, hobellers narchers aufs q ceux q tiegnent p tiele Bvice, sil ne soit de coe assent & g'nt fait en plement. Ensement p'ce q tresgrant damage & desceit est fait au poeple, p tant g plus's marchantz usent dachater & poiser leines & aut's marchandises p une pois qest appelle Aunsett, acorde est & establi, q celle pois appelle Aunsett entre achatour et vendour soit del tout oste, & q chescun vend & achatte p balances, issint q les balances soient owels & les leines & auts marchandises owelment poisez y droit pois; et q le sak de leine ne poise q vint & sys peres, & chescun pere poise quatorze livres, & q lestater de la balance ne encline ne a lune prie, ne al autre, & q le pois soit acordant al estandard del Escheker : et si nul achatour face al encontre, soit grevousement puny si bien a la seute de ptic come a la seute nre Seign' le Roi.

Auxint come contenue soit en la g'nde Chre q une mesure soit usee pmy tout Engletre, la quele chartre nad mie este tenu bien en ceo point avant ces heures; si est acorde & assentu, q touz les mesures cest asavoir bussel, di bussel, & peck, galon, potel & quart, p toute Englei re deinz franchise & dehors soient acordauntz al estandard nre Seign' le Roi; & contiegne le quart oet busselx p lestandard & nient pluis ; & soit chescune mesure de blee rase saunz comble, sauvez les rentes & fermes des Seign's queles soient mesurez p 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 impri-soned nor put out of his Freehold, nor of his Franchises nor free Custom, unless it be by the Law of the Land; It is accorded assented, and stablished, That from henceh is accorded asserted, an atomster, i had not inter-forth 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 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 Franchies, 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 redresseed and holden for none.

ITEM. It is accorded and stablished. That Executors of Executors shall have Actions of Debts, Accompts, and of Goods carried away of the first Testators, and Execution of Statutes Merchants and Recognizances made in Court of Record to the first Testator, in the same Manner as the first Testator should have had if same Manner as the first Testator should have had if a uthe first he were in Life, as well of Actions of the Time past, as Executors, of the Time to come, in all Cases where Judgement is not yet given betwirk 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 all answer to other of as much as they have recovered of the Goods of the 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 stablished, That no Taker of Wood nor of Timber to the King's Use for work, nor for to make other thing, shall cut or cast down the Trees of any Man growing about or within his House; and if any do to the contrary, he shall make 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 stablished, 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 Archers, other than those which hold by such Services, if it be not by common Assent and Grant made in Parliament.

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 Merchandicse evenly weigh by right Weight; so that the Sack of Wool weigh no more but xxvi Stones, and every Stone to weigh no more but xxvi Stones, and every Stone to bow more to the one part than to the other; and that the Weight be according to the Standard of the Ex-chequer: 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 striken without Heap, saving the Rents and Ferms of Lords, which shall be measured by such Measures as they were wont in Times past. of Executors

321

be taken upor Suggestion without lawful Presentment

nor disfear chised, but by Course of Law.

v Executors of Executors shall have the same Rights and Duties

Purveyors thall not take Trees about the Mansion.

VII. Kcepers 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

1X. A uncel Weight Weight abolished. Goods shall ne weighed by Balance

Magna Carta, chapter 25. respecting Measures and enforced

.25° Epw. III. Stat. 5. c. 10-17.

And the Purveyors of the King, of the Queen, and all And the Purveyors of the King, of the Queen, and all other, shall make their Purveyances by the same Mea-sure 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 aforeraid, 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 Justices shall inquire of and punish the Offendera Saving of Franchises.

Points without Blemish to be made in any Manner.

ITEM, It is assented, That reasonable Aid to make

ITEM, It is accorded, That it shall be lawful for every

Man to exchange Gold for Silver, for Silver for Gold, or for Gold and Silver,'] so that no Man hold [the same as exchanged,'] nor take no Profit for making such Exchanged, pro Pain of Forfeiture of the Money so exchanged; except the King's Exchangers, which take Profit of such Exchange, according to the Ordi-nare after mode.

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

322

XII. None shall take Profit by Exchange of Gold or

ITEM, It is accorded, That the Money of Gold and Silver which now runneth, shall not be impaired in Weight nor in Allay; but as soon as a good way may be found, the same be put in the antient State, as in the Stables XIII. The current Coin shall not be impaired. the Sterling. 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 a trach 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 tor Precept of Capias shall be incontinently made, re-turnable at three weeks after; and in the same Writ or Precept is 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 Indictee 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 hinself, 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.

nance afore made.

the Sterling.

be saved.

XIV. Process against Persons indicted of Felony.

XVI. Exception of Nontenure of Parcel. 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 Exigend (by'] the Sheriff's Return, as is used in a Writ of Accompt.

ITEM, It is accorded, That by the Exception of Non-tenure of Parcel no Writ shall be abated, but for Quan-

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 Oppres-sion of the People; It is accorded, that no such Taker,

sion 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 con-tained in every Commission of such Purveyors.

Omit this Word. Knight's for far Gold, or Silver for Silver or for Gold, a common Exchange upon

tity of the Nontenure which is alledged.

et facent les p'veours le Roi, ma dame la Roigne, & toutz autres, lours p'veances p meismes les mesures rases, & en meisme la maîile; & a toutes les foitz q mestier Bra, nre Seign' le Roi assignera cteines Justices en chescune Countee, denqueer & doier & Pminer s' les pointz suisditz, & de faire s' ce due punissement, solonc chescun Papas, si bien a la seute de ptie, come a la seute le Roi; Issint totes foitz q toutes mailles des franchises soient sauvez as Seign's en touz pointz saunz nul emblemissement ent faire en geumq, manie.

Estre ceo acorde est & assentu q renable eid, p' faire leisne fitz le Roi Chivaler, & sa eisnesce filt marier, soit demande & leve solone la forme del estatut ent fait, & nemie en autre manie, cest assavoir de chescun fee (') tenue du Roi saunz meen, vint souldz & nient plus; & de chescun vint livree de Pre tenue du Roi saunz meen en sokage vint souldz & nient plus.

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

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

Et auxint est acorde & assentu, q aps ceo q ascun home soit endite de felonie devant Justices en lour sessions doier & miner, soit comande au viscont 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, meintenant soit autre brief ou Pcept de Capias fait, retournable as trois symeignes aps; & en meisme le brief ou Pcept soit compris q le viscount face seisir les chateux & les sauvement garder tang a jour de brief ou pcept retournable; et si le viscount respoigne q le corps nest pas trovce, ne lendite vient point, soit lexigend agarde & soient les chateux forfaitz, sicome la lei de la corone demand : Mes sil viegne & se rend ou soit pris p viscount ou p autre Ministre devant le retourn del scile Capias, adonos soient les biens & les chateux sauvez.

Ensement p'ce q les achatours & pnours des prises le Roi pnent berbitz du poeple, pentre la Pascfi et la fest de Seint Johan od les leines, & les fount preiser a [mene'] pris, & puis les mandent a lours mesons demesne & les fount tounder a lour pfit demesne, en deceit du Roi & g'nt oppssion du poeple, Si est acorde & assentuz, q nul des tieux Purveours, pnours & achatours ne pigne nules berbitz devant la scisone du toundeson, forsq, a tantz q p'ront suffire resonablement tanto, au temps du toundison, & aps 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 ptie, soit fait de lui come de laron ou de robbour, & soit la peine contenue en chescune comission des tieux p'veours.

Auxint acorde est & assentue, q p excepcion de nounten'e de pcell null brief soit abatu forsq, p' la quantite de la nounten'e gest alegge. Ensement acorde est & assentue, q autiele pres soit fait en brief de dette, deteneu des chateux, & en prises des avers p brief de Capias, & p pces dexigend, p retourii de viscount, sicome est usee en brief dacompt.

<sup>1</sup> de Chivaler Rot. Porl. 25 E. III. P. II. nu. xix. (29.) <sup>2</sup> petit Printed Copies-mesne Rot. Parl. xxxj. (41.)

### A.D.1351-2.

## 25° Epw. III. Stat. 5. c. 18-22.

Estre ceo acorde est & assentue, q nient contreesteant adjournement faite en Eire p brief de libtate pbanda p'chacee en favour des neifs, p' delaier les Seign's de lours accions devs tieux neifs, soient les Seign's receux dalegger excepcions de villenage contre lours vileins en toutz briefs le quel q les ditz briefs de libtate phanda soient p'chacez p deceit ou en autre mable, et q les Seign's pussent seisir les corps de lours vileins, auxi bien come ils p'roient devant q tieux briefs de libtate phanda feurent ordenez & p'chacez.

Auxint come nie Seign' le Roi eit avant ces heures fait preccions as divses gentz q lui estoisent tenuz en ascuñ malbe des dettes, qils ne sront mie empledez des dettes queles ils deivent as auls, tang, ils eussent fait gre a nie Seign' le Roi de ceo q lui estoit due p eux p resoun de sa progative, & issint durantes tieles preccions nul home ad este osee dempleder tieux dett's; acorde est & assentue, q nient contreesteant tieles pteccions les pties quant accions a lours dettours, soient respounduz en la Court le Roi p lours dettours, et si juggement soit sur ceo rendu p' le pleintif ou demandant, soit lexecucion de cel juggement mys en suspens tanq gre soit fait au Koi de sa dette; et si les Creansours voillent empndre p' la dette le Roi, soient ils a ceo receuz, & outre eient execucion devs lours dettours de dette a eux due, & auxint recovent devs eux tant come ils paieront p' eux au Roi.

Ensement acorde est & assentue, q les Moneours, & au?s gardeins & Ministres de la monoie, receivent plat dor & dargent p pois, & en meisme la mane delivent les monoies q'nt eles sront faitz p pois, & nemie p nombre, saunz nully targer. Estre ce, come avant ces heures les Botillers nie Seign' le Roi & lours deputees soleient pndr, & pnent de jour en autre, moult plus des vyns, p colour de lour office al oeps nre Seign' le Roi qil ne bosoigneroit, des queux les plus fiebles ils delivent al oeps nie f' le Roi, & les meillours en g'nt nombre ils retiegnent devs eux a vendre & a faire ent lour pfit, & alafoitz ils relessent as marchantz ceo qils ount pris de eaux, p' fines & donnes qils pignent de meismes les marchantz p extorsion, en g'nt damage & empovissement des ditz marchantz; si est acorde & establi q le Seneschal del Hostiel le Roi, & le Tresorer de la Garderobe, mandent as touz les portz Denglevre la ou vyns sont a pndr al oeps le Roi le ctein nombre q le Botiller pndra en chescun port, si q rien soit pris outre cel nombre; et q Meir & Baillifs des ditz portz 2tifient les ditz Seneschal & Tresorer le nombre des toneux issint prises p le Botiller ou ses lieutenantz, souz les seals des ditz Meir & Baillifs, & p endenture faite entre eaux & les pnours des ditz vines; et en cas qil soit trove q le Botiller ou ses lieu tenantz Pignent plus ou Pignent lower de nully ou delaie nully p colour de son office, come p 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 q'nt lui plerra denquere sur cestes choses; & respoigne le Botiller sibien p' ses deputees come p' lui meismes, la ou ils ne sont mie sufficeantz.

Auxint p' ce q ascuns p'chacent a la Court de Rome pvisions, davoir Abbeies & Priories en Engletre, en destruccion du Roialme & de seinte religion, acorde est & assentue q chescun q p'chace tieles pvisions dabbeie ou de priorie, q lui & ses executours & pcuratours q suent & fount execucion de tieles prisions, soient hors de la preccion n'e Seign' le Roi ; & q home pusse faire

ITEM, It is accorded and assented, that notwithstand-ITEM, It is accorded and assented, that notwithstand-ing adjournment made in Eyre, by Writ of Liberate probanda, purchased in favour ofe 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 Liberate 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 Liberate probanda were oblight or before that the Writs of Libertate probanda were ordained or

ITEM, Forasmuch as our Lord the King hath made before this Time Protections to divers People, which 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; and if Judgement be thereupon given for the Paintiff or Demandant, the Execution of the same to the King of his Debt; and if the Creditors will undertake for the King's Debt, they shall be thereuno 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 of them.

ITEM, It is accorded and assented, That the Moneyand in the same Manner shall deliver the Money when is shall receive Plate of Gold and Silver by the Weight; and in the same Manner shall deliver the Money when is shall be made, by Weight, and not by Number, with-out any tarving out 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 Mer-chants that which they have taken of them, for Fines and Giffs which they take of the same Merchants but chants 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 Butter shall take in every Port, so that nothing be taken over this Number; and that the Mayor and Bailiffs of the Suid Ports certify the said Steward and Treasurer of the Number of all the Tuns so taken by the Butter 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 Butter or his Lieutenant take more, or take Reward of the said Wines; and in case that it be found, that the Buller 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 Imprison-ment, 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 enficient. they be not sufficient.

ITEM, Because that some do purchase in the Court of Rome Provisions, to have Abbies and Priories in England, in Destruction of the Realm, and of Holy Religion; It is accorded, That every Man that pur-chaseth such Provisions of Abbies or Priories, that he and his Furencement and Remembrance the data chaseth such trovisions of Address of Address, 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

Old Printed Copies amit these Words.

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

323

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

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

Regulations therein

Punishment of the Butlers

XXII. Penalties on purchasing Provisions at Rome, for Abbies, or P-

## 25° Epw. III. Stat.5. c. 22, 23.—Stat. 6.

A.D.1351-2.

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 Possession, shall be excuted against all People, and shall never be impeached nor grieved for the same at any Man's Suit.

XXIII. Companies of Lombards for the Debts of their

324

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 duratic address of the Reales, it is exceeded 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.

#### ' 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 striftly observed, and holden. Witness the King at West-minster, the saith 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 Shareshull 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 enenny du Roi et du Roialme; ét q celui q face contre tiels pvisours en corps ou biens ou en auts possessions, soit excuse devs touz gentz, & p tant ne soit james greve nempeschee au seute de nully.

Auxint p'ce q plusurs gentz du Roialme, qont fait contractes ove Lumbardz q sont nomez des compaignies demorantz en meisme le Roialme, queux Lombardz aps qils ount fait lours obligacions a lours 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 q si nul marchant de compaignie conue se oblige p la maîte, q la compaignie respoigne de la dette. Issint q autre marchant qi nest mie de la compaignie ne soit p tant grevez nempeschez.

B Vič Kanč, saltm. Quedam statuta, in pliamento não D' priamaõõe apud Westm in festo sci Hillar pi Prito convocato, p Statuti. nos Prelatos Duces Comites Barones & alios de cõitate regni nri Angt ad dcm pliamentum sumonitos, edita, tibi mittim<sup>9</sup> sub pede sigilli nii, mandantes qd statuta pdča in pleno Com tuo legi & ea firmi? observari & teneri fač. T. R. apud Westin vi. die Marč.

Conš bria dirigunt' singulis vicecomitib3 p Angt sub eadem data.

Cons bre dirigit' Justič Hibii mutatis mutand sub eadem data.

Conš bria dirigunt' subscriptis sub eadem data vidett. Wilto de Shareshull & sociis suis Justič ad ptita coram rege tenend assigñ.

Joh de Stonore & sociis suis Justič de cõi Banco. Thes & Baronib3 de scaccio.

### Drdínacio p' Clero fc'a apud Mestm, anno r. R. C. t'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 Twelfh, 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 estati deliberacion les peticions & articles a lui bailliez en son plement, tenuz a Westmonster en la feste de seint Hillar lan de son regne Denglerre vintisme quint, & de France duszisme, p Lon'able piere en Dieu Simon Ercevesq, de Cantibirs et au's Evesüs de sa prince, s' & p' cteines grevances queles ils disoient estre faites a seinte eglise et a la clergie, encontre les privileges de seinte eglise, & dunk ils prierent q 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.

364

31° EDW. III. Stat. 4. c. 19.

A.D.1357

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 abovesaid 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 Deceirs, Extortions, Oppressions, and Grievances and other Matters aforesaid, under the Seals of him the said Justice and of the others associated with him, distincily 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.

Pjudiciū, & ipius populi destruccoem & injuriam manifestas, ac cont' justiciam & formā statuti pdči : Volum<sup>9</sup> & firmi? peipim<sup>9</sup> qd Justič nr Hibii qui p tempe fuit, in singulis Com & pub; p quos t'nsierit, associatis sibi Prelato loci, & aliquo Comite seu alio nobili vel Milite eaadem pciú vicinaa, de Pdčis falsitatib3, extorsionib3, oppssionib3, g'vaminib3, & excessib3, & omiby sup'deis p ipos firmarios quomodolibet ppertis, & de ipop fcis & gestib; in hac pte, tam ad sectam nram q'm alios quoscuq, inde conqueri volenciu tam de tempe plito q m futuro inquirat; & Vsus cos pcedat, & contemptus, faisitates, extorsiones, oppssiones, g'vamina & excessus, ac alia Pdča audiat & Pminet, necnon delinquentes & culpabiles cum tales inventi füint castiget & puniat, scom legem & consuetudinem Pre nre Hibn antedeas; & nos & consiliu nrm in Angt de noib3 sic culpabiliu, ac de falsitatib3, extorsionib3, oppssionib; & g'vaminib; & aliis Pdčis sub sigillis ipius Justič & sibi associatoș, distincte & apte de tem-pore in tempus nichilomin<sup>9</sup> Etificet ex Eta causa. [In cujus, &c. T. ]k. apud Westm xxv. die Octobř. p ipm Regem & Cons.']

In cujus rei testimoniü has fras nras fieri fecim? patentes. Teste me ijio apud Westin vicesimo quinto die Octobr, anno regni nii Angt ticesimo pinto, regni vo nii Franc decimo octavo.

Nos autem Ordinações Voluntates & perpta poliz, ac omia Nos autem Ordinacoes Voluitates ex perpira puez, ae onna alia & singla in tris pleis cotenta rata hentes & gras, ca mo nob & herediby niis quantum in nob est, acceptam? approba-mus, ratificam? & confirmam?, put lie plete rationabil? tessant. In cuj?, &c. T. R. apd Westin xxy die Junii. Rat. Pat. 17 Rit. II.

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

## Statutu fe'm in p'llameto tento apud Mestm ; anno rrriiijto.

In Margine Rotuli

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

THESE be the Things which our Lord the King, the Prelates, Lords, and the Commons have or-dained 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 (')

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

Vagabonda;

They may take Surety for good Belaviour;

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 chastice them according their Trespass or Offence; and to cause them to be imprisoned and duly punished accord-ing to the Law and Customs of the Realm, and according to that which to them shall seem best to do by their Discretions and good Advisement; and also to inform them, and to inquire of all those that have been Pillors and Robbers in the Parts beyond the Sea, and be Philors and Robolets in the Tarts 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 Suepicion, 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

I abat it to say : \* All Translations read thus

Ex magno Rot. Stat. in Turr. Lond. m. 10. YES sont les choses queles nie Seign' le Roi Prelatz U Seign's & la comune ont ordinez en cest p'sent plement, tenuz a Westmustier le Dymenge pschein devant la feste de la Convision de Seint Poul, a tenir & publier obtement pmy le Roialme ; Cestassavoir :

Primement q en chescun Countee Denglet re soient assignez, p' la garde de la pees, un Seign', & oveset lui trois ou quatre des meultz vauez du Countee, ensemblement ove ascuns sages de la ley, & cient poer de restreindre les mesfesours, riotois, & touz aufs baretto's, & de les p'suir, arester, p'ndre, chastier, selone leur Uspas ou mesprision ; & de faire emprisoner, & duement punir selone la ley & custumes du Roialine, & selone ce gils Pront mieltz affaire p lo' discressions & bon avisement ; & auxint de cux enformer & denquere de touz ceux qi ont este pilours & robeours es pties de dela, & som ore revenuz & vont vagantz, & ne voillent t'vailler come ils solcient avant ces hours; & de pondre & arester touz ceux gils pront trov p enditement, ou p suspection & les mettre en prisone & de jondre de touz ceux [qi sont '] de bone fame, ou ils 'sront trovez, souffisant seurete & meinprise de

qi ne sont Lib. Scace, Wertm. IX; MS. Cott. Nero C. I; and the Old Printed Copies.

#### A.D.1360-1.

## 34° Epw. III. c. 1-6.

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

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

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

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

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

Item come contenu soit en la g'ut Chie, q une mesure soit use pmy tut Engletre, la quele Chre nad mie este tenue bien en ce point avant ces heures ; si est acorde & assentu, q totes les mesures, cest assavoir bussel demy bussel & Peck, galon potel & quart, p tout Englet're deinz franchise & dehors

Behaviour towards the King and his People, and the other duly to punish; to the Intent that the People be not by such Rioters or Rebels troubled nor endamaged, nor the Peace blemished, nor Merchants nor other passing by the Highways of the Realm disturbed, nor [put in the Peril which may happen '] of such Offenders : And also to hear and determine at the King's Suit all Manner of Felonies and Trespasses done in the same County according to the Laws and Customs aforesaid; and that Writs of Oyer and Determiner be granted ac-cording to the Statutes thereof made, and that the cording to the Statutes theretor made, and that me 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 Oppreswithin any Seignories, for the Mischels and Oppres-sions 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 Tres-pass 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 for which they may be made.

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

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

ITEM, Because that the Sheriff's and other Ministers often do array their Panels in all Manner of Inquests, of People procured, and most far off [from ] the Counties, which have no Knowledge of the Deed whereof the Inquest shall be taken; It is accorded, That such Panels shall be made of the next People, which shall not be suspect nor procured; and that the Sheriff's, Coroners, Neighbour-hood. and ther himself which on Against the same shall be purished before the Justices that takk 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.

of the Damage which he hath suffered in such Mañner. ITEM, It is accorded, That they which shall be assigned to keep the Peace shall have Power to induce 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 Porm that followeth; "Whereas great Panage and De-to buy and weigh Wools and other Merchandises, by a Weight which is called Auncel; It is accorded and esta-blished, 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 Ba-lance be even, and the Wools and other Merchandizes evenly weigh air. I. and that the Beam of the Balance do not bow more to the one Part than to the other; and that the Weight be according to the Standard of the bished. that the Weight be according to the Standard of the Exchequer; and if any Buyer do the contrary, he shall be grievously punished, as well at the Suit of the Party, as at the Suit of our Lord 'the King.''

ITEM, Whereas it is contained in the Great Charter, that one Measure be used through the Realt, 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, Haff Bushel, Peek, Gallon, Pottle, and Quart, through (\*) England, within

\* put in fear by peril which might happen \* Takings of • 11

and may hear and determine Felonies and

365

Commissions of general Inquiries shall cease. Fines for Trespasses shall be reasonable.

III. When Pur Purveyances for the Quee &c. shall be

VE. All Measures shall be according to Standard, &c.

34

### 7° RIC. II. C. 9-12.

A.D.1383.

x.

xj.

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. ITEM, It is ordained and assented, That an Assise of

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

ITEM, Whereas in divers Parliaments holden at West-

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 Vic-

tuallers, 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 For-

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 re-

ceive 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

Wines, and the

of Contradiction, in a due Form. XI. The Statutes 5 Ric. II. c. 4, 5. and 6 Ric. II. c. 7, 11, 13, concerning Fishmongers, Victuallers, and Vintners, repealed. minster, the Fifth and Sixth Years of our said Lord the King, divers Ordinances and Statutes of Fishers of London and other Victuallers were made, and also of Vint-ners, 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 repealed.

feitures of Wines for the Time past that to him pertaineth by virtue of the same Ordinances and Statutes : Provided Victuallers of London shall be under the Rule of the always, that all the [Vintners and '] Victuallers, as well Fishers as other coming with their Victuals to the City of Mayor and Aldermen. 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.

XII. Stat. 3Richt. Westminster, the Third Year of the Reign of our said c. 3. recited j Lord the King, at the Request of the Commons, and

same Realm, without the especial Grace and express confirmed and extended to Aliens Licence of our said Lord the King, upon a certain Pain contained in the said Statute; It is assented and agreed holding Benefices in England ; by the same Lords, That the same Statute shall keep his

lieux avantditz p endentures ent entre eux duement affaires; les queles endentures soient chescun an a le feste de Seint Michel livez en leschegir p ceux gensi ferront la dite livee, al effect de charger illoeqs les Alneours & coillours avantditz p queux tielx defautes deussent estre Schez chastiez & amendez & ne sont my einz coement maintenuz ou concelez toutz ptz; pur quele tierce ptie qapptient au Roi come sa forfaiture p force de lestatutz devant ore faitz les alneo' & coillo' avantditz, en chescun Countee & lieu ou tielz draps defectives front trovez p' peine encontre lo's ditz mal fait & concelement, facent gree de lo's ppres deniers a nie dit ? le Roi en son Escheqir de la value de celle tierce ptie, issint q sion de mesme la tierce ptie come del remenant du dit drap nre l' le Roi soit entierement responduz a son Eschegir avantdit. Item est ordeignez & assentuz qassise de Novele Novel Disseisin shall be from henceforth granted and made of Rent behind, due of Tenements being in divers

Disseisine soit desore g nte & faite de rent aderiere, due des teñz esteantz es divses Countees a tenir en la confyne des Countees deinz queux les teñz sont, & sur ce lassise prise & triee p gentz des ditz Countees en mesme la mafie come est fait du cõe de pasture esteantz en un Countee & appendante as teñz 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 mane de cont diccion en due forme.

soient psentz ou des l's des feires & marchees, & auls lieux ou tielx draps defectives Bront trovez, ou de lo's

Seneschalx & Baillifs ou des Conestables des villes &

Item combn q nadgairs en divses plementz tenuz a Westm les ans du regne nre dit & le Roi quint & sisme, furent faitz divses ordinances, & estatutz des pessoners de Londres & dauis vitaillers & auxint des vineters & la vente des vins, & sur ce mesmes les ordinances & estatutz ovesq, les peynes en ycelles contenuz furent publiez & pclamez pmy le Roialme sicome en les ditz ordinances & estatutz pluis pleinement purra apparoir; Nientmeyns p' Éteins enchesons a la requeste des Cões DengiePre sur ceo especialment faite, est assentuz & accordez q mesmes les ordinances & estatutz des Pessoners Vineters & Vitaillers, faitz en les ans desuisditz, soient de tout anientiz & repellez & pdent lour force & Ptue ; Sauvez nientmeins a nre f' le Roi toutz les forfaitures des vins a lui apptenantes p viue de mesmes les ordinances & estatutz qantal temps passez. Purveuz toutz foitz q toutz les [vins'] & vitaillers sibn Pessoners come aurs ove leur vitailles venantz a la dee Citee de Londres, soient desore desouz le govnaile [& reulle \*] des Meir & Aldermannes de la Citee avandče p' le temps esteantz come auncienement y soleient estre.

Item come nadgairs en plement tenuz a Westm lan du regne nre ?' le Roi tierce, a la requeste des Coes & p assent des l's temporels, estoit ordeignez & assentuz & sur grevouse peyne defunduz q nutt liege le Roi nautre psone quelconq de quel estat ou condicion gil fuist, Pndroit ne resceivoit delors enavant deinz le Roialme Denglerre pouracie, tre datto'ne, ne ferme, nautre administracion p endenture nen autre make quelconq<sub>b</sub> de nulle psone dascun benefice de Seinte Esglise deinz le dit Roialme fors tantsoulement des lieges nre ?' le Roi de mesme le Roialme sanz especiale g'ce & expsse congie de nie ?' le Roi sur dieine peine comprise en lestatut avantdit, assentuz est ore & accordez p mesmes les l's q mesme lestatut tiegne ses

Vinters Old Printed Copies.

\* Interlined on the Roll.

M. 18.

xij.

Filed: 02/01/2019

### A.D.1383.

## 7° Ric. II. c. 12-16.

force & Vrue en toutz pointz ; et outre ceo est auxint assentuz q si ascun alien eit purchacez ou desore purchace ascun benefice de Seinte Esglise Dignite ou autre & en ppre psone 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 encourge en toutz pointz tielx peines & forfaiture come sont ordeignez p un autre estatut fait en lan xxv\* del regne luy noble Roi E. aiel nre ? le Roi gore est, contre ceux qi purchacent pvisions dabbeies ou Priories; et enoutre au fyn q tielx licences ne se facent desore enavant, le Roi voet & comande a toutz ses lieges & autres qils lour abstiegnent de cy enavant de luy prier dascuns tiels licences doner; et si voet auxi le Roi luy mesmes abstiegner de doner ascune tiele licence, durantes les guerres horspris au Cardinal de Naples ou a autre ciale psone a qi le Roi soit p especiale cause tenuz.

Item est ordeignez & assentuz & le Roi defende q

desoremes nutt home chivache deinz le Roialme armez, encontre la forme de lestatut de Norhamptoñ sur ce

fait, ne ovesq, lancegay deinz mesme le Roialme, les queux lancegayes soient de tout oustez deinz le dit Roialme come chose defendue p nre ? le Roi, sur peine de forfaiture dicelx lancegaies armures & auts herneys quelconqes es mayns & possession de celluy qi les porta

xiij.

жШj.

desore deinz mesme le Roialme contre cestz estatut & ordinances sanz especiale congie de Roi nre ?. Item es briefs de Pmunire fat est assentuz & accordez q ceux vs queux tielx briefs sont portez, & qi sont de psent hors de Roialme & sont de bone fame & aient faitz lo' genalx atto'nes devant lo' deptir, q le Chaunceller [Denglerre ] pur le temps esteant, p ladvis des Justices purra g'ntier q mesmes les psones purront apparoir & respondre & faire & resceivre ce q la ley demande, p lo' genalx atto'nes avantdiz siavant come es autres cas & quereles ; et ceux psones qi decy enavant passeront p licence nre f' le Roi & soient auxint de bone fame, q a lo' requeste le dit Chaunceller p ladvis des Justices lour purra g'ntier defaire lo' gefialx atto'nes en la Chancellerie p patent du Roi devant lo' passer, [a respondre'] sibn es ditz briefs de pmunire fac, come en auls quereles en quel cas toutes voies soit expsse mencion [faite '] des briefs & quereles de pmunire fac; et celle patente ensi faite, purront des lors les ditz atto'nes en absence de lo' Meistres, respondre p eux & aul's atto'nes desouz eux, devant quelconq, juge du Roialme & faire & resceivre el dit cas, siavant come en nult autre cas nientcontresteant ascun estatut fait a contrie avant ces heures.

Item sur la grevouse pleinte qest faite des meynteno's des quereles & chaumpto's; est ordeignez & assentuz q lestatutz ent faitz en les ans du regne le Roi Edward aiel nie dit f' le Roi primer & quart, et auxint en lan de nre & le Roi qore est primer, soient tenuz & gardez & duement executz en toutz pointz.

Item est assentuz & le Roi defende estroitement à decy enavant nulle psone aliene ou denszein de quelconq, estat ou condicion qil soit amesne ou envoie ou face amesner ou envoier p Pre ou p meer hors du Roialme Denglerre as ascunes pries Descoce en prive ne en appt ascune malie darmure de blee de brees ne dautre vitaille ou dautre refressfichement queconqu sur peine de forfaiture de mesmes les vitailles armures & des autres choses avantdites ensemble avec les niefs vesseulx charettes & chivalx qi les portent ou amement. ou de la Proie value dicelles, si ensi ne soit q le 1 11 Interlined on the RolL

Force and Effect in all Points; and moreover it is who shall also assented, That if any Alien have purchased, or from be liable to henceforth shall purchase any Benefice of Holy Church, or 52 fd. 111. 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 Starute; and moreover shall incur all Pains and Forfeitures in all Deine are in before archived to reache Correspondence. 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, againft them that purchase Provisions of Abbeys or Priories; and to the Intent that such Licences shall not be from henceforth made, the King willeth 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. special Cause.

special Cause. TTEM, 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 Launce-gays be clearly put out within the said Realm, as a Thing prohibited by our Lord the King, upon Pain of Forfeiture of the said Launcegays, Armours, and other Harness, in whose Hands or Possession they be found that bear them within the Realm, contrary to the Sta-tutes and Ordinances aforesaid, without the King's special Licence. special Licence.

ITEM, In Writs of Præmunire facias, It is assented and who at this Time be out of the Realm, and be of good Fame, and have made their general Atturnies begood rame, and nave made their general Atturnies be-fore their departing, that the Chancellor of England for the Time being, by the Advice of the Justices, may grant, that the same Persons may appear to answer, to do, and to receive that Thing which the Law demandeth, by their general Atturnies aforesaid, as well as in other Causes and Quarrels; and those Persons which from henceforth shall pass by the King's Licence, and be of good Fame, that at their Remet the Chusellon hu henceforth shall pass by the King's Licence, and be of good Fame, that at their Request the Chancellor, by the Advice of the Justices, may grant to them to make their general Atturnies in the Chancery by the King's Patent, before their Passage, to answer as well in the said Writs of Præmunire facias, as in other Writs and Plaints; in which Case express Mention shall be made at all Times of the Writs and Plaints of Præmunire at an annes of the writs and Flants of Framulnite from henceforth, in Absence of their Masters, may an-swer [for them, and make'] other Atturnies under them, before any Judge of the Realm, [10<sup>o</sup>] do and receive in the said Case as much as in any other Case or Matter, notwithstanding any Status much to the 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 or tained 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.

laintan... ained and assence... he First and Fourth Years ... o our Lord the King that now is, shan Year of our Lord the King that now is, shan and kept, and duly executed in all Points. TTEM, 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 or Vifual whatsoever Estate or Condition that he be, shall carry or Vifual whatsoever Estate or Condition that he be, shall carry or Vifual "end, nor do to be carried nor sent, by Land nor "the Realm of England, to any Parts of "whou ther refreshing, or Pain of "en Armours, or Pain of the Kring in of Pain of the Kring in of "the Armours, or Pain of the Condition of the Kring in of "the Armours, or Pain of the Kring in of the Kring in of the Kring in of Pain of Pain of the Kring in of the Kring in of Pain of Pain of Pain of the Armours, before the Kring in of Pain of Pa and other Things aforesaid, together with the Ships, Vessels, Carta, and Horses which shall bring or carry the same, or of the very Value of the same, except so it be

and

· by themselves and

35

11. 5. c. 22.

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

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

XIV. For enabling Parties out of the Realm to appoint Attornies Write of

36

## 7° Ric. II. c. 16, 17.

A.D.1383.

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, epy 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 Mainpernors 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 Supersedeas be grantable, that if the Persons [comprised ] come not before the Judges at a Day comprised in the same Mainprise, and by so much the Plaintiff is put to Delay and Loss, the said Mainpernors 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 Mainpernors shall endure in Assay till the next Parliament only.

[<sup>1</sup> And therefore We command you that as well the said Starute of Winchester, four times in each Year from henceforth, in Manner as abore is ordained, as the other Statutes and Ordinances abore written, in all the Cities, Boroughs, Market Towns, and other notable laces within your Bailiwick, where is thall 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 Effed of the same. Given under the Witness of our Great Seal at our Palace of Westminster the Twentysixth Day of November, in the Serenth Year of our Reign.<sup>3</sup> Like Commands of the King are directed to the several

Sheriffs throughout England, under the same Date. • for his labour • mainprised

 for bis labour 'mainprised
 Former Translations read only thus : And therefore We command you, &c. Dated, &c. Roi nie 4' nent donne sa licence especiale a cont'rie. Et au fyn q ceste ordinance soit duement gardez & mys en bone execucioñ est auxint assentuz q celluy qi aPs q proclamacion ent soit faite purra espier & pver qascun eit mespris, ou forfait en ascun point contre la forme de ceste ordinance, eit la tierce pie des dites forfaitures entement a son ppre oeps p' son tvaille.

Item est assentuz & accordez qen briefs de dette trespas & de accompte, & en toutz autres cas ou maynprise & brief de Supsedeas sont g'ntables, si les psones maunprisez ne viegnent mye devant les Juges au jo' compris en mesme la meynprise, & p tant le pleintif soit mys en delay & pde, soient les ditz meinpnours respoignables as pleintifs dune Éteine sôme, (') a limiter p la discrecion & advis des ditz Juges, eiantz consideracion a la qualitee & quantitee des damages du ptie & de la chose en demande. Et si durera ceste ordinance des mainpno's en assaie, tanq, al pchein plement tantsoulement.

Et purce vous mandons q sibn le dit Estatut de Wyncestre quatre foitz chescun an decy enavant p mahle q dessus est ordeignez, come les autres Estatutz & ordinances dessussecritz en toutz les Citees Burghs villes marchees & autres lieux notables deinz vire baillie ou vous verrez q mieutz soit affaire deinz franchise & dehors, facez pelamer dep nous & publier & duement garder & tenir selone la forme & effect dicelles. Doñ p tesmoignance de nire grnt Seal a nire Paleys de Westm avatidt le xxvj<sup>ar</sup> jour de Novembre lan de nire regne septisme.

Consimilia mandata & dirigunt' singulis Vicecomitiby p Angt sub eadem dat.

dargent Old Printed Copies.

## Anno 8° RICARDI, II. A.D. 1384.

### Statutu apud Mestm anno octavo editu.

In Margine Rotuli.

## STATUTE MADE AT WESTMINSTER IN THE EIGHTH YEAR.

To the Honour of God, and at the Request of the Commonality 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 good and just Governance, and due Execution of the Common Law, in the Form following.

I. Liberties of the Church, and Statutes confirmed.

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

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.

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

14 accorded and statuted MS. Tr. 2.

Ex Rot. Stat. in Turr. Lond. II. m. 18. A D honorem dei & requisicõem cõitatis regni Angt féam dño Regi in pliamento suo tento apud Westm in Crastino Sci Martini anno regni sui oclavo, idem dñs Rex de assensu Prelatoş Magnatü & Cõitatis påde quoddam statutū in eodem pliamento p cõi utilitate déi regni & Psertim p bona & justa gubnacõe ac debita execucõe cõis legis fieri fecit in forma subsequenti :

In primis concordatu est & statutu qd sča ecclia heat offies libitates suas, & qd Magna Carta & Carta de Foresta, Statuta de pvisoriby & laboratoriby & offia alia statuta & ordinaĉões ante hec têpora edita & minime revocata teneant' observent' & execulõi debite demandent' juxta formam & effer eoadem.

Item concordată est & statută qă nullus homo de lege sit decelo Justie assisaș vel cois delibacois gaolaș în ppria pria sua et qă capitalis Justie de coi Banco assignet' int<sup>9</sup> alios ad h<sup>9</sup>i assisas capiend & ad gaolas deliband set quoad capitalem Justie de Banco Regis fiat sicut p majori pte Centă annoș pă Pitloș fieri consuevic.

## 92

## 17° RIC. II. c. 13.

### A.D.1393-4

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 eloct 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.

garde de Faradoñ dedeins puissent eslire un Alderman sage sufficeant & able p' govner mesme la garde dedeins, & estre nome laldermañ de la garde de Farndon dedeins; et q pentre cy & le dit fest de Seint Gregoire les gentz de la garde de Farndoñ dehors puissent eslire un autre Aldirman sage sufficeant & able p' govner mesme la garde dehors, & estre nomes lalderman de la garde de Farndoñ dehora. Et q les ditz deux Aldermans issint esluz puissent estre establiz & nemye remoez si noun p cause resonable, come ordeinez est & g'ntez p nře dit l' le Roi en cest plement des aufs Aldermans du dite Citee.

For the proclaimin the Statut

THE King to the Sheriff of Kent, Greeting. A certain Statute, in our last Parliament holden at Westminster, by Us with the Ament 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 3 and to John Duke of Aquitain and Lancaster, or to his Chancellor in the same Duchy of Lancaster, under the same Date.

B Vič Kanč, saltm. Quoddam statutum in ultimo D pelamatoe stapliamento nio apud Westin tento p nos de assensu tutos pelamand. Magnatum & Cõitatis regni nri Angt nobiscum ibidem tunc assistenciù editù tibi mittim<sup>9</sup> in forma patenti; Mandantes qd Statutum illud & omes & singulos articulos in codem contentos, in Civitatibus Burgis Villis ificatoriis & aliis locis infra ballivā tuam ubi melius expediri videris, publice polamari & quantum ad te ptinet firmit & inviolabilit observari fač. T. B. apud Westil primo die Junii.

p ipm Regem & consilium. Consimilia bria dirigunt' singulis Vicecomitiby p Angi ; ac Johi Duci Aquif & Lancastr vel ejus Cancellario in eodem Ducatu Lancasti sub eadem data.

Anno 20° RICARDI, II. A.D. 1396-7.

### Statutu de Anno picesimo.

In Margine Rotuli.

### STATUTE OF THE TWENTIETH YEAR.

HE KING at his Parliament holden at Westminster in the Feast of Saint Vincent, the Twentleth 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.

FIRST, Whereas in a Statute made the Seventh Year 7 R. II. c. 13: 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, Armours, 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.

E ROY en son parlement tenuz a Westm en la feste de Seint Vincent lan de son roialme vintisme, del assent des Prelatz ?'s & Comunes de son roialme en mesme le parlement, pur quiete & t'nquillite de son poeple ad fait éteins estatutz & ordenances gensuient.

Primement, come en un estatut fait lan septisme du regne nre Seignur le Roy soit ordeignez & assentuz q nutt home chivache deins le Roialme armez contre la fourme de lestatut de Norhamptoñ sur ce fait, ne oveso, 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 & aufs hernoys quelconques, es mayns & possession dycelx qui les port'a delors deinz mesme le Roialme encontre ycelles estatutz & ordenances sanz espale congie du Roy: Doc: 26-2

#### A.D.1396-7.

## 20° Ric. II. c. 1-5.

Nre Seignur le Roy considerant le gent clamour a luy fuit en cest plement de ce q le dit estatut nest mye tenuz, Si ad ordeignez & establiz en mesme le plement q les ditz estatutz soient pleinement tenuz & gardez & duement executz; et q les ditz lancegayes soient tout ourment oustez sur la peine contenue en le dit estatut de Northamptoñ & outre de fair fyn & ranceon au Roy. Et outre ce q nuit ?, 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 susdče; Sauvez & exceptz les offices & Ministres du Roy enfaisantz leur offices. Et outre ce le Roy voet & ad ordeignez q lestatut fait lan de son regne prime de livee des Chaperons soit tenuz & gardez sur la peine contenue en mesme lestatut & sur peine destre emprisonez & de fair fyn & ranceon au Roy.

Item q Vadletz appellez Yomen ne nutt au? de meindre estat gesquier ne use ne porte null signe ne livee appelle livee de compaignie dascun f' deins le roialme, sil ne soit menial & familier ou officer continuel de son dit d' et q les Justices de la paix' aient poair denquer de ceux qi font a lencontre & de les punir selonc leur discrecion.

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

Item õ come il soit contenuz en un estatut de & Edward nadgairs Roy Denglerre Aiel a nre & le Roy qorest lan de son regne vynt & oetisme, q nulle mane de nief q soit frette devs EnglePre ou aillours soit artez de venir a nul port Dengle?re 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 ascun port DenglePre & les Meistres & marin's ou Marchantz de mesmes les niefs voillent vendre & deliver ptie de leur michandises p loure bone voluntee, bien lise a chescuny tieles michandises achatre franchement sanz empeschement en le port ou tieles niefs viendront, tout ne soient les mchandises mises a la Pre pur vendre; Et q les Meistres Marines & Marchantz, aps ce qils avont issint venduz ce q lour plerra de leur ditz biens & paie ent la custume, puissent l'unchement deptier & aler ove lour niefs & tout le remenant de lour bis pla ou lour plerra sanz custume ent paier : Nie Seignur le Roy p' la quiete & ease de son poeple voet q le dit estatut soit tenuz & gardez en toutz pointz & duement executez nient contreesteant ascune ordeignance ou usage a contrie.

Item pur ce q les Comunes ount fait compleint q plusours g'ntz meschiefs extorsions & disease sont faitz p divses gentz de mauveis condicion q de leure auctoritee demesne pignont & font pndre roialment chivalx & aufs choses & bestes hors de leur charues charettes & mesons, disantz & imaginantz qils 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 Confirmation 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 xxviij 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 Shins, 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 Fruth they be in no wise privy of any Business or Message, but only in Deceit and Subtilty by such Colour

\* Pette \* Omit this word. + Badge or Livery \* Will or other Misfortune or Mischief, + put to land, to sell.

thereof.

93

No Man shall ac or go armed.

The Statute 1 Ric. II. c.7, touching giving of Liveries,

II. Liveries of Companies restrained.

III. ne shall ift upon the Bench with tices of Anine.

IV. Recital of St. 28 Edw. 111. chapter 13, Strangers.

Confirmation thereof.

Penalt for taking Horses, &v. for the King's out Warrant

10 HENRY IV.

455

1409.

## Membrane 24d-cont.

Jan. 20. To the sheriffs of London. Writ of *supersedeas*, and order by Westminster. mainprise of William Carneby, John Laweson, William Clifforde 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. Westminster.

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

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

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

Kent.	Devon.
Suthampton.	Cornwall.
Essex.	Somerset.
Norffolk 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 Norffolk 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. To the mayor and sheriffs of London. Order upon sight etc. to 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

Filed: 02/01/2019 Pg: 21 of 215

### 486

## CALENDAR OF CLOSE ROLLS.

1409.

## Membrane 23d-cont.

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

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

Memorandum of acknowledgment, 6 February.

Henry ate Grene, otherwise 'Levcestre 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 Blakewelle, and the reversion thereof after the death of William Blakewelle 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% to the grantor or his attorney, namely 10% at Easter next, 10% at Michaelmas following and 10% at the Purification following, any clause in this charter and any money paid notwithstanding. Witnesses : Nicholas Schosse bailiff of Hertforde. Master Thomas Ferrour, John Carpenter, Henry Fuller, John Fleecher, William Lythyng. Dated Hertforde, 2 February 1408, 10 Henry IV.

Memorandum of acknowledgment, 7 February.

Feb. 0. To the treasurer and the barons of the exchequer. Writ of Westminster. supersedeas omnino in respect of any process against William Banastre, appointed with others, upon an information that John Kyghlay and John Kent banished Englishmen, Wybert 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 10

## Anno Regni Quarto Gulielmi & Marix.

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

Measurer of Salt, and Culfer of Fifth.

A N D further it is Enacted by the Authority aforefaid, That all Fines, Penalties, and Forfeitures arifing by force and virtue of this Act, thall be, the one car talt to Their Majefties, towards the Support of the Government of this Protalt vince, and the other Half to him or them that thall inform and fue for the fame methin any of Their Majefties Courts of Record within this Province.

Be it further Enacted by the Authority aforefaid, That there be a Meafurer of Salt, and Culler of Filh in every Sea-port Town within this Province, to be appointed, as aforefaid, who being likewife fivorn for the faithful Difcharge of that Office, fhall cull all merchantable Fifh, and meafure all Salt that fhall be imported and fold out of any Ship or other Veffel, and fhall have Threehalf Pence for every Hoghead of Salt by him fo meafured to be paid, the one Half by the Buyer, the other Half by the Seller; and One Peny per Quintal for every Quintal of merchantable Fifh by him culled, to be paid, one Half by the Buyer, and the other Half by the Seller.

52º 6. Confirme 1 22 Aug. 1893.

Clarfing and Sheating.

I domation.

An AEt for the Punishing of Criminal Offenders.

BE it Enacted and Ordained by the Governor, Council, and Reprefentatives, in General Court Affembled, and by the Authority of the fame, That if any Perfon or Perfons thall prophanely Swear or Curfe in the hearing of any Juffice of the Peace, or thall be thereof convicted by the Oaths of Two Witneffes, or Confeflion of the Party, before any Juffice or Juffices of the Peace, every fuch Offender thall forfeit and pay unto the Ufe of the Poor of the Town where the Offender thall be committed, the Sum of Five Shillings; and if the Offender be not able to pay the faid Sum, then to be fet in the Stocks, not exceeding Two Hours: And if any Perfon thall utter more prophane Oaths or Curfes at the fame time, and in hearing of the fame Perfon or Perfons, he thall forfeit and pay to the Ufe aforefaid, the Sum of Twelve Pence for every Oath or Curfe after the first, or be fet in the Stocks Three Hours.

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

Deutstennefs.

FURTHER it is Enacted by the Authority aforefaid, That every Perfon convicted of Drunkennefs by View of any Juffice of Peace, Confession of the Party, or Oaths of Two Witneffes, fuch Perfon to convicted, shall forfeit and pay unto the Use of the Poor of the Town where fuch Offence is committed, the Sum of Five Shillings for every fuch Offence; and if the Offender be unable to pay the faid Sum, to be set in the Stocks, not exceeding Three-Hours, at the Difference of the Juffice or Juffices before where the Conviction shall be: And upon a fecond Conviction of Drunkenness, every fuch Offender, over and above the Penalty aforefaid, 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 fent to the Common Goal until be find the fame.

PROVIDED, That no Perfon shall be impeached or molested for any Offence against this A&, unless he shall be thereof Prefented, Indicated, or Convicted, within Six Months after the Offence committed; and the lustice or Justices before whom Conviction of any of the aforefaid Offences shall be, are hereby impowered and authorized to restrain or commit the Offente, until the Fine imposed for such Offence be fatisfied; or to cause the same to be levied by Distress and Sale of the Offender's Goods, by Warrant directed to the Constable, returning

## Anno Regni Quarto Gulielmi & Maria.

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

IT is further Enacted and Ordained by the Aushority aforefaid, That who- then, foever shall steal or purloin any Money, Goods, or Chattels, being thereof convicted by Confession, or fufficient Witnels upon Oath, every fuch Offender shall forfeit treble the Value of the Money, Goods, or Chattels fo stoln or purloined, unto the Owner or Owners thereof; and be further punished, by Fine or Whipping, at the Difcretion of the Court or Juffices that have Cognizance of fuch Offence, not exceeding the Sum of Five Pounds, or Twenty Stripes : And if any fuch Offender be unable to make Reflicution, or pay fuch Threefold Damages, fuch Offender shall be enjoyned to make Satisfaction by Service; and the Profecutor shall be, and hereby is impowered to dispose of the faid Offender in Service to any of Their Majefties Subjects, for fuch Term as thall be affigned by the Court or Justices before whom the Profecution was. And every Juffice of the Peace in the County where fuch 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 Perfon Ihall commit Burglary Burglary and by breaking up any Dwelling-houle, Ware-houle, Shop, Mill, Malt-houle, Barn, Out-houfe, or any Ship or other Veffel lying within the Body of the County, or shall rob any Person in the Field or High-ways, every Person so offending shall, upon Conviction, be branded on the Forehead with the Letter B; and upon a fecond Conviction, shall be fet upon the Gallows for the space of One Hour, with a Rope about his Neck, and one End thereof caft over the Gallows, and be feverely 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 thall likewife, upon the first and fecond Convictions, pay treble Damages to the Party injured, as is provided in cafe of Theft.

AND it is further Enacted by the Authority aforefaid, That if any Man Fornication. commit Fornication with any lingle Woman, upon due Conviction thereof, they fhall be fined unto Their Majefties, not exceeding the Sum of Five Pounds, or be corporally punished by Whipping, not exceeding Ten Stripes apiece, at the Diferentian of the Selfions 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 Reput 1 Fi-Child, begotten of her Body, the continuing conftant in fuch Acculation, being that examined upon Oath, and put upon the Difcovery of the Truth in the time of her Travail, shall be adjudged the Reputed Father of fuch Child, notwithstanding his Denial, and stand charged with the Maintenance thereof, with the Allillance of the Mother, as the Justices in the Quarter-Sellions shall order; and give Security to perform the faid Order, and to fave the Town or Place where fuch Child is born, free from Charge for its Maintenauce; and may be committed to Prilon until he find Sureties for the fame, unlefs the Pleas and Proofs made and produced on the behalf of the Man accused, and other Circumflances, be fuch as the Juffices shall fee reafon to judge him innocent, and acquit him thereof, and otherwife dispele of the Child: And every Justice of the Peace, upon his Difcretion, may bind to the next Quarter-Seffions him that is charged or fulpected to have begotten a Bastard Child; and if the Woman be not then delivered, the Seffions may order the Continuance or Renewal of his Bond, that he may be forth-coming when the Child is bom.

FURTHER it is Enacted by the Authority aforefaid, That every Juffice of Power of the the Peace in the County where the Offence is committed, may caule to be fullice of staid and arrested all Affrayers, Rioters, Disturbers, or Breakers of the Peace, and fuch as shall ride or go armed Offensively before any of Their Majeftics Juffices, or other Their Officers or Minifters doing their Office, or elfewhere, by

## Anno Regni Quarto Gulielmi & Marix.

by Night or by Day, in Fear or Affray of Their Majefties Liege People; and fuch others as shall utter any Menaces or Threatning Speeches; and upon View of fuch Juffice or Juffices, Confession of the Party, or other legal Conviction of any fuch Offence, shall commit the Offender to Prison, until he find Sureties for the Peace and good Behaviour, and feize and take away his Armour or Weapons, and shall caufe them to be apprized and answered to the Breach of the Praces King as forfeited : And may further punish the Breach of the Peace, in any Perfon that fhall fmite or firike 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 Sellions of the Peace, as the Nature or Forcible Forty Circumstance of the Offence may be; and may make Enquity of forcible Entry and Detainer, and caufe the fame to be removed, and make out Hue and

Cries after Runaway Servants, Thieves, and other Criminals. AND it is further Enacted by the Authority aforefaid, That if any Perfor or Perfons of the Age of Diferention (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 Perfon, make or fpread any falle News or Reports, with Intent to abufe and deceive others, every fuch Perfon or Perfons offending in any of the Particulars before mentioned, and being duly convicted thereof before One or more Juffices of the Peace, shall be fined according to the Degree of fuch Offence, not exceeding the Sum of Twenty Shillings for the first Conviction, and find Sureties for the good Behaviour : And if the Party be unable to pay the faid Fine, then to be let in the Stocks, not exceeding Three Hours, or be corporally punished by Whipping, at the Diferentian of the Justice or Justices Lefore whom the Conviction shall be, according as the Circumstances or Nature of the Offence shall be; and the faid Juffice or Juffices may reftrain and commit the Offender until he pay the faid Fine, and find Surcties for the good Behaviour, or may caufe the Fine to be levied by Diffrefs and Sale of the Offender's Goods; and the Party or Parties grieved or injured by reafon of any of the Offences aforefaid, fhall or may take his or their Suit against any such Offender or Offenders in any Court of Record.

It is further Enacted by the Authority aforefaid, That if any Perfon or Perfons, upon his or their own Head or Imagination, or by falle Confpiracy and Fraud with others, fhall wittingly, fubtilly, and falfely forge or make, or fubtilly caufe, or wittingly affent to be forged or made, any falle Deed, Conveyance, or Writing fealed, or the Will of any Perfon or Perfons in Writing, to the Intent that the Effate of Free-hold or Inheritance, Right, Title, or Intereft of any Person or Persons, of, in, or to any Lands, Tenements, or Heredita-ments, shall or may be molested, troubled, defeated, recovered, or charged, or shall, as is aforefaid, sorge, make, or caule or affent to be made or forged, any Obligation, or Bill Obligatory, Letter of Attorney, or any Acquittance, Releafe, or other Discharge of any Debt, Account, Action, Suit, Demand, or other Thing Perfonal; or if any Perfon or Perfons shall pronounce, publish, or shew forth in Evidence, any fuch falle and forged Deed, Conveyance, Writing, Obligation, Bill Obligatory, Letter of Attorney, Acquittance, Releafe, or Discharge, as true, knowing the same to be false and forged, as is aforefaid, to the Intent above remembred, and shall be thereof convicted, either upon Action or Actions of Forger of falle Deeds to be founded upon this Act at the Suit of the Party grieved, or otherwife according to the Order and due Courfe of Law, or upon Bill or Information, that then every fuch Offender shall pay unto the Party grieved his double Cofts and Damages, to be found and affeffed in fuch Court where the faid Conviction shall be; and also shall be fet upon the Pillory in fome 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 realon

12

and Decine r.

I ving and Lisbellin :.

Forgery.

# LAWS OF NEW HAMPSHIRE.

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

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

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

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

And every justice of the peace within this province, may cause Justices power to be stayed and arrested, all affrayers, rioters, disturbers or break- to stay affrayers, ers of the peace, or any other who shall go armed offensively, or to break the put his Majesty's subjects in fear, by menaces or threatning peace; by virtue speeches: And upon view of such justice, confession of the in an act past

#### LAWS OF THE PROVINCE

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

2

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

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

And every justice of the peace in this province, in the town or parish where he dwells, shall be, and hereby is, authorized and impowered to take cognizance of, hear, try, and determine, any civil action, wherein the demand is for any sum not exceeding forty shillings, arising within this province, in which the title of land, or any real estate is not concerned. And to give judgment for the debt, or damage, according to the nature of the action, with the legal cost, and grant execution thereon — And for that purpose to issue all necessary processes, which with the execution Direction of writs by 4th of G. r. prescribing forms. To be served 7 days be. said province, his under-sheriff or deputy, or to any constable of fore the time of the town or parish where the person, on whom any such writ is to trial. be served, resides; and shall be executed seven days before the day therein appointed for the trial, and return'd to the justice who Pleas in *zbate* issued the same, at or before the time of trial. And all pleas in ment and bar to abatement, and bar, in any such action, shall be made and enter'd, before any issuable plea is given.

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

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

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

ance.

Liberty of appealing

### OF NEW HAMPSHIRE.

court of common pleas, to be held in and for said province; the party appealing, giving security before said justice, in a reasonable sum, to the appellee, to prosecute his appeal with effect, and to answer and pay such cost and damage, as shall be awarded against the appellant thereon, at the said court. And the party so appeal- How the appeal ing, shall observe the same rule in bringing forward his appeal, as is to be bro't is prescribed in this act, to appellants from judgments of the inferior court, and have the same advantage.

ferior court, and have the same advantage. And be it further Enacted, That there shall be held and kept, by Court of general the justices of the peace within this province, or so many of them as shall be limited by the commission of the peace, to make a quorum, a court of general sessions of the peace at Portsmouth in said province, quarterly, every year; to begin on the second Tues-the act of the said at of the second Tues-the act of the second the second the second the second the peace at Portsmouth in said province, quarterly, every year; to begin on the second Tues-the second the second the second the second the second the peace and punishment of offenders, appeals from of justice, &c. servation of the peace, and punishment of offenders, appeals from of justice, &c. the sentences of justices in the criminal cases triable by them as aforesaid, and whatsoever is by said court cognizable according to law; and to give judgment and award execution therein.

law; and to give judgment and award execution energy. And any person aggrieved at the sentence of the justices, in the Liberty to appeal court of general sessions of the peace, may appeal from such sen-tence, the matter being originally heard and tried in the said court, of a paragraphin unto the next court of assize and general goal delivery, in said det of the to surveise upon the same to be finally issued — Provided that no appeal mean process. province, there to be finally issued. — *Provided* that no appeal mean process, shall be granted, unless it be claimed at the time of declaring the  $\frac{\&c}{\&c}$ . sentence, and the appellant enter into recognizance, with two sureties within the space of two hours next after, in a reasonable sum Time and condi-tions of granting for his personal appearance at the court appealed to, and prosecu-said appeal. tion of his appeal there with effect, and to perform and abide by the order or sentence of the said court thereon, and to be of good behaviour in the mean time. And the party appealing is to remain in the hands or custody of an officer, until he or she shall have given such security, and the officer not to be allowed above twelve pence an hour for his time and attendance.

And such appellant shall, at his or her own cost, take out and How the appellant shall bring present unto the court appealed to, an attested copy of the sen- forward his aptence, and of all the evidences, upon which the same was grounded: peal. and the appellant shall pay the like fee, for the entry of his appeal in the court appealed to, as is by law required for entry of a civil

And be it further Enacted, That there shall be held and kept at Inferior court essaid Portsmouth, at four terms, an inferior court of common pleas, said by four justices, to be appointed and commissionated thereto, by inth of W. 3d. the Governor or Commander in chief for the time being, any Time of the be-three of whom to make a quorum : The said terms to begin on ginning of each the first Tuesdays of March, June, September, and December, <sup>term</sup> by said act, <sup>31st of G.2.</sup> annually. Which said inferior court shall have cognizance of Actions of 40s. hear, try, and determine, all civil actions, matters, and causes, to be commenced triable at the common law, of what nature, kind, or quality soever, elsewhere, tile appeals from judgments of justices of the peace in civil actions, by virtue of the triable by them as aforesaid — Excepting that no action for the trials in eivil value of forty shillings, and under, shall be commenced at the said of W. 3.

#### LAWS OF THE PROVINCE

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

Appeal granted And any party aggrieved at the judgment given in any inferior by virtue of the act of rath of W. court of common pleas (the matter being originally heard and tried s, for regulating there) may appeal from such judgment to the part automic there) may appeal from such judgment, to the next superior court of judicature, to be held within and for this province. The appellant entering into a recognizance with sufficient sureties, to prosecute his appeal there with effect, and to answer and pay all inter-

causes.

4

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

Appellant to pro-duce a copy of the case.

Superior court of judicature, court of assize, &c. so called by several acts viz. 10th

King's Bench, &c.

2

vening damages occasion'd to the appellee by such appeal, with Execution stayed additional costs, in case the judgment shall be affirmed. And no execution shall be awarded or issued, on any judgment, from which

an appeal is granted. The said recognizance shall be taken before the said inferior court of common pleas whilst sitting, or before one or more of the justices of the same, with the clerk, out of

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

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

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

And be it further Enacted, That there shall be held and kept at Portsmouth aforesaid, at two terms in every year, a superior court of judicature, court of assize and general goal delivery, by one chief justice, and three other justices, to be appointed and comacts viz. toth Ann against origing the bills of credit; the the figure and three other justices, to be appointed and com-missionated thereto by the Governor or Commander in chief for the time being, any three of whom to make a quorum. The one ties, &c. another of said terms to begin on the third Tuesday of May, and the office & dury of a coroner, &c. The court shall have cognizance of all pleas, real, personal, or mixt, or beginning of each term now stated bythe said act of 31st of Geo. 2. and inheritance, or whether the same do concern the personalty, and relate to matter of debt, contract, damage, or personal injury. And all mixt actions, which concern both realty and personalty, which shall be brought before them, by appeal, review, writ of error, certiorari, or in any legal way whatsoever. And all pleas of the crown, criminal actions, and causes, and whatsoever relates to the conservation of the peace, and punishment of offenders, whether the same be brought into said court by appeal, or any The power of the original process, according to law. And generally all other matters, as fully and amply to all intents and purposes whatsoever, as

### OF NEW HAMPSHIRE.

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

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

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

appeal, in case the judgment appealed from shall be affirm'd. *And be it further Enacted*, That all original writs, or writs of original writs review, for bringing any civil actions or suits to trial, in the said what sort to be. inferior court of common pleas, or superior court of judicature, shall be summons, capias or attachment, and shall be issued in writs how issued the form directed in and by an act of this province, entituled "An and executed act prescribing forms of writs in civil causes"; and shall be under G. 1. the seal, and signed by the clerk, of the court, to which it shall be returnable, and shall be executed by the officer to whom it is directed, fourteen days at least before the day of the sitting of the court to which it is to be returned.

And the justices of the several courts aforesaid, are hereby Courts power to authorized to make necessary rules, for the more orderly practice, make rules, soft W. 3. and management of the business of said courts respectively : Pro*vided* such rules are not repugnant to the laws of this province, nor to the rules of common law in use here.

And also as often as they shall judge it necessary and proper, And to chuse to chuse and appoint a clerk, to officiate in such court, and to do their clerk, by the r<sub>3</sub>th W. 3. all things belonging to that office, who shall be under oath, well and truly to execute and discharge the same.

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

5

LAWS OF THE PROVINCE

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

Justices of each court to be sworn.

Oath.

6

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

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

Pass'd 13th of W. 3.

AN ACT FOR REGULATING OF TRIALS IN CIVIL CASES.

Be it Enacted by the Lieutenant Governor, Council, and Representatives, convened in general assembly, and by the authority of the same:

Actions for more than 405 to be commenced at the inferior court, excepting causes wherein the King is concern'd, which may be at either inf. or sup-court. All pro-court. All pro-court. All pro-court. All pro-court. All pro-court of judicature.) And that all writs, processes, declarations, indictments, pleas, answers, replications, and entries, in the English. Not to abate for circum-stantial errors. writ, judgment, or other proceedings in court, or course of justice, shall be abated, or arrested, or reversed for any kind of circumstantial errors, or mistakes, where the person and case may be rightly understood and intended by the court, nor through defect or want of form only; and the justices on motion made in court may order amendment thereof.

Costs to be grant-ed on non-suits.

And it is further Enacted by the Authority aforesaid, That if any person shall cause process to be served upon another on preIN THE PURCHARGE I LEAR OF THE COMMONWEALTH. 33

1786.

terpolition difarmed of her natural weapons, free argument and debate, errors cealing to be dangerous when it is permitted freely to contradict them :

II. BE it enabled by the General Affembly, That no man shall be compelled to frequent No man comor fupport any religious worthip, place, or Ministry whatsoever, nor shall be enforced, reitrained, moleited, or burthened in his body or goods, nor fhall otherwife fuffer on ac-count of his religious opinions or belief; but that all men fhall be free to profefs, and by All men free argument to maintain, their opinions in matters of religion and that the formed, it is a set of the formed of the argument to maintain, their opinions in matters of religion, and that the fame shall in no wife diminish, enlarge, or affect their civil capacities.

quent or Jup to profess, and by argument to maintain their religious opinions.

III. AND though we well know that this Affembly elected by the people for the ordi- Declaration nary purposes of legislation only, have no power to reftrain the Acts of fucceeding Affem-blies, conflituted 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 rights of the rights hereby afferted, are of the natural rights of mankind, and that if any Act shall kind. be hereafter passed to repeal the present, or to narrow its operation, such Act will be an infringement of natural right.

General Affembly, 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.

#### XXÍ. C H A P.

An Ast forbidding and punishing Affrays.

[Paffed the 27th of November, 1786.]

DE it enacted by the General Affembly, That no man, great nor finall, of what condition Punifimement for former he be, except the Ministers of Luftice in executing the presents of the O The tree character of the General Algemony, I had no man, great nor infail, or what condition perfors going to be fore the be, except the Ministers of Juffice in executing the precepts of the Courts of Juffice, or in executing of their office, and fuch as be in their company affifting them, there or the best of the court of the of being arrefted and committed to prifon by any Justice on his own view, or proof by others, there to abide for fo long a time as a Jury, to be fivorn for that purpose by the faid Justice, shall direct, and in like manner to forfeit his armour to the Commonwealth; but no perfon shall be imprisoned for such offence by a longer space of time than one month.

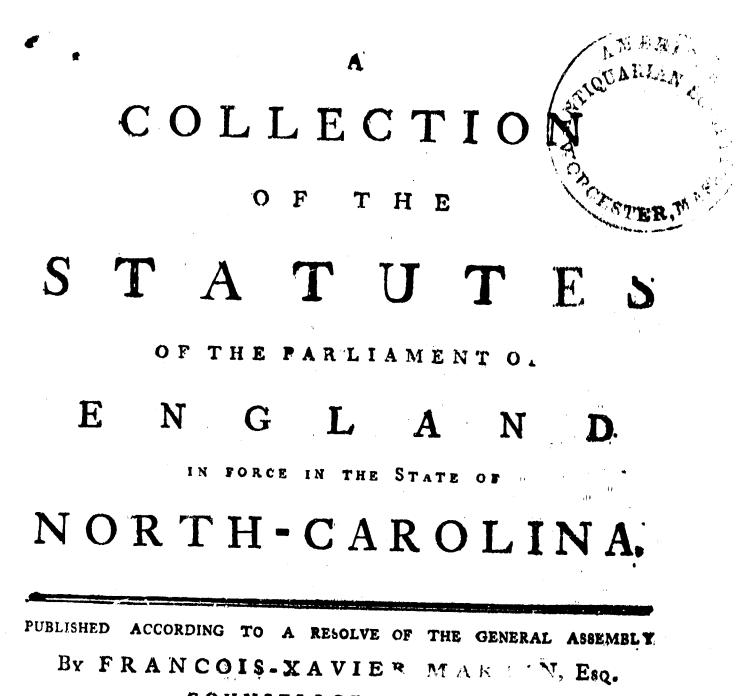
#### C H A P. XXII.

## An AEt against Confpirators.

[Paffed the 27th of November, 1786.]

DE it declared and enabled by the General Allembly, That Confipirators be they that do con-federate and bind themfelves by oath, covenant, or other alliance, that every of them firsters. shall aid and bear the other falfely and maliciously, to move or cause to be moved any indictment or information against another on the part of the Commonwealth, and those who are convicted thereof at the fuit of the Commonwealth, shall be punished by imprisonment and amercement, at the diferction of a Jury.

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.



COUNSELLOF LAW.

NEWBERN:

FROM THE EDITOR'S PRESS.

1792.

# ( 60 )

#### CHAP. VIII.

## Nothing Shuli be taken for Beaupleeder.

I'FEM, Whereas fome of the realm have grievoully complained, that they be grieved by Sheriff's, naming themfelves the King's approvers, which take money by extortion for Beaupleader, the King will, that the statute of Marlebridge that be observed and kept in this point.

#### XIV. H A P. С

## None shall commit Maintenance.

TEM, Because the King defireth that common right be administered to all perfons, as well poor as rich, he commanded, and defined at as well poor as rich, he commandeth and defendeth, that none of his Countellors, nor of his house; nor none other of his Ministers, nor no great man of the realm by himfelf, nor by other, by fending of letters, nor otherwite, nor none other in this land, great nor fmall, fhall take upon them to maintain quarrels nor parties in the country, to the let and diffurbance of the common law.

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

#### CHAP. 1.

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

[Unneceffory to be inferted.]

#### H A P. III. C

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

TEM, It is enacted, that no man great nor finall, of what condition focyet he be, except the King's fervants in his prefence, and his Miniflers in executing of the King's precepts, or of their office, and fuch as be in their company affifting them, and alfo upon a cry made for arms to keep the peace, and the fame in fuch places where fuch acts happen, be to hardy to come before the King's Jultices, or other of the King's

1. Ash

11

## ( 61 )

Ministers doing their office with force and arms, nor bring no force in an affray of peace, nor to go nor ride armed by night nor by day, in fairs, markets, nor in the prefence of the King's Justices, or other ministers, nor in no part elfewhere, upon pain to forfeit their ar her to the King, and their bodies to prifun at the King's pleafure. And that the King's Justices in their prefence, Sheriffs and other ministers, in their bailiwicks, Lords of Franchifes, and their bailiffs in the fame, and Mayors and Bailiffs of cities and horoughs, within the fame enter and boroughs, and borough-holders, constables and wardens of the peace within their wards shall have power to execute this act. And that the Juffices affigned, at their coming down into the country, shall have power to enquire how fuch 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.

#### ٧. C HAA P.

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

Construction and the second second 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 eftablished, 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 fhall receive the fame writs, and make a bill after the form contained in the fame flatute, without taking any thing therefore. And if they refuse to make a bill, others that be prefent shall fet to their feals, and if the Sheriff or Under-Sheriff do not return the faid write, they shall be punished after the form contained in the faid statute. And also the Justices of Affize shall have power to enquire thereof at every man's complaint, and to award damages, as having refpect to the delay, and to the lofs and peril that might happen.

#### С H A P. VI.

Juffices shall have Power to punif Breakers of the Peace.

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 faid statute of Winchester, that the Juffices affigned 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 feen, the fameJuffices shall have power to punish the offenders and disobeyers.

In the Year of our LORD, 1795.

## 436

## Criminal Offenders.

on faid fence, till it comes to the land improved by George Summer ; then through faid land nearly the fame courfe, till it comes to the fouth-weft corner of faid George Sumner's home meadow, fo called ; then turning and running cafterly in faid meadow, as the ditch which forms the fence is made, till it comes to the fouth end of Benjamin Hawes's meadow ; then in the line between faid Hawes's incadow, and the land of William Richards ; then in the line between faid Richards's home lot, and the meadow lots, till it comes to Cumming's brook, fo called ; thence on faid brook, till it comes to the line between Stoughton and Sharen ; thence on faid line till it comes to Neponfet river; thence westerly on faid river, till it comes to Traphole brook ; thence on faid brook, till it comes to the bounds first mentioned-fhall be confidered as one Common and General Field ; and that the proprietors of faid lands, their heirs and fucceflors be, and they hereby are incorporated and invefted with all the powers and privileges which the proprietors of Common and General Fields by Law are invefted with.

[This Act passed January 22, 1795.]

### C H A P. II.

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

A ft repealed.

Juffices of the Peace empow-

cred.

E it enacted by the Senate and Houfe of Reprefentatives, in General Court affembled, and by the authority of the fame, That the faid Act be, and hereby is repealed, and made wholly null and void. And be it further enacted by the authority aforefaid, That every Juf-

And be it further enacted by the authority aforefaid, That every jultice of the Peace, within the county for which he may be commitfioned, may caufe to be faid and arrefted, all affrayers, rioters, difturbers, or breakers of the peace, and fuch as fhall ride or go armed offenfively, to the fear or terror of the good citizens of this Commonwealth, or fuch others as may utter any menaces or threatening fpeeches, and upon view of fuch Juffice, confeflion of the delinquent, or other legal conviction of any fuch offence, fhall require of the offender to find furctics for his keeping the Peace, and being of the good behaviour; and in want thereof, to commit him to prifon until he fhall comply with fuch requifition : And may further punifh the breach of the Peace in any perfon that fhall affault or firike another, by fine to the Commonwealth, not exceeding *twenty fhillings*, and require fureties, as aforefaid, or bind the offender, to appear and anfwer for his offence, at the next Court of General Seflions of the Peace, as the nature or circumflances of the cafe may require.

[This Act paffed January 29, 1795.]

C H A P.

co unty, shall proceed against such offender, in the same man-1801. ner as is heretofore prescribed for vagrants.

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

3. Be it enacted, That all and every keeper or keepers, excertain gam- hibitor 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.

4. Be it enacted, That it shall not be lawful for any house Penalty for harboring va- keeper to harbor any idle person of the character aforesaid, grants. April 1784, c. 34, s. 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.

5. Be it enacted, That it shall be the duty of each justice justices hereof the peace, on information being made on oath to him or in. Apl. 1784, them, that there is a person or persons of the aforesaid desc. 34. 1811, c. cription, 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.

6. Be it en acted, That if any person or persons shall publicly ride or go armed to the terror of the people, or privately Proceedings carry any dirk, large knife, pistol or any other dangerous weapon, to the fear or terror of any person, it shall be the sons going ar- 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.

7. Be it enacted, That if any person or persons shall unlawmaim or disfi- fully cut out or disable the tongue, put out an eye, slit a nose, gure any per- bite or cut off a nose, ear or lip, or cut off or disable any son, &c. Dec. bite or cut off a nose, ear or lip, or cut off or disable any 1754, ch. 15. limb or member, or stab any person whatsoever, in doing so, 1807, ch. 73, 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.,

against permed contrary to this act.

Duty of the

112, s. 1, 2.

Penalty for

failing.

Felony to s. 13.

#### POWER OF JUSTICES.

## 285

### CHAPTER LXXVI.

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

BE it enacted by the Senate, and House of Repre- General juris-Sec. 1. sectatives, in Legislature assembled, That it shall be within diction of Jus-tice of the power, and be the duty of every Justice of the Peace Peace and their within his county, to punish by fine not exceeding five dol-at case, in ar-reating, trying. lars, all assaults and batteries that are not of a high and ag-recognizing and gravated nature, and to examine into all homicides, mur-tenders. ders, 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.

SEC. 2. Be it further enacted, That all fines and forfeitures Breaches of the accruing for the breach of any bye-law, in any town within towns may be this State, may be prosecuted for, and recovered before any fore Justices of the Peore Justice of the Peace in the town or county where the offence the Peace. 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.

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

#### POWER OF JUSTICES.

ecute his ap-peal, his de-fault to be entered.

Court may order such case to be laid bery, or arrest &c.

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

Justices may, on their own view, (in abstables,) require any per son to appre-head offenders.

fusing to obey such Justice.

If the Justice be known or declared-plea his office not admissible.

**Justices** may grant subpœ-

But not on behalf of the State without consent of Attorney Gener-al. or County Altorney, except before himself.

Justices to account annually all fines, &c.

Penalty for negleci.

Failing to pros- ed to. And if he shall not there prosecute his appeal, and produce the copies as aforesaid, the Court shall order his default to be 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 fore Grand Ju- cause him thereby to be brought before them, and when he ry, or arrest appellant, and is so in Court, shall affirm the sentence of the Justice against affirm sentence, him, with all additional costs.

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

SEC. 5. Be it further enacted, That any Justice of the Peace for the preservation thereof, or upon view of the breach theresence of sheriff, 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 of-Penalty for re-fenders. 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 declared-plca 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 has for witnes. within their respective counties, be, and they are hereby auses in criminal thorized and empowered to grant subpœnas 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 subporters 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 to state, coun- Peace shall account annually with the Treasurer of the State, ty and Town Treasurers for the Treasurer of their respective counties, and the town Treasurer, as the case may be, for all fines by them received or imposed, upon pain of forfeiting the sum of thirty dollars, to be sued for and recovered by the Treasurer of the State, the county or town Treasurer for the time being, to which the said fines may respectively belong.

#### POWER OF JUSTICES.

287

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

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

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

#### POWER OF JUSTICES.

tioned to bring forward an action of trespass, doth neglect to ward the action according do it, upon complaint thereof made in writing by the plaintiff, nizance.-Plain shall give judgment for such sum in damages, as the plaintiff hath declared for, together with all reasonable costs which acdamages.

ing to proseplaint judgment may be afilrmed.

crued both in the same Court and before the Justice. And Appellant fail- the Circuit Court of Common Pleas shall, when any appellant cute, on com- 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.

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

SEC. 11. Be it further enacted, That when an action of trespacs 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 suretics 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 Appeal allowed 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 tresbefore Justices pass wherein the defendant means to avail himself, by pleadmatter given in ing the title of himself or any other person under whom he evidence except claims in justification of the trospass 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 subported 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 proclamation: 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.

in such cases from C. C. C.; Pleas to S. J. Court.

General issue in all actions where title to yeal estate is relied on by defendant.

Justices may grant subponas in all civil actions. .

May adjourn their Courts by

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

SEC. 14. Be it further enacted, That when an executor or In case of administrator shall be guilty of committing waste, whereby use of waste by exec-he is rendered unable to pay the judgment recovered before may proceed as any Justice of the Peace, against the goods and estate of the may in such deceased in his hands, out of the same, the Justice may prodeceased in his hands, out of the same, the Justice may pro- cases. ceed 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.

SEC. 15. Be it further enacted, That each Justice of the Justice to keep Peace shall keep a fair record of all his proceedings; and record of his when any Justice of the Peace shall die before a judgment given by him is paid and satisfied, it shall be in the power of shall die before any Justice of the Peace in the same county to grant a scire a judgment facias upon the same judgment, to the party against whom satisfied what such judgment was rendered up, for him to show cause if any be had. 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 Appeal allowed in other personal actions, where judgment is given by a Jus- to either party. tice of the Peace. And every Justice of the Peace who shall Justice to whom have complaint made to him, that a judgment given by a Jus- complaint in tice of the same county then deceased, remains unsatisfied, cases may sum-shall issue his summons to the person in whose possession the possessing the record of the same judgment is, directing him to bring and to record to proproduce to him the same record; and if such person shall contemptuously refuse to produce the same record, or shall refuse Punishment for 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 afore- Duty of the said; and when the Justice is possessed of such record, he the record is shall transcribe the same upon his own book of records, be-produced, to fore he shall issue his scire facias; and shall deliver the orig-into his own inal back again to the person who shall have produced it, and Copy of such a copy of such transcription, attested by the transcribing Jus- transcript to be evidence. tice, shall be allowed in evidence in all cases, where an authenticated copy of the orignal might be received.

SEC. 16. Be it further enacted, That all Justices of the Justices, whose Peace before whom actions may be commenced under for-expire before mer commissions, and such commissions shall expire before intistaction, judgment shall be rendered thereon, or judgment being ren- under a new dered, the same remains in whole or in part unsatisfied, such commission, Justices of the Peace who shall hereafter have their said point. commissions seasonably renewed, and being duly qualified &c. 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-

37

#### RECOVERY OF DEBTS.

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

## [Approved March 15, 1821.] - :00:---

#### CHAPTER LXXVII.

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

Justices may

nizance.

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

Know all men, that I, A. B. of , in the County of , to be paid to the Form of recog- do owe unto C. D. of , the sum of day of ; and if I shall fail of said C. D. on the 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 , in the year of our , this day of Witness, my hand and seal Lord A. B. ss. Acknowledged the day and year last abovesaid.

Before E. F. Justice of the Peace.

To be recorded by the Justice.

issue thereon

tion.

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 Execution may the Conusec; and upon the Conusee's lodging the same with within 3 years, 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 Čounty, Greeting.

, in the County of , on the Because A. B. of Form of execu-, in the year of our Lord day of 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 remains unpaid as it is said day of , and : 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 up to the said C. D. at the value

#### USCA4 Appeal: 18-2377 Doc: 26-2

Filed: 02/01/2019 Pg: 44 of 215

330

### LAWS OF THE

### Of Justices of the Peace.

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

## CHAPTER 97.

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

SEC. 1. Number in the several counties.

- Power to issue process.
   To keep records. Adjournments.
- 4. To issue subpoenas.
- 5. To administer oaths.
- 6. To punish contempts.
- 7. To arrest without warrant.
- To commit or bind to appear.
- Form of commitment.
- Form of binding TO KEEP THE PEACE. 8. Power to punish assaults and batteries. Form of binding to ANSWER CHARGE.
- Binding witnesses to appear. 9. To permit parties to settle cases of as-sault and battery.
- 10. Not to receive fine or costs.
- To put it in charge of a constable. 11. To certify fines to the auditor. Penalty. 12. Power to BIND OVER FOR THREATS.
- 13. To cause arrests of peace breakers, &c.,

- &c.
  14. To fine drunkards and swearers.
  15. To punish those who resist authority.
  16. Mode of proceeding in criminal cases.
- After arrest.
   The examination.
- 19. The commitment or binding to appear. Binding witnesses.
- 20. To deliver recognizances to clerk of the peace. Fee.

- SEC. 21. To indorse the names of witnesses. 22. To arrest persons complained against.

  - 23. Warrant may be executed in any county.
  - 24. Bail for appearance; how taken; by
  - whom.
  - Commitment in default of bail.
  - 25. How discharged from prison on bail.
  - 26. Capital cases ; when bail may be taken
  - 27. Bail in other cases; how determined.
  - 28. How taken by sheriff. &c.
  - 29. SEARCH WARRANTS, when and how to be issued.
    - Complaint must be in writing. Warrant; how directed.
  - When it may be executed at night. 30. Power of justice to try certain offences by slaves.
  - by slaves.
    31. Power of two justices to try slaves. Order on master to pay restitution, &c. Service of notice on master; verification.
    32. Power to punish Sabbath breaking.
    33. Duty of representatives of a deceased justice to deliver records; penalty.
    34. Duty of justice to give transcripts, copies, &c.; penalty.
    Originals may be required by the court.
    35. Duty to attend elections: penalty.

  - 35. Duty to attend elections; penalty.

### Number.

2003 Number.

New Castle.

Kent. Sussex.

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

### General powers and duties.

2004 May issue process. Forms.

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

### STATE OF DELAWARE.

Filed: 02/01/2019

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 2005 Records. judicial proceedings in criminal as well as civil cases.

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

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

SEC. 5. He may administer oaths in all cases where an oath is 200 Oaths. 2008 required by law.

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

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

A commitment may be in this form :-

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

 $\{\overbrace{\ldots s.}^{L. s.}\} \begin{array}{c} \text{Given under my hand and seal this} \longrightarrow day \text{ of } -J_{J.} \\ J_{J.} \\ J_{J.}$ J. P.

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

2012 Binding TO KEEP THE PEACE.

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

2006 ments.

warrant.

2011 Commitment.

Pg: 45 of 215

Filed: 02/01/2019 Pg: 46 of 215

### LAWS OF THE

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

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 assaults 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:-

The State of Delaware. BE IT REMEMBERED, - county, ss. 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 ugainst 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 <u>day</u> of <u>A. D.</u>, 18.

2015 Binding a witness to appear.

2016 Parties may settle assaults and batteries.

2017 Not to receive fines. Binding a witness for appearance may be in the same form, substituting for the words "there to answer such matters," &c., down to "and shall not depart the court," the words "as a witness for the State." A recognizance, when taken by a justice of the peace, or a judge out of court, shall be signed by the parties bound.

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

SEC. 10. He shall, in no case, receive a fine, or costs, imposed by him; but upon imposing any fine, he shall charge a constable present with the defendant, and enter the constable's name on Aiddlo4Bet,

### STATE OF DELAWARE.

Doc: 26-2

Filed: 02/01/2019

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

SEC. 11. Every justice of the peace shall transmit to the auditor To certify of accounts, by mail, on the first Tuesday of April and October in fines to aueach 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; Penalty. and the court shall, on conviction of such justice, transmit a copy of the record to the general assembly.

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

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

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

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

SEC. 16. When complaint is made in due form to a justice, al- 2023 Proceedleging that an offence has been committed, the justice shall carefully ings in criexamine the complainant on oath, or affirmation, and if he considers complaint. there is probable ground for the accusation, he shall issue his warrant.

A warrant of arrest may be in this form:

County, ss.

The State of Delaware, To any constable of said county, greeting:

----- hath upon oath (or affirmation) before me, Whereas G. H. of a justice of the peace of said county declared that on the ---- day of - at ---- (state the offence charged) and that he hath just cause to suspect and doth suspect C. D. of ----- hundred, of committing the said offence: You are therefore hereby commanded to take the said Add. 44 43

2024

Warrant of arrest.

Pg: 47 of 215

### LAWS OF THE

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

 $\{\widetilde{\underline{L}}, \widetilde{\underline{S}}, \}$  Witness the hand and seal of the said justice, the - A day of ---- A. D. 18-.

2025 How directed. 2026 Proceeding on arrest.

2027 Examination. Voluntary

2028 In felonies ting.

2029 Testimony in writing.

2030 Commitment; or binding to appear.

2031 Binding the witnesses.

2032 [2014, &c.]

2033 To deliver recognizances, &cc.

Fee.

2034 Names of witnesses to

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

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

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

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

> 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.

> 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.

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

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

> 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.

SEC. 21. He shall indorse on the recognizance the names of the be indersed. material witnesses, and the clerk shall issue subpoenas for de if 5ap-

### STATE OF DELAWARE.

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

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

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

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

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

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

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

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

Bail for ap

2040

2042

Search war-

and how to

be issued.

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

LAWS OF THE

2043 Complaint in writing.

2044

How directed.

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.

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.

A search warrant shall not authorize the person executing it to may be exe 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.

> 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.

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

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. Add. 47

2045 When it night.

2046 Power to try offences by SLAVES.

Judgment tor costs. 2047

Power of to try offences by SLAVES.

2048 Order on master to pay costs, &c.

[1577.]

### STATE OF DELAWARE.

Doc: 26-2

They shall indorse on any process for the arrest of a slave under service on this section, an order that the constable shall serve a copy of such master. process on the master as provided in respect to an original sum-[2006] mons.

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

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

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

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

Upon an appeal, a transcript shall be sufficient, unless a full copy 2054 be specially requested. Upon a certiorari, the justice shall make a on certiorafull copy of the entire record and proceedings.

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

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

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

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

337

#### LAWS OF NEW MEXICO.

Challenges.

Panel how completed.

94

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.

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.]

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

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

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.

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.

Carrying weapons prohibited.

First conviction fine.

Second conviction. imprisonment.

### LEYES DE NUEVO MÉJICO.

son dispuestos antes. En los condados de San Miguel, Rio Arriba, y Bernalillo, el primer lúnes 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 lúnes de Mayo, Setiembre y Noviembre, y continuará una semana si los negocios no están dispuestos ántes.

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

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

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

Aprobado Febrero 2 de 1860.

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

Decrétese por la Asamblea Legislativa del Territorio de Nuevo Méjico:

SECCION 1<sup>a</sup>. Que desde y despues del pasaje de este acto no Porte de armas será legal para que ninguna persona porte armas sobre sus personas, ninguna pistola de cualesquiera clase que sea, ni bowie knife (cuchillo de cinto) Arkansas toothpick, daga española, huracana, ó cualesquiera otra arma mortífera de cualesquiera clase 6 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.

SEC. 2. Decrétese ademas: Que si cualesquiera persona Primera conportare sobre su persona, ya sea oculta ó de otra manera, cualesquiera arma mortífera de la clase y descripcion mencionada en la seccion anterior, la persona ó personas que así ofendan, sobre conviccion, la cual será 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

completa.

prohibido.

viccion, multa.

95

Penalty for discharging or drawing weapons.

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

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.

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.

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

Penalty for cutting or wounding in assemblies.

In case of death, to be decmed murder

Duty of sheriffs and constables to arrest.

Sheriffs and constables to take oath.

Officers excused.

Travellers excused.

#### LEYES DE NUEVO MÉJICO.

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.

SEC. 3. Decrétese ademas: Que si cualesquiera persona Disparando disparare 6 sacare cualquier arma mortífera, de la clase 6 descripcion citada en la primera seccion de este acto, en cualesquiera baile 6 fandango, 6 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.

SEC. 4. Decrétese ademas: Que si cualesquiera persona en Hiriendo en realgun baile ó fandango, ó en otra concurrencia pública de la uniones publica de la cas, pena de. clase y descripcion que sea, disparare 6 descargare alguna arma de fuego de la clase mencionada en la seccion primera de este acto, ó que cortare ó hiricre á alguna persona con cualesquiera descripcion de armas mortíferas mencionadas en la primera seccion de este acto, en algun baile 6 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 conviecion, será considerada culpada de muerte en el primer Muerte en prigrado, y sufrirá la pena de muerte en dicho primer grado.

SEC. 5. Decrétese ademas : Que será el deber de los algua- Debéres de los ciles mayores, sus diputados, ó condestables, de arrestar y tomar toda persona que sea hallada con armas mortíferas, de dar fianzas. 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 provisiènes de este acto, y arrestarán en todo tiempo á todas las personas que violaren cualesquiera de las provisiones de este acto.

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

7

Segunda conviccion, encar-celarmiento.

armas, pena de.

uniones públi-

mer grado.

alguaciles, y ofensores de

esceptuados.

charge.

#### LAWS OF NEW MEXICO.

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

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.

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

To be published. b

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

Good faith to be observed.

Articles what to contain and before whom made. 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.

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-

Repealing clause.

Judges to give this act in

# Laws passed in 1686. 289

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

### Chap. VIII.

# An Act appointing some new Commissioners of the Highways.

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

### Chap. IX.

# An Act against wearing Swords, &c.

WHEREAS there hath been great complaint by the inhabitants of this Province, that several persons wearing swords, daggers, pistols, dirks, stilladoes, skeines, or any other unusual or unlawful weapons, by reason of which several persons in this Province, receive great abuses, and put in great fear and quarrels, and challenges made, to the great abuse of the inhabitants of this Province. *Be it therefore enacted* by the Governor, and Council, and Deputies now met in General Assembly, and by authority of the same, that no person or persons within this Province, presume to send any challenge in writing, by word of mouth, 19

# Laws passed in 1686.

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

Снар. 134. Sect. 1.

PART IV.

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

Benefit of clergy and petit treason abol-1shed. 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.	
CHAPTER	196	Of indictments and proceedings before trial.
OHAPTER	150.	Of malciments 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 crim- inal prosecutions.
CHAPTER	142.	General provisions concerning proceedings in criminal

### CHAPTER 134.

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

SECTION

#### 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.

how discharged. 14. Recognizances to be transmitted to the court.

13. Persons committed for not recognizing,

- "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' author- SECTION 1. The justices of the supreme judicial court, the jusized to keep the tices of the court of common pleas, justices of police courts, in vacapeace.

#### Снар. 134. TITLE II. SECT. 2-9.

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

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

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

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

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

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

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

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

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

be discharged.

when to pav

749

On appeal, witnesses to

recognize.

Proceedings on appeal.

Recognizance, when to remain

Persons committed for not

Recognizances to be transmit-

ted to the court.

- when to be required on

court or magistrate.

view of the

in force.

Снар. 134. Sect. 10-18.

PART IV.

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

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

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

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.

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

> 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.

> 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.

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

Surety may surrender his

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

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.

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 principal, who a civil cause, and upon such surrender shall be discharged, and ex- may recognize empt from all liability, for any act of the principal subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person, so surrendered, may recognize anew, with sufficient sureties, before any justice of the peace, for the residue of the term, and thereupon shall be discharged.

### CHAPTER 135.

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

#### SECTION

#### 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.
- Proceedings, when the party fails to 1 recognize.
- 12, 13, 14. Manner of conducting the examination.

- 15. Testimony may be reduced to writing. 16. Prisoner, when to be discharged.
- 17. 66 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 of- Officers, emfences, the justices of the supreme judicial court, justices of the court under this chapof common pleas, justices of any police court, in vacation as well as ter. in term time, and all justices of the peace, are authorized to issue process, to carry into effect the provisions of this chapter.

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

## STATUTES OF WISCONSIN.

Filed: 02/01/2019

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 Not recogto recognize as required by the court or magistrate, may be discharg- nizing, how discharged. ed by any judge or justice of the peace on giving such security as was required.

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

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

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

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

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

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

§ 1. That every person who shall be aiding in the commission of Accessory any offence, which shall be a felony either at common law or by any fore the fact, statute now made, or which shall be hereafter made, or who shall be how punishaccessory 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 princi-Add. 60 pal felon.

Pg: 63 of 215

#### TITLE XII.]

### JUSTICES OF THE PEACE.

refusing to recognize, as required by the court or magistrate, may CHAP. 169. security, as was required. after commit-

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

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

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

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

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

### CHAPTER 170.

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

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

709

TITLE XXXI. CHAPTER 162.

### PREVENTION OF CRIME.

## 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.

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.

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.

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

Complaint, how made.

Arrest.

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

### PREVENTION OF CRIME.

Filed: 02/01/2019

this state, and especially towards the person requiring such security, TITLE XXXI. CHAPTER 162. for such term as the magistrate may order, not exceeding one year, but shall not be bound over to the next court, unless he is also charged with some other offence, for which he ought by law to be held to answer at such court.

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

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

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

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

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

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

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

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

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

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

order of justice,

Pg: 66 of 215

ARREST &c. OF OFFENDERS.

TITLE XXXI. CHAPTER 163.

in presence of magistrate, &c.

Person going armed to find sureties for the peace.

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

Surety may surrender his principal, effect of surrender.

SEC. 15. Every person who shall, in the presence of any magis-, trate mentioned in the first section of this chapter, or before any court Breach of peace 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.

> 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. 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.

> 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-

Complainant, &c. to be examined.

Proceedings if it appear that an offence has been committed.

SECTION 1. For the apprehension of persons charged with offences, excepting such offences as are cognizable by justices of the peace, the cess for the arrest justices of the supreme court, judges of the county courts, circiuit court commissioners, mayors and recorders of cities, and all justices

of the peace, shall have power to issue process and to carry into effect the provisions of this chapter.

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

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

### TITLE III.

OF PROCEEDINGS IN CRIMINAL CASES.

### CHAP. 14. Of proceedings to prevent the commission of crimes.

- 15. Of arrest and commitment.
- 16. Of coroners' inquests.
- 17. Of bail in criminal cases.
- 18. Of examining courts.
- 19. Of grand jurics.
- 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 12. Recognizance, when to remain in 1. Officers authorized to keep the force. peace. 2. Complaint, how made. 13. Persons committed for not recognizing, how discharged. 3. Arrest. 4. Trial. Recognizance to keep the 14. Recognizances to be transmitted to court. peace. 5. Party, when discharged. 15. Recognizances, when to be required on view of the court or ma-G. Refusing to recognize, to be comgistrate. mitted. 16. Persons who go armed may be 7. Complainant when to pay costs. required to find surctics of the 8. Payment of costs in other cases. 9. Appeal allowed. peace, &c. 17. Persons not of good fame to give 10. On appeal, witnesses to recognize. 11. Proceedings on appeal. surcty for good behaviour. 1. The judges of the supreme court of appeals, the judges of the one or south -

general court throughout the commonwealth, all justices of the peace rized to keep the and commissioners in chancery within their respective jurisdictions, shall have power to cause all laws made for the preservation of the public peace, to be kept, and in the execution of that power, may re- Power to require quire persons to give security to keep the peace, or for their good beviour.

2. Whenever complaint shall be made to any such magistrate that Complaint how there is good cause for fear that any person intends to commit an of-<sup>made</sup>. fence 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 Arrest. 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. Recognizance to keep peace.

Party when discharged.

Refusing to rocognize, to be committed.

Defendant when discharged.

Complainant when to pay costs.

**Payment of costs** in other cases.

On appeal, witnesses to recognize.

Proceedings on appeal.

Costs.

Recognizance to be valid unless appeal prosecu-ted.

Persons commitnizing, how discharged.

Recognizances returned to court.

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 surcties, in such sum as the magis. trate 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

Prevention of Crimcs.

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

held to answer at such court.

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.

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.

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.

Append against 9. Any person aggrieved by the order of any judice for grant of giving the security or corporation court next to be holden required, appeal to the county or corporation court next to be holden for the said county or corporation.

> 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.

> 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.

> 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.

13. Any person committed for not finding securities, or refusing to ted for not recog- recognize as required by the court or magistrate, may be discharged by any judge or justice of the peace on giving such security as was required, or by the county court, on such terms as the court may deem reasonable.

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

### Arrest and Commitment.

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

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

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

#### CHAP. XV.

#### OF ARREST AND COMMITMENT.

SECTION

- 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.
- G. 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.
- tion. 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,
- Sc. 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 surctics.
- 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 recogni-34. zances.
- 13. Manner of conducting examina-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 Process to arrest judges of the general court, and all justices of the peace in vacation for offences, by as well as in term time, are authorized to issue process to carry into effect the provisions of this act.

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

Add. 67

129

Appeal allowed.

Doc: 26-2

526

### PROCEEDINGS TO PREVENT CRIMES.

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

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

 Magistrate when to issue warrant.
 Proceedings upon examination, before magistrate.

5. Defendant may have counsel.

charged to give re-

When person

cognizance.

When to be committed.

Forfeiture of recognizance.

When discharged.

May be delivered on warrant of executive, &c.

Complainant liable for costs, &c. Doc: 26-2

PROCEEDINGS TO PREVENT CRIMES.

#### SECTION

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

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

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

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

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

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

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

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

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

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

What officers to cause public peace to be kept.

Proceedings when complaint is made to magistrate.

Magistrate when to issue warrant.

examination before magistrate.

Defendant may have counsel.

Defendant when to enter into recognizance.

Defendant when to be discharged.

Defendant when to be committed.

Defendant when to be discharged,

527

# PROCEEDINGS TO PREVENT CRIME.

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

Costs by whom paid

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

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.

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.

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.

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.

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.

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.

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

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.

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

Appeal when allowed,

When magistrate may require witness to recognize.

District court how to proceed upon such appeal.

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

After commitment, how defendant may be discharged.

Recognizance to be transmitted to district court-

When person may be ordered to recognize without warrant.

Persons carrying offensive weapons how punished.

Suit brought on recognizance,

# OF ARRESTS.

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

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

Surety may take and surrender principal in recognizance.

529

# CHAPTER 113.

Boavest S. Server, deservate a libertitive owner tarville, warso

# • 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 dafendant 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.

13. Arrest may be made at night. 14. Officer must inform person of the cause of

SECTION

12. Officer may break open door.

arrest. 15. Person breaking peace to be taken before

justice.

16. Offetices 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 Arrest defined. be held to answer for a public offence.

SEC. 2. An arrest may be either,

1. By a peace officer under a warrant :

2. By a peace officer without a warrant :

3. By a private person.

SEC. 3. Every person must aid an officer in the execution of a warald officer in ma-king arrest. rant, if the officer require his aid, and be present and acting in its execution.

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

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

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

Every person must

misdemeanor how

made,

Arrest for felony or misdemeanor how made.

Defendant how to be restrained.

Add. 71

Arrest how and by whom made.

# PROCEEDINGS TO PREVENT COMMISSION OF CRIMES.

CHAP, 16.

# CHAPTER XVI.

# PROCEEDINGS TO PREVENT COMMISSION OF CRIMES.

SEC. 1. Certain officers conservators of the public peace.

- 2. Proceedings when complaint is made to magistrate.
- 3. Magistrate when to issue warrant.
- 4. Proceedings on examination before magistrate.
- 5. Privilege of defendant.
- 6. Recognizance, when required.
- 7. Defendant, when to be committed,
- 8. Discharge of defendant; complainant, when to pay costs.
- 9. In other cases, costs, how and when paid.
- 10. Appeal, when allowed.
- 11. When magistrate may require witnesses to recognize.
- Proceedings on appeal by district court.
   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-

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.

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.

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

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

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

When surc-ties may be required. 17 Wen. 181; 28 do. 639.

Warrant to issue.

Recogniz

# PROCEEDINGS TO PREVENT COMMISSION OF CRIMES.

complained of, he shall be required to enter into recognizance with CHAP, 16. sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of this territory, and especially towards the person requiring such security, for such term as the magistrate shall order, not exceeding six months; but he shall not be ordered to recognize for his appearance at the district court, unless he is charged with some offence for which he ought to be held to answer at said court.

SEC. 7. If the person so ordered to recognize, shall refuse or ne. When to be glect to comply with such order, the magistrate shall commit him 23 Wen. 639. to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment, with the sum and time for which security was required.

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

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

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

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

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

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

SEC. 14. Any person committed for notfinding sureties, or refus- Discharge of ing to recognise as required by the court or magistrate, may be dis- matty com-

219

Pg: 77 of 215

# 220

Recognizan-

Order to re-

mitted.

# ARRESTS.

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

SEC. 15. Every recognizance taken in pursuance of the foreces when to be transtrans- going 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.

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

Armed per-sons, when sons, 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.

Surety may surrender principal.

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. 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 misdomeanor, when may be made.
- 5. As to what constitutes arrest.

6. Officer may pursue fugitive into other counties.

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.

### 588 PART 4.

# INDICTABLE OFFENCES.

TITLE 1,

Factor appropriating ing the control of cotton, who appropriates to his own use propriating any cotton taken from any bale under his control, with infrom bale.

Adulterating sugar.

Making or emitting bills

for circulation.

Signing bills for circula-

tion.

punished, as if he had feloniously stolen such cotton. § 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.

tent to defraud the owner thereof, must, on conviction, be

§ 3266. Any factor, commission merchant, or agent, hav-

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

Passing such paper.

Psssing bills under five dollars.

Indictment

Concealed weapons.

The same.

for.

CHAP. 2.]

§ 3275. In an indictment under the preceding section, it Indictment is sufficient to charge that the defendant carried concealed for. about his person a pistol or other description of fire arms; Excuse. and the excuse must be made out by the defendant, to the satisfaction of the jury.

Filed: 02/01/2019

§ 3276. Any person, who in any newspaper, handbill, or Publishing other advertisement, written or printed, publishes or pro- another as a claims 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.

§ 3277. The publisher or printer of any such newspaper, Printer to or handbill, or other publication, may be required to testify give eviagainst any defendant indicted under the preceding section; and refusing to give evidence, must be fined five hundred Penalty for dollars, and imprisoned until such fine is paid, and also im- refusing. prisoned until he shall testify.

§ 3278. Any person who sells and delivers any poisonous selling poisubstance, without having the word "poison" written or labels. 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.

§ 3279. Any person who sells to any slave, or free child selling poiunder ten years of age, any drug, poisonous in its nature, or children. 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.

§ 3280. Any licensed retailer or other person, keeping fer- selling or mented, vinous or spirituous liquors for sale, who sells, gives to students, or delivers to any student of any college, or pupil of any &c. 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.

§ 3281. Any licensed retailer or other person who sells, To minors. 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.

§ 3282. Any licensed retailer, who, after taking the affida- Licensed retailer 76 vit prescribed in section 1057, knowingly sells any vinous tailed for 76

Pg: 79 of 215

sons without

PART 4.]

INDICTABLE OFFENCES.

Filed: 02/01/2019

TITLE 1,

Pg: 80 of 215

ing with slaves.

590

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.

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.

§ 3283. Any person who sells, gives, or delivers to any

§ 3284. The provisions of the above section apply to licensed retailers as well as other persons.

§ 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.

§ 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.

§ 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.

§ 3288. Any justice or magistrate, whenever he has good lation to laws reason to believe, or upon information on oath that any of the laws of this state against retailing or trading with slaves trading with 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.

> § 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.

§ 3290. In indictments under the preceding section, the defendant may show in defence he was the owner of the cotton.

§ 3291. Any person who prosecutes a suit in any of the Add. 77 courts in this state, in the name of another person, without

The same.

Trading with slaves. 19 Ala., 19.

Evidence on indictment.

Employing slave or free negro to draw off or sell.

Duty of magistrate in reagainst retailing or slaves.

Permitting slave or free negro to sample cotton.

Owner may.

Prosecuting suits in the name of anCHAP. 2.

INDICTABLE OFFENCES.

Pg: 81 of 215

his consent, must, on conviction, be fined not less than five other. Exceptions. hundred dollars.

§ 3292. The provisions of the preceding section do not Refusing to apply to a person having the beneficial interest using the mons of officer. name of the person having the legal right, in cases where he cannot bring the action in his own name.

§ 3293. Any person summoned by any sheriff, or other officer having authority, for the purpose of enabling such Duty of the officer to make an arrest, or to execute any duty devolving officer. 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.

 $\S$  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.

3296. Causing death by whipping, &c., without intention to kill, murder in the second degree.

- 3297. Inflicting or allowing cruel punishment, &c., failing to provide food, raiment, attention in sickness, dc.
- 3298. Indictments under preceding section.
- 3299. Defendant entitled to a jury twothirds of whom are slave holders.
- 3300. Assaults by any other person than the master.

§ 3295. Any person who with malice aforethought causes Death of a the death of a slave, by cruel whipping or beating, or by any slave by whipping, &c. inhuman treatment, or by the use of any weapon in its nature calculated to produce death, is guilty of murder in the first degree.

§ 3296. Any owner, overseer, or other person having the without in. right to correct any slave, who causes the death of such slave tention to kill. 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.

§ 3297. Any master, or other person standing towards the Cruel punslave in that relation, who inflicts, or allows another to inflict ishments; on him any cruel punishment, or fails to provide him with a or clothing, 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.

§ 3298. In indictments under the preceding section, it is Indictments. sufficient to charge that the defendant did inflict on a slave Add. 78

591

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.
- Persons committed for not recognising ; how discharged.
- Recognizances to be transmitted to the court.

# SECTION

- 15. Recognizances; when to be required on view of the court or magistrate.
- Persons who go armed may be required to find sureties for the peace, &c.
- Proceedings when person is suspected of selling liquor contrary to law.
- 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.
- Penalty for constable's or juror's neglect.
- 27. Jurors; how empanneled 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.
- Testimony of witnesses reduced to writing.
- Inquisition; how taken, and form thereof.

SECTION

- 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.
- 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 Add. 80

magitrate 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

Add. 81

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 Add. 82

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

# PT. 4.-TIT. 1.-PENAL CODE.

Division 9.—Offences against the Public Peace and Tranquility.

be made; And provided, also, that the only questions to be sub-ritie net ex mitted to and determined by the jury in trials for forcible entry, or forcible detainer, shall be the possession and the force, withont regard to the merits of the title on either side.

§4413. SEC. XV. Any person having or carrying about his Carrying person, unless in an open manner and fully exposed to view, any deadly weapistol, (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.

§4414. SEC. XVI. All other offences against the public peace, Other offennot provided for in this Code, shall be prosecuted and indicted lic peace. 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.

# 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 offr	'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 know-Polygamy ingly having a plurality of husbands, or wives, at the same time.

859

# USCA4 Appeal: 18-2377 Doc: 26-2

248

# Filed: 02/01/2019 - Pg: 88 of 215

Crimes.—Criminal Procedure.

Acts of asstrictly pursued.

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

Meaning of general terms.

193. Wherever anything is forbidden or directed by the provisions of this code, by using the general terms, any one, any person, the person, every person and such person, or the relative pronoun he, referring to such general term, the same prohibition or direction, if the contrary be not expressed, is extended to more persons than one, and to females as well as males doing or omitting the same act.(b)

# Criminal Procedure.

- A. PROCEEDINGS TO DETECT THE COMMISSION OF CRIMES.

- Writs of arrest, &c. Subpœnas. Expenses.
   Escapes into another county.
   Backing warrants. Bail. Removal.
   Magistrates backing such warrants to be indemnified.
   Disposition of property supposed to be stolen, found in the

possession of one accused. 6. Surety of the peace. 7. Bail.

8. Surrender of bail.

9. Settlement of criminal cases.

B. INDICTMENTS AND PLEADINGS.

 Grand jurors authorized to administer oaths.
 Form of indictments. Formal objections to indictment to be made before the jury is sworn. Amendments on demurrer, &c. 12. Variances between written instruments, as produced and

laid in the indictment, amendable.

13. Immaterial variances between indictment and proof amendable. 14. Manner of laying the ownership of property in cases of

partners and joint owners. 15. Manner of charging frauds against partners and joint

owners. 16. Manner of laying property of counties, cities, townships,

&c. 17. Forms of indictment in cases of forging, stealing and

18. Forms in other cases.
19. Intent to defraud particular persons need not be alleged or proven in cases of forging, uttering or false pretences.
20. In indictments for murder and manslaughter, means by which the injury was inflicted need not be specified.

- Requisites of an indictment for perjury.
   Requisites of an indictment for subornation of perjury.
   Indictment for duelling.
   Counts for receiving and stealing may be joined.
   Issue and trial in criminal cases.

 Prisoners standing mute.
 Prosecutor's name to be indorsed on the indictment. 28. Distinct acts of embezzlement may be charged in the same indictment.

29. Nolle prosequi

30. Pleas of autrefois convict or autrefois acquit.

C. COURTS OF CRIMINAL JURISDICTION.

31. Courts of over and terminer.

32. Quarter sessions. When causes to be certified to the over and terminer. Powers of the courts.

33. Writs of error and certiorari.

### D. OF THE TRIAL.

Persons under bail not to be placed in the criminal bar.
 Persons indicted for treason to have a copy of the indict-

ment

36. Peremptory challenges.

- Challenges by the commonwealth.
   How challenges are to be conducted.
- 39. How challenges are to be determined.

40. Of the trial of persons jointly indicted, and joint cnallenges anges.
41. How tales may be awarded and juries summoned.
42. Of juries de medietate lingue.
43. Of the place of trial of treason.
44. Of the place of trial of accessories before the fact.
45. Of the place of trial of accessories after the fact.
46. Of featuring striking or poisoning in one sounds and

46. Of felonious striking or poisoning in one county, and death in another

47. Of felonious striking or poisoning in the state, and death out of the state.

attention of the state.
48. Proof of offences committed near county lines.
49. Proof of offences committed during journeys.
50. Party indicted for felony or misdemeanor may be found guilty of attempt to commit the same. 51. Persons tried for misdemeanor not to be acquitted if the offence turn out to be felony.
52. Witnesses entitled to restitution to be competent.
53. Cure of defects in jury process by verdict.
54. Of the trial of prisoners committed.

- 55. Witnesses in forgeries.
   56. Witnesses not to be imprisoned except in certain cases.
   57. Bills of exceptions and writs of error allowed.
- Written opinions to be filed.
   Granting of writs of error regulated.
- 60. From whence writ of error shall issue.
- 61. Proceedings after affirmance or reversal of judgment.

### E. OF COSTS.

- 62. Power of grand and petit jurors over costs.
- 63. Of the defendant's costs.
   64. Of payment of costs generally.

65. Costs where separate bills are presented against joint

F. GENERAL PROVISIONS.

66. Insane prisoners. Jury to find the fact of insanity. De-

- fendant to be detained in custody. 67. Where defendant is found insane upon arraignment. 68. Where prisouer brought up to be discharged appears to
- be insane.

69. Insane defendant to be delivered up to his friends or to the overseers, on security being given. 70. How expenses to be paid in such cases. 71. Civil actions against felons.

- Executions upon sentences of restitution.
   Outlawry.

offenders.

74. Sentences of separate or solitary confinement. 75. Sentences of separate or solitary confinement of less than one year, and simple imprisonment.

- Executions in capital cases.
   Limitation of prosecutions.

78. Fines to be decreed to be paid to the state for the use of the county.

# A. PROCEEDINGS TO DETECT THE COMMISSION OF CRIMES.

1. The judges of the supreme court, of the court of over and terminer and jail Warrants of delivery, of the courts of quarter sessions, or any of them, shall and may direct their arrest, &c. writs and precepts to the sheriffs and coroners of the several counties within this com-

Subpœnas.

monwealth, when need shall be, to take persons indicted for felonies, or other offences, before them, who may dwell, remove or be received into another county; and it shall and may be lawful to and for the said judges, or any of them, to issue subpœnas into any county of the commonwealth, for summoning and bringing any person to give evidence in any matter or cause before them, or any of them, and to compel obedience to such writs, precepts or subpœnas, by attachment or otherwise, and under such pains and

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

193. Ibid. § 184. 1. Act 31 March 1860, § 1. P. L. 428.

system by the 13th section of the act of 22d April 1794. 3 Sm. 190; it will also be found in the punishments provided by the act of 23d April 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. Asd. B456. 1 R. 457. 5 R. 64. 1 Ash. 46. 7 Am. L. R. 620. (b) This section explains the meanings of general terms which have been used for the sake of brevity. Report on the Penal Code 39. Penal Code 39.

# Criminal Procedure.

penalties as other writs or subpœnas 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, subpœna or attachments, to be executed by the sheriff of the county in which the same is awarded, which said writ, precept, summons or subpœna, 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 Expenses. such process, when issued on behalf of the commonwealth, shall be paid out of the funds of the county where issued; and the expenses of removing any person charged with having committed an offence in one county into another county, or of transporting any person charged with having committed any offence in this state from another state into this state for trial, or for conveying any person, after conviction, to the penitentiary, shall be paid out of the treasury of the county where the offence is charged to have been committed.(a)

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

3. In case any person against whom a warrant may be issued by any judge or Backing waralderman of any city, or justice of the peace of any county in this common wealth, for rants. 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 Bail. 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 Removal. any other city or county, shall not be bailable in law by an alderman or justice of the peace, or such offender shall not give bail for his appearance at the proper court having cognisance of his crime, to the satisfaction of the alderman or justice before whom he shall be brought, then the constable or other person so apprehending such offender, shall carry and convey him before one of the aldermen or justices of the peace of the proper city or county where such offence was committed, there to be dealt with according to law.(d)

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

5. When any person shall be accused before a magistrate, upon oath or affirma-Disposition of property 4. Ibid. § 4. 5. 1bid. § 5. 2. Act 31 March 1560, § 2. P. L. 429. 3. Ibid. § 3.

(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 22d Schwarz 1791, 3 Sm. 43; and of the 2d section of the act of 22d 25th April 1846, P. L. 406. It is not proposed to repeal all the 2th 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 thas 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 charging a Midd. 8

Add. 86

# USCA4 Appeal: 18-2377 Doc: 26-2

250

Filed: 02/01/2019 Pg: 90 of 215 Eriminal Procedure.

supposed to 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 found in the have been described, on oath or affirmation, to have been stolen goods, if any shall be stolen, one accused. found in the custody or possession of such person or persons, or in the custody or possession of any other person or persons, for his, her or their use, and there is probable cause, supported by oath or affirmation, to suspect that other goods, which may be discovered on such search, are stolen, it shall and may be lawful for the said magistrate to direct the said goods to be seized, and to secure the same in his own custody, unless the 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 Inventory. 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 Restitution. and time of trial. And if, on such trial, the accused party shall be acquitted, and nc. 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 nc other shall appear or claim the said goods, or any part of them, then it shall be lawful. notwithstanding the claim of the said party accused, to detain such goods for the term of nine months, to the end that all persons having any claim thereto may have ful. opportunity to come, and to the satisfaction of the court, prove their property in them on which proof the said owner or owners, respectively, shall receive the said goods, or the value thereof, if from their perishable nature it shall have been found necessary to make sale thereof, upon paying the reasonable charges incurred by the securing the said goods and establishing their property in the same ; but if no such claim shall be brought and duly supported, then the person so convicted shall be entitled to the remainder of the said goods, or the value thereof, in case the same shall have been sold agreeably to When to be 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 missioners. 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)

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 appea: 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)

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.

(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

(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

# 7. Ibid. § 7.

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 at obvious necessity. arising from daily experience and observa-tion. Report on the Penal Code 39. (g) A justice may take bail after commitment for trial. 6 W & S. 314. 2 P. 45S. And sec 7 W. 454. 5 B. 512. 1 Sm. 57. n A recognisance taken by a justice to answer the charge cf arear is coram non judice, and void. Com. v. Phillip 2 H. S. 497 Mag. 316.

Notice.

delivered to county com-

Disposition of proceeds.

Surety of the

# Criminal Procedure.

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

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

9. In all cases where a person shall, on the complaint of another, be bound by recog-settlement nisance to appear, or shall, for want of security, be committed, or shall be indicted for of criminal an assault and battery or other misdemeanor, to the injury and damage of the party cases. complaining, and not charged to have been done with intent to commit a felony, or not being an infamous crime, and for which there shall also be a remedy, by action, if the party complaining shall appear before the magistrate who may have taken recognisance or made the commitment, or before the court in which the indictment shall be, and acknowledge to have received satisfaction for such injury and damage, it shall be lawful for the magistrate, in his discretion, to discharge the recognisance which may have been taken for the appearance of the defendant, or in case of committal, to discharge the prisoner, or for the court also where such proceeding has been returned to the court, in their discretion, to order a nolle prosequi to be entered on the indictment, as the case may require, upon payment of costs: Provided, That this act shall not extend to any assault and battery, or other 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 Grand jurors empowered to administer the requisite oaths or affirmations to any witness whose name may admin-ister oaths. may be marked by the district attorney on the bill of indictment. (e)

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

10. Ibid. § 10.

### 8. Act 31 March 1860, § 8 P. L. 432. 9. Ibid. § 9.

# <text><text><text><text><text><text><text><text>

11. Ibid. § 11.

# USCA4 Appeal: 18-2377 Doc: 26-2

252

Filed: 02/01/2019 Eriminal Procedure.

Pg: 92 of 215

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

Immaterial variances hetween indictment and proof amendable.

ners and

ers.

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 Manner of aying the the case of partners and joint owners, in any indictment for any felony or misdemeanor ownership of committed on or with respect to any money, chattels, bond, bill, note or other valuable seproperty in cases of part-curity 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 joint ownsuch 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.

which he is charged with having committed a felony or misde-meanor. 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 contem-plate 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 eradi-cated, 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 offonce is, that the act charged was committed with an intent to defraud; an indictment contain-ing 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 which he is charged with having committed a felony or misdepretences, with intert 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 manuer of the killing, and the means by which it was effected; if a person be indicted for one species 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. Oro. Cas. 113, decided in 1825, the indictment charged that the prisoner struck the deceased with a piece of brick, and it appeared pro-bable that the prisoner had not struck with the briek but that he struck with his fist, and that the fall on the brick was the znues of the death; it was unanimously held by the twelve judges of England, on a case reserved, that the cause of the

13. Ibid. § 13.

# 14. Ibid. § 14.

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 ment 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 occa-sioned 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 rahmed tight, might have produced the effect without any the surgeon, examined in the case, testified that the walding, if rahmed 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 reconcluble with reason, to wit: that where the instrument laid in the indict-ment, 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 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 felonionsly, withily, and of his malice aforethought, kill and murder the diccased; 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 defea-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 characteris-ties of indictments for these crimes, are so familiar to all crimi-nal 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 40ACd. 89

# Criminal Procedure.

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

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

16. With respect to property belonging to counties, cities, townships and districts, it Manner of shall be sufficient in any indictment for any felony or misdemeanor committed on or laying prowith respect to any goods, chattels, furniture, provisions, clothes, tools, utensils, mate-counties, children in the state of the state the expense of any county, city, township or district, to be used in any court, jail, house ships, &c. of correction, almshouse, or other building or place, or in any part thereof respectively, or to be used for the making, altering or repairing of any bridge or road, to aver that any such things are the property of such county, city, township or district.

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

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

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

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

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

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

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

15. Act 31 March 1860, § 15. P. L. 434.	18. Ibid. § 18.	21. Ibid. § 21.
16. Ibid. § 16.	19. Ibid. § 19.	22. Ibid. § 22.
17. Ibid. § 17.	20. Ibid. § 20.	23. Ibid. § 23.

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

against him." 1 Wr. 109. (b) This section is taken from the 3d section of the schefts as Murch 1806, 4 Sm. 354. Report on the Penal C. de 42. Add. 90

# Filed: 02/01/2019 Pg: 94 of 215 Eriminal Procedure.

Counts for receiving, may be joined.

24. In every indictment for feloniously stealing property, it shall be lawful to add a stealing and 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.

Prisoners standing mute.

Prosecutor's name to be indorsed on Indictment.

Distinct acts ment may be charged in ment.

25. In all cases of felony the prisoner shall be arraigned, and where any person on being so arraigned shall plead not guilty, every such person shall be deemed and taken to put himself upon the inquest or country for trial, without any question being asked of him how he will be tried, and the inquest shall be charged only to inquire whether he be guilty or not guilty of the crime charged against him, and no more. And wherever a person shall be indicted for treason or felony, the jury impannelled to try such person shall not be charged to inquire concerning his lands, tenements or goods, nor whether he fled for such treason or felony.(b)

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) 27. No person shall be required to answer to any indictment for any offence whatso-

ever, 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)

28. It shall be lawful in cases of embezzlement by clerks, servants or other persons in of embezzle the employ of another, to charge in the indictment, and proceed against an offender for any distinct acts of embezzlement, not exceeding three, which may have been committed same indict- 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 autre-30. In any plea of autrefois acquit, or autrefois convict, it shall be sufficient for any fois convict, or autrefois defendant to state, that he has been lawfully convicted or acquitted, as the case may be, of the offence charged in the indictment.(i)acquit.

24. Act 31 March 1860, § 24. P. L. 436. 25. Ibid. § 25.	26, Ibid. § 26,	28. Ibid. § 28. 29. Ibid. § 29.	30. Ibid. § 30.
--	-----------------	------------------------------------	-----------------

(a) This section is new, and is intended to remedy difficul-ties 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 then related and beth how here here in the second felony and a misdemensor, such as burglary and receiving stolen goods, could not be regularly joined; in larceny, counts for receiving were sometimes added, but the practice was re-garded as of doubtful legality, until in the cases of Rex v. Gal-loway, 1 Mood. Cro. Cas. 234, and of Rex v. Madden, 1 Mood. Cro. Cas. 277, it was decided to be erroueous. In Pennsylvania, the uniform practice has been to unite counts for larceny and receiving, but in no other kind of felonious taking has such ionder hean parmitted. So at common hear if three processors 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 receiv-ing 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 sec-tion will obviate these technical difficulties, as it permits a count for receiving to be joined with all indictments for feloni-us taking and authorizes the conviction of one or more of 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 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

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 de-fendant 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 prose-cution 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.

Report on the Penal Code 44. (h) This section is taken from the proviso to the 1st section of the act of 3d May 1800, 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 new. Report on the Penal Code 44

Add. 91

# Filed: 02/01/2019 Criminal Procedure.

C. COURTS OF CRIMINAL JURISDICTION.

31. The courts of over and terminer and general jail delivery shall have power—(a) Courts of

I. To inquire by the oaths and affirmations of good and lawful men of the county, of all over and tor miner. 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.(1

(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 Quarter and the respective countiessions.

I. To inquire, by the oaths or affirmations of good and lawful men of the .ounty, of all crimes, misdemeanors and offences whatsoever, against the laws of this commonwealth, which shall be triable in the respective county. II. To inquire of, hear, determine and punish, in due form of law, all such crimes and

misdemeanors and offences, whereof exclusive jurisdiction is not given, as aforesaid, to the courts of over and 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 over 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 when causer or offence not triable therein, it shall be the duty of said court to certify the same into to be certifi-the court of over and terminer next to be holden in such county, there to be heard and and termidetermined in due course of law.

The judges of the county courts of over and terminer and quarter sessions, and every powers of of them, shall have power to direct their writs or precepts to all or any of the sheriffs the courts. or other officers of any of the counties, cities, boroughs or towns corporate of this commonwealth, to arrest and bring before them persons indicted for felonies and other offences, and amenable to the respective court; each of said courts shall have power to award process to levy and recover such fines, forfeitures and amercements, as shall be imposed, taxed or adjudged by them respectively; each of the said courts shall have full power and authority to establish such rules for regulating the practice thereof respectively and for expediting the determination of suits, causes and proceedings therein, as in their

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

32. Ibi 1. § 32.

(\*) 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 uirisdiction frequently present themselves in criminal courts. (b) Sue 8 Pittshurgh Lar. J. 200 jurisdiction frequently present themselves in criminal courts,

(b) See 8 Pittsburgh Leg. J. 290.

Pg: 95 of 215

# Filed: 02/01/2019 Pg: 96 of 215 Criminal Procedure.

discretion they shall judge necessary or proper: Provided, That such rules shall not be inconsistent with the constitution and laws of this commonwealth; each of the said courts is empowered to issue writs of subpœna, 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 over 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.

34. No person who may hereafter be arraigned on any indictment, and who shall be Persons unbound by recognisance to appear and abide by the judgment of the court, shall be placed der bail not to be placed in the crimi- 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 nal bar. their counsel.(d)

35. Every person indicted for treason shall have a copy of the indictment(e) and a Persons indicted for list of the jury and the witnesses to be produced on the trial for proving such indictment, treason to have copy of mentioning the names and places of abode of such jurors and witnesses, delivered to indictment. him three whole days before the trial.(g)

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)

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.

38. All challenges in criminal proceedings shall be conducted as follows, to wit: the lenges are to commonwealth shall challenge one person, and then the defendant shall challenge one 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 39. When a challenge for a cause assigned shall be made in any criminal proceeding, determined. the truth of such cause shall be inquired of and determined by the court. (k)

Trial of per-40. In all cases in which two or more persons are jointly indicted for any offence, it sons jointly shall be in the discretion of the court to try them jointly or severally, except that in indicted, and cases of felonious homicide, the parties charged shall have the right to demand separate lenges. trials; (l) and in all cases of joint trials, the accused shall have the right to the same

33. Act 31 March 1860, § 33. P. L. 439.	35. Ibid. § 35.	37. Ibid. § 37.	39. Ibid. § 39.
34. Ibid. § 34.	36. Ibid. § 36.	38, Ibid. § 38.	40. Ibid. 9 40.

(a) A writ of error issued without a special allocatur will be quashed. 2 S. & R. 453. 2 Wh. 113. So. also, if the allocatur be obtained before sentence. 16 S. & R. 319. (b) It is never granted on mere technical matters, not going to the merits. 2 Barr 244. 3 S. & R. 199. 3 Y. 29. 6 B. 403. 4 B. 424. 1 Wh. 525. There must be strong ground to believe that if the case be not removed, some important principle of law or the plain instite of the case will be yielded. 4 Pitts law, or the plain justice of the case, will be violated. burgh Leg. J. 668. 4 Pitts-

(c) This section is taken from the 7th section of the act of 13th April 1791, 3 Sm. 30; and the 9th section of the act of 16th June 1836, P. L. 787. Report on the Penal Code 44.
(d) This section is taken from the act of 28th March 1808, 4 Sm. 529. Report on the Penal Code 45.
(e) The caption is a postion of the indictment and the section of the section of the section.

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.

Brightly's U. S. Dig. 221. (h) The 36th, 37th, 35th and 39th sections are intended to supply the 1524, 1554, 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 chal-lenges are allowed; and that by the 154th section of the act of 1834, the commonwealth is interdicted from challenging, with-out cause, in any case of feiony, 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, marder, mansection, to wit: treason, misprision of treason, murder, man-slaughter, concealing the death of a bastard child, rape, robbery, burglary, sodomy, malicious maiming and arson; and in a'l other felonies and misdemeanors, is allowed the same num-

36. Ibid. § 36. 38. Ibid. § 38. 40. Ibid. § 40. ber of challenges as the defendant, to wit: four. The object of thus extending to the commonwealth the right of challenging, in the minor felouies, the same number of jurors as the defendant, arises from the fact, that by the present code a large number of offences, which were misdemensors at common law, are now made felouies; 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 preemptorly, is of the deepest importance; it is not an uncommon thing to find in a panel of jurors, one or more persons pludged 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 sgainst such contingencies. The 39th section of the Preal 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.

45.

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. 202. 1 Crauch C. C. 452. Or that the juror has been supposed as a witness by the prisoner. 7 W 558. Or that he is a tenant of one of the parties. 8 W. 304. Or that he had grossly misbehaved bimself on a former occasion, declaring that he had tried to acquit any one the index desired to have convicted; and that  $Aigly 3^{\circ}$  (34) on a tormer occasion, accurating that he has tried to active any one the judge desired to have convicted; and that Are 3.5 GS Tom Paine man, and would as lief swear on a specified work 3.3on the Bible." 11 II. 12. (l) See 1? C. 305

Peremptory challenges.

> Challenges by the commonwealth.

How chalbe conducted.

# Criminal Procedure.

Filed: 02/01/2019

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 How tales authorized and required, when occasion shall render the same necessary, (b) to order a may be tales de circumstantibus, either for the grand or petit jury, (c) and all talesmen shall be and juries liable to the same challenges, fines and penalties as the principal jurors: Provided, summoned. That nothing herein contained shall repeal or alter the provisions of an act passed the 20th day of April 1858, entitled, "An act establishing a mode of drawing and selecting jurors in and for the city and county of Philadelphia."(d)

42. No alien shall, in any criminal case whatsoever, be entitled to a jury de medietate or juries de linguæ, or partly of strangers.(e) aedietate

43. The trial of all treason against the commonwealth, committed out of the jurisdiclinguæ. tion of the state, shall be in the county where the offender is apprehended, or into which Place of trail for treason. he shall first be brought.(g)

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

45. If any person shall become an accessory after the fact, to any felony, whether the Of accessosame be a felony at common law, or by virtue of any act of assembly now in force, or ries after the that may be hereafter in force, he may be indicted and convicted as an accessory after the fact, to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether

41. Act 31 March 1860, § 41. P. L. 440. 42. Ibid. § 42.

43. Ibid. § 43, 44. Ibid. § 44.

45. Ibid. § 45.

Pg: 97 of 215

(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 peremp-tory challenge to the aggregate of the numbers to which they are respectively entitled. The emburrassments 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 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 in-dicted, could demand a separate trial, presented another ques-tion; some in-sisting that they possess such a right; others contending that such severance is a mather of sound discretion, to be exercised by the court, with that due regard and tender-ness to prisoners, which characterizes our criminal jurispru-dence; 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 trinks. it is also pro-posed 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.

so circumstanced with not be intered by this latter provision. It cases of joint trial, as their being so fried 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 cared by the vertict, under the 533 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 is taken from the 149th section of the eat of 14th April 1834, P. L. 368; which has also been left unrepealed for the same reason. Report on the Penal Code 46. (c) This section is new, and necessary in the event of trials of treason against the state hereafter taking piace. Report on the Penal Code 46.

of treason against the state hereafter taking place. Report on the Penal Code 46.

of treason against the state leterater taking place. Report of 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, com-fraters, &c., as against principals, is familiar to our criminal legislation; it is found in the 7th section of the act of 1718, 1 Sm. 113; in the 21 section of the act of 8th March 1780, 1 Sm. 499; in the 2d, 3d and 5th sections of the act of 5th April 1790, 2 Sm. 531; and in the 4th section of the act of 231 April 1780, 2 Sm. 531; and in the 4th section of the act of 231 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 substan-tive 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 (he technical distinction now existing between accesso-17

ries before the fact and principal offenders. This was always the law as regards misdemeanors in which there are no acces-sories, all being regarded by law as principals; in felony, how-ever, except in certain cases about to be noticed, an accessory ever, except in certain cases about to be noticed, an accessory cannot be tried before the conviction or outlawry of his princi-pal, unless tried with him. In felonies of frequent occurrence, this was found a great and serious evil, which called for and re-ceived partial legislative correction; as early as the act of the 31st May 1718, 1 Sm. 105, it was provided that persons barbor-ing, 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 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 acce-sories, to wit, receivers of stolen goods, in cases where the principal was not amenable to justice; afterwards, by the act of 23d September 1731, 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

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 re-ceivers 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. 2 6, p. 373, says on this point: "I know attempts have been made, under various shapes, to prosecute the receiver as for a misdemeanor,

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 pro-perty, knowing it to have been felonionsly stolen, may be pro-secuted, 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 offenders who have been felonices, 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 confort to an offender whose crime they abominate and deplore. It seems strange that the common law privilege, which ex-empted 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 40-8.

17

# Add. 94

# Doc: 26-2

# Filed: 02/01/2019 Pg: 98 of 215 Criminal Procedure.

the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony, if convicted as an accessory, may be punished; and the offence of such person, howsoever indicted, may be inquired of, tried, determined and punished, by any court which shall have jurisdiction to try the principal felon, in the same manner as if the act by reason of which such person shall have become accessory, had been committed at the same place as the principal felony : Provided always, That no person who shall be once duly tried for any such offence, whether as an accessory after the fact, or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.(a)

Felonious striking or poisoning in

Felonious striking or the state.

Proof of of-

Proof of offences committed dur-

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 one county, death in another county, then an indicated and effectual in law, as well against the and death in where the death shall happen, shall be as good and effectual in law, as well against the principal in such murder as against the accessory thereto, as if the stroke, poisoning or other cause of death had been given, done or committed in the same county where such indictment shall be found ; and the proper courts having jurisdiction of the offence shall proceed upon the same as they might or could do in case such felonious stroke, poisoning or other cause of death, and the death itself thereby ensuing, had been committed and happened all in one and the same county.(b)

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 bisoning in the state and cause of death at any place out of the jurisdiction of this state, an indictment therefor the state and cause of death at any place out of the jurisdiction of this state, an indictment therefor death out of found by the jurors of the county in which such stroke, poisoning or other cause of 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)

48. In order to obviate the difficulty of proof as to all offences committed near fences com-the boundaries of counties, in any indictment for felony or misdemeanor committed near county lines. the boundary or boundaries of two or more counties, or within the distance of five hun-dred yards of any such boundary or boundaries, it shall be sufficient to allege that such foloa or more county in the sufficient to allege that such felony or misdemeanor was committed in any of the said counties; and every such felony or misdemeanor shall and may be inquired of, tried, determined and punished in the county within which the same shall be so alleged to have been committed, in the same manner as if it had been actually committed therein.(d)

49. In order to obviate the difficulty of proof as to offences committed during journeys from place to place, in any indictment for felony or misdemeanor committed ing journeys, on any person or on any property, upon any stage coach, stage, wagon, railway-car or other such carriage whatever, employed in any journey, it shall be sufficient to allege that such felony or misdemeanor was committed within any county or place through any part whereof such coach, wagon, cart, car or other carriage shall have passed in the course of the journey during which such felony or misdemeanor shall have been committed; and in all cases where the centre or other part of any highway shall constitute the boundaries of any two counties, it shall be sufficient to allege that the felony or mis-

### 46. Act 31 March 1860, § 46. P. L. 441. 47. Ibid. § 47.

48. Thid. 5 48.

(a) This section is only an extension of the existing laws. which, as will be seen from the preceding remarks, subjected accessories after the fact, and receivers, to punishment before the conviction or attainder of their principals. It embraces such accessories not only in common law felonies, but those created, or which hereafter may be created, by statute; it anthorizes 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 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 renal Code 48.

Penal Čode 48. (b) This section has been introduced to remove a difficulty (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 Piens of the Grown, book 2, chap. 25, 236, 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 homi-ride 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 reme-died by 2d & 3d Edward VI., chap. 24, by which it was enacted,

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

that in such cases the trial should take place in the county where the death happened. This statute is among those reported by the julges of the Supreme Court, as being in force in Penn-sylvania; 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,  $\gtrsim$  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 per-petrated and manifested within our jurisdiction; it seems, petrated and manifested within our jurisdiction; it seems,

petrated 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 perpe-trated; 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.

Add. 95

49. Ibid. \$ 49.

# Eriminal Procedure.

Filed: 02/01/2019

demeanor was committed in either of the said counties through, or adjoining to, or by the boundaries of any part whereof such coach, wagon, cart, car or other carriage shall have passed in the course of the journey during which such felony or misdemeanor shall have been committed ; and in any indictment for any felony or misdemeanor, committed on any person or on any property on board any vessel whatsoever, employed in any voyage or journey on any navigable river, canal or inland navigation, it shall be sufficient to allege that such felony or misdemeanor was committed in any county or place through any part whereof such vessel shall have passed in the course of the voyage or journey during which such felony or misdemeanor shall have been committed; and in all cases where the side or bank of any navigable river or creek, canal or inland navigation, or the centre or other part thereof, shall constitute the boundary of any two counties, it shall be sufficient to allege that such felony or misdemeanor was committed in either of the said counties through, or adjoining to, or by the boundary of any part thereof, such vessel shall have passed in the course of the voyage or journey during which such felony or misdemeanor shall have been committed; and every such felony or misdemeanor committed in any of the cases aforesaid, shall and may be inquired of, tried, determined and punished in the county or place within which the same shall be so alleged to have been committed, in the same manner as if it had actually been committed therein.

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

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

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

53. No verdict in any criminal court shall be set aside, nor shall any judgment be Cure of dearrested or reversed, nor sentence delayed, for any defect or error in the precept issued fects in jury from any court, or in the venire issued for the summoning and returning of jurors, or verdict. for any defect or error in drawing, summoning or returning any juror, or panel of jurors, (c) but a trial, or an agreement to try on the merits, (d) or pleading guilty, or the general issue(c) in any case, shall be a waiver of all errors and defects in, or relative

51. Ibid. § 51.

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

(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 facilitate the conviction of offenders and void unnecessary delay in the administration 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 beeu committed, the Americau courts hare 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 (leas of the Crown, vol. I, p. 508, thus recites one of these cases: "A. hath his keys ticd 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 thanged in the pocket of A., whereby A. had still in law the possession of his purse, so that *lied, copil wan 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 ware tied to the counter by a cord; upon being tried for stealing, it was held that the property never was either com-pletely server of from the possession of the owner, nor completely in the possession of the prisoner, and he was acquitted." Sleigh's Criminal Law 29. In regard to the other doctrine gought 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  $\gtrsim 564, 2294$ . 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 seuse. Report on the Penal Code 50.

53. Ibid. § 53.

(b) This section is taken from the act of 29th March 1809, 5
(b) This section is taken from the act of 29th March 1809, 5
Sm. 4S; 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 the formula of the merits of the section of

52. Ibid. § 52.

(a) A drift of the metric is a waver of an inregularities 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 verdicit was rendered. 10 H. 94. If a person, by whom the vertict 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. c. Spring, 10 Leg. Int. 54-6. 1 Am. L. R. 424. See 4 P. L. J. 521. (c) If the prisouer stands mute, and the plea of not guilty is entered by the court, it is within the act. 5 Wh. 67. See 2 Add.

Ash. 90.

Add. 96

Pg: 99 of 215

Filed: 02/01/2019 Pg: 100 of 215 Criminal Procedure.

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

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 over and terminer, general jail delivery, or other court where the offence is properly cognisable. after such commitment, it shall and may be lawful for the judges or justices thereof, (b) and they are hereby required on the last day of the term, sessions or court, to set at liherty 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 thee he produced; (c) and if such prisoner shall not be indicted and tried the second term. session or court(d) after his or her commitment, unless the delay happen on the application or with the assent of the defendant, or upon trial he shall be acquitted, he shall be discharged from imprisonment: (e) Provided always, That nothing in this act shall extend to discharge out of prison, any person guilty of, or charged with treason, felony or other high misdemeanor in any other state, and who by the constitution of the United States ought to be delivered up to the executive power of such state, nor any person guilty of, or charged with a breach or violation of the laws of nations.(g)

Witnesses in forgeries.

Witnesses prisoned except in certain cases.

55. Upon the trial of any indictment for making or passing, and uttering, any false, forged or counterfeited coin, or bank note, the court may receive in evidence, to establish either the genuineness or falsity of such coin or note, the oaths or affirmations of witnesses who may, by experience and habit, have become expert in judging of the genuineness or otherwise, of such coin or paper, and such testimony may be submitted to the jury without first requiring proof of the handwriting or the other tests of genuineness, as the case may be, which have been heretofore required by law; and in prosecutions for either of the offences mentioned or described in the 164th, 165th, 166th and 167th sections of the "Act to consolidate, revise and amend the penal laws of this commonwealth,"(h) the courts shall not require the common wealth to produce the charter of either of said banks, but the jury may find that fact upon other evidence, under the direction of the court.(i)

56. No witness in any case who enters his or her recognisance, in such sum as the not to be im- magistrate may demand, to appear and testify in such prosecutions as require his testimony, shall be committed to prison by the judge, alderman or magistrate before whom any criminal charge may be preferred: Provided however, That in all cases triable in the over and terminer, where a positive oath is made, reduced to writing and signed by the deponent, setting forth sufficient reasons or facts to induce the firm belief on the part of the judge, magistrate or alderman, that any witness will abscond, elope or refuse to appear upon the trial, that then and in such case the judge, magistrate or alderman may exact bail of said witness to testify.(k)

Bills of exception and writsoferror allowed.

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

55, Ibid. § 55.

54. Act 31 March 1860, § 54. P. L. 443.

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.

to the code of criminal procedure. Report on the Penal Code 51.
(b) The application must be made to the court in which the prisoners were indicted. 2 Wh 502. 3 Y. 264. 7 W. & S. 110.
(c) This section only applies where there has been wilful delay on the part of the commonwealth. 16 S. & R. 305. 7 W. 366. Not where the trial is delayed by the prisoner. 3 Y. 266.
16 S. & R. 304. 2 Wh. 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 triad. 5 C. 129.

competent and regularly constituted court before whom he could have been indicted and triad. 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 infor-mality in selecting and drawing them, he is not entitled to a discharge. 5 C. 129. (f) This section is a transcript of the 3d section of the act of 18th February 1785, 2 Sm. 277. The words, "or other indicta-ble 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 commit-ments for treason or felony, but to commitments for all crimi-nal 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 inter-ference 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. (a, See tit. "Crimes," pl. 173-6.

(..., 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 scaled by the court below. 2 W. 285.

nal offence, other than murder or voluntary manslaughter, is not the subject of consideration on a writ of error, although the . (m) The prisoner must show that a substantial error was com-bill may have been sealed by the court below. 2 W 285. . (m) The prisoner must show that a substantial error was com-by which he has been injured; it is not anticient that an ab-stract or technical error has taken place. 5 C. 429. . (m) The supreme court is limited to a review of the points so that or technical error has taken place. 5 C. 429. . (m) The supreme court is limited to a review of the points so that filed of record by the court below. 5 C. 420. 1 Wr. 108. The act does not authorize an exception to the charge of the court. Com. v. Jacoby, 6 Piltsburgh Leg. J. 178. . (a) Sections 57 to 61 are taken from the 1st, 24, 34, 4th and 5th sections of the act of 6th November 1856, P. L. 795. The provides for the oath or affirmation required, being filed in the prothonotary's office of the proper district. The effect of the prothonotary's office of the proper district. The effect of the party convicted of murder or mansian ther, making an oath that his application for a writ of error is not for the proves of in authorizing a defendant, convicted of voluntary mar-shaughter, to enter bail to appear and abile the sentence. The com-provide when by the previous part of the sentence. The ori-in sing out a writ of error, to obtain a reversal of their conden-antions; they think that such a temptation to perior with do infusence in preventing litigation; how much less must the shaughter, in the work of a party so situated. Experience shaughter, the then in the work of a party so situated being filed in the provide ball that such a temptation to perior with of error can issue until after conviction and sentence. The com-suing out a writ of error, to obtain a reversal of their conden-suing out a writ of error, to obtain a reversal of their conden-strations; they think that such a temptation to perior, should be placed in the

Add. 97

# Eriminal Procedure.

58. If during the trial upon any indictment for murder or voluntary manslaughter, Written optthe court shall be required by the defendant or defendants to give an opinion upon any nions to be point submitted and stated in writing, it shall be the duty of the court to answer the filed. same fully, and file the point and answer with the records of the case (a)

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

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

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

# E. OF COSTS.

62. In all prosecutions, cases of felony excepted, if the bill of indictment shall be Power of returned "ignoramus," the grand jury returning the same shall decide and certify on grand and such bill whether the county or the prosecutor shall pay the costs of prosecution; and over costs. in all cases of acquittals (b) by the petit jury on indictments for the offences aforesaid, the jury trying the same shall determine, by their verdict, whether the county, (c) or the prosecutor, or the defendant shall pay the costs, (d) or whether the same shall be apportioned between the prosecutor and the defendant, and in what proportions; and the jury, grand or petit, so determining, in case they direct the prosecutor to pay the costs or any portion thereof, shall name him in their return or verdict; (e) and whenever the jury shall determine as aforesaid, that the prosecutor or defendant shall pay the costs, the court in which the said determination shall be made shall forthwith pass sentence to that effect, and order him to be committed to the jail of the county until the costs are paid, unless he give security to pay the same within ten days.(g)

63. In all prosecutions where the petit jury trying the same shall acquit the of the defendefendant, and shall determine, by the verdict, that the prosecutor shall pay the costs(h) dant's costs. the defendant's bill for his subpœnas, serving the same, and attendance of his material and necessary witnesses, shall be included in the costs and paid accordingly.(i)

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

58. Act 31 March 1860, § 58. P. L. 444.	60. Ibid. § 60.	
59 Thid, § 59	61 Thid \$ 61.	

have in a criminal proceeding, where the matter in issue is life or liberty! The privilege given in the proviso, in a case of vol-untary 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 sup-pose 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 rehave in a criminal proceeding, where the matter in issue is life extended to felonious homicide; as has been heretofore re-marked, the line between murder and voluntary manslaughter marked, 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 re-mains unreversed and unrepealed. We ought not, in our anxiety to guard the rights of the offender, to forget those of the community, an error which seems gradually insinunting itself into neual legislation and administration; the reasoning on this subject might be extended, but the commissioners think they have said enough to recommend their proposed modifica-tion 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

### 64. Ibid. § 64. 62. Ibid. § 62. 63. Ibid. § 63.

ap indictment for a felony, a count for a misdemeanor is joined. ap indictment for a reloady, a control a misuchieneous is joined. 2 C. 154. The statute extends to the case of a defective indict-ment. 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 con-vict 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 pro-senter. 2 Gr 66.

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 hattery, 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. c. Carr. Quarter Sessions, Phila., 23 October 1847. MS. The act does not apply to persous 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 1504. 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 the days is given to the defendant, who, although acquitted, 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

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 Asth. 98
7 Sm. 242. Report on the Penal Code 53.

# Eriminal Procedure.

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

65. In all cases where two or more persons have committed an indictable offence, the Costs where suparate biils names of all concerned (if a prosecution shall be commenced) shall be contained in one are present bill of indictment, for which no more costs shall be allowed than if the name of one perjoint offend- son only was contained therein.(g)ers.

# F. GENERAL PROVISIONS.

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

and to declare whether he was acquitted by them on the ground of such insanity; and Defendant to if they shall so find and declare, the court before whom the trial is had shall have power to be detained order him to be kept in strict custody, in such place and in such manner as to the said in custody. court shall seem fit, at the expense of the county in which the trial is had, so long as

such person shall continue to be of unsound mind.(h)

67. The same proceedings may be had, if any person indicted for an offence shall, upon arraignment, be found to be a lunatic, by a jury lawfully impannelled for the purpose; or if, upon the trial of any person so indicted, such person shall appear to the jury, found insane charged with such indictment, to be a lunatic, the court shall direct such finding to be raignment. recorded, and may proceed as aforesaid. 68. In every case in which any person charged with any offence shall be brought

before the court to be discharged for want of prosecution, and shall by the oath or affirmation of one or more credible persons, appear to be insane, the court shall order the

district attorney to send before the grand jury a written allegation of such insanity in

the nature of a bill of indictment; and thereupon the said grand jury shall make inquiry

into the case, as in cases of crimes, and make presentment of their finding to said court thereon; and thereupon the court shall order a jury to be impannelled to try the insanity of such person; but before a trial thereof be ordered, the court shall direct notice thereof to be given to the next of kin of such person, by publication or otherwise, as the case requires, and if the jury shall find such person to be insane, the like proceedings

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

Where de-

fendant is

upon ar-

Insane de friends, &c.

How expen-

in such

cases.

may be had as aforesaid.

69. If the kindred or friends of any person who may have been acquitted as aforesaid fendant to be on the ground of insanity, or in the default of such, the guardians, overseers or supervisors of any county, township or place, shall give security in such amount as shall be satisfactory to the court, with condition that such lunatic shall be restrained from the commission of any offence by seclusion or otherwise, it shall be lawful for the court to make an order for the enlargement of such lunatic, and his delivery to his kindred or friends, or as the case may be, to such guardians, overseers or supervisors.

70. The estate and effects of every such lunatic shall, in all cases, be liable to the ses to be paid 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 fe-lons.

71. In all cases of felony heretofore committed, or which may hereafter be committed, it shall and may be lawful for any person injured or aggrieved by such felony, to have and maintain his action against the person or persons guilty of such felony, in like manner as if the offence committed had not been feloniously done; and in no case whatever, shall the action of the party injured, be deemed, taken or adjudged to be merged in the felony, or in any manner affected thereby.(i)

Executions upon sentences of restitution.

449.

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.	67. Ibid. § 67.	69. Ibid. § 69.	71. Ibid. § 71.
66. Ibid. § 66.	68. Ibid. § 68.	70. Ibid. § 70.	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

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.

liable. 6 P. L. J. 237. (c) This section is a consolidation of the 11th and 15th sec-tions 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 l'enal Code 54. (h) Sections 66 to 70 are taken from the 58th. 59th. 60th, 61st and 62d sections of the act of 13th June 1836, P. L. 603. Report on the Penal Code 54. See 6 C 522. 10 C. 184. (i) This section is new; its object is sufficient element of the out further explanation Report on the Penal Code 54. 4 C. 173. 5 C. 38. Provided the defendants be sentenced to hard labor, and the commitments follow the sentences as re-corded. 12 C. 349. The case of a prosecutor on a bill returned ignoramus, is not within the act; nor that of a defendant ac-quitted, 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 noile pro-sequit 12 S. & R. 94. 6 H. 493. Or the indictment is quashed. 3 if. 487. But it extends to cases where the party may be dis-charged 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

# Criminal Procedure.

county, requiring him to levy the sums due upon such recoveries as aforesaid, of the lands and tenements, goods and chattels of such offenders, returnable to the next term or session of the court where such conviction was had, which shall be executed accordingly; (a) and the lands, goods and chattels thereby seized shall be sold and conveyed by the said officers, and such sales shall be as available and effectual in law as any other sales of land taken and sold for the payment of debts, by virtue of write 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 Outlawry. jurisdiction within this commonwealth, of treason, felony of death, robbery, burglary, sodomy or buggery, or as accessories before the fact to any of the same offences, did not or will not appear to answer to such indictment, or having appeared, shall escape before trial, the same indictment, record and proceedings shall be removed by writ of certiorari Certiorari. into the supreme court of this 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 afore-Alias capias. said, cannot be found in his bailiwick, then, after such return, a second writ of capias may issue out of the said supreme court, and be delivered at least three months (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  $court_{d}(d)$  on the first day of the second term next after the teste of the said second writ of capias, so that a term shall intervene between the teste of the return days of the same writ or writs, whereby the said sheriff or sheriffs shall be commanded to take the said person so indicted as aforesaid, if he may be found in his or their bailiwicks, and him safely keep, so that he may have his body before the justices of the said supreme court at the day of the return thereof, to answer or prosecute his traverse as aforesaid; but if Proclama he cannot be found in his or their bailiwicks, then to cause public proclamation to be tion. made on three several days(e) in one of the courts of quarter sessions of the peace to be held for the said counties respectively, between the teste and return days of the same writ or writs, that the party so indicted shall appear before the said justices of the said supreme court, at a supreme court to be holden at the time and place contained in the same writs, to answer such indictment or prosecute his traverse thereof, as the case may be, or through default thereof, he will at the return of the same writ or writs be outlawed, and attainted of the crime whereof he was indicted as aforesaid; and the said second writ of capias, directed to the sheriff of the county where the crime hath been, or shall be charged to have been committed, shall contain a further clause commanding the said sheriff, in case the person indicted as aforesaid cannot be found in his bailiwick, Advertiseto cause public advertisement to be made in one or more of the public newspapers of ment. this state, once a week, in six succeeding weeks, between the teste and return of the said second writ of 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 clude 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.

Add. 100

Sentence.

lawry.

How execu-tion to be

awarded.

When out-

lawry may be reversed.

234

# Filed: 02/01/2019 Pg: 104 of 215

# Eriminal Procedure.

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 princi-pal offender, previously to the declaration of outlawry against the accessory, against Accessories. 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 Effect of out 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.

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.

All the costs and charges of the said proceedings to outlawry shall be borne and paid by the county where the crime is laid to have been committed : Provided always, That if the person or persons so outlawed shall have real or personal estate, the same or so much thereof as shall be necessary, shall be sold in the manner provided by the seventysecond section of this act, and the net proceeds of such sales shall be applied to the payment of the said costs and charges, or so far as the same shall extend, in exoneration of the county.(b)

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 year, and simple im-

75. No person shall be sentenced to imprisonment at labor, by separate or solitary less than one confinement, for a period of time less than one year, except in the counties where, in the opinion of the court pronouncing the sentence, suitable prisons have been erected for prisonment 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 trans-cript 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. Al-hough proceedings in outlawry bars here paraly presented to

ably drawn, as to require no amendment of importance. Al-though proceedings in outlawry have been rarely resorted to in our state, yet they are indispensably necessary in every com-plete 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 autho-rized to receive convicts of a like description; and the 77th section prohibits sentences of imprisonment at labor by sepa-rate or solitary confinement for a less period of time than one rate or solitary confinement for a less period of time than one year, except in the counties where suitable prisons have been or shall hereafter be erected for such confinement and labor.

This section also provides that in all cases where the sentence is for simple imprisonment only, the offender shall be confined in the county where the conviction shall take place. The sections taken together require: 1. That all persons sentenced to simple imprisonment, shall be confined in the county where the offender is convicted. 2. That no person shall be sentenced to imprisonment at labor by separate or solitary confinement for a less period than one year, except in the counties where, in the opinion of the court passing the sentence, prisons are provided suitable for such confinement and labor. 3. That all imprison-ment 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 and in those counties, such convicts may be sent to the county prisons as heretofore. The provision contained in the last pro-viso 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 pro-viso, was held to be merely directory, and a failure to comply with its requirements, not to avoid the sentence **Acter** is the

Costs.

Sentences of separate or solitary confinement.

# Eriminal Procedure.

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

76. Whenever, hereafter, any person shall be condemned to suffer death by hanging, Execution in for any crime of which he shall have been convicted, the said punishment shall be capital cases. inflicted upon him within the walls or yard of the jail of the county in which he shall have been convicted; and it shall be the duty of the sheriff or coroner of the said county to attend and be present at such execution, to which he shall invite the presence of a physician, the district attorney of the county, and twelve reputable citizens, who shall be selected by the sheriff; and the said sheriff shall, at the request of the criminal, permit such ministers of the gospel, not exceeding two, as he may name, and any of his immediate relatives, to attend and be present at such execution, together with such officers of the prison, and such of the sheriff's deputies as the said sheriff or coroner, in his discretion, may think it expedient to have present; and it shall be only permitted to the persons above designated to witness the said execution : Provided, That no person under age shall be permitted, on any account, to witness the same. And after the execution, the said sheriff or coroner shall make oath or affirmation, in writing, that he proceeded to execute the said criminal, within the walls or yard aforesaid, at the time designated by the death warrant of the governor; and the same shall be filed in the office of the clerk of the court of over and terminer of the aforesaid county, and a copy thereof published in two or more newspapers, one, at least, of which shall be printed in the county where the execution took place. (a)

77. All indictments which shall hereafter be brought or exhibited for any crime or Limitation of misdemeanor, murder and voluntary manslaughter excepted, shall be brought or ex- prosecutions. hibited within the time and limitation hereafter expressed, and not after; (b) that is to say, all indictments and prosecutions for treason, arson, sodomy, buggery, robbery, burglary, perjury, counterfeiting, forgery, uttering or publishing any bank note, check or draft, knowing the same to be counterfeited or forged, shall be brought or exhibited within five years next after the offence shall have been committed; and all indictments and prosecutions for other felonies not named or excepted heretofore in this section, and for all misdemeanors, perjury excepted, shall be brought or exhibited within two years next after such felony or misdemeanor shall have been committed :(c) Provided however, That if the person against whom such indictment shall be brought or exhibited, shall not have been an inhabitant of this state, or usual resident therein, during the said respective terms for which he shall be subject and liable to prosecution as aforesaid, then such indictment shall or may be brought or exhibited against such person at any period within a similar space of time during which he shall be an inhabitant of, or usually resident within this state: And provided also, That indictments for misdemeanors committed by any officer of a bank, or other corporation, may be commenced and prosecuted at any time within six years from the time the alleged offence shall have been committed.(d)

78. All fines imposed upon any party, by any court of criminal jurisdiction, shall be Fines to be decreed to be paid to the commonwealth; but the same shall be collected and received, decreed to be decreed to be paid to the commonweath, but the sume chart and bare been imposed as state, for the use of the respective counties in which such fines shall have been imposed as state, for the use of the county.

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

77. Ibid. § 77.

78. Ibid. § 78.

a 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 subserve the ends ofth accused, and the accused kept in a state of moral slavery, to which no human being kept in a state of moral slavery, to which no human being should be subjected; it is true, that stale prosecutions are

(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.
(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. 386, 00, 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, prosecutions should not be unnecessarily 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 Code 55. 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.

[ 266 ]

# Cumberland Road.

1. Road accepted from the United States.

Appointment of superintendents. Term. Vacancies, how d. Oath of office. Bond. filled.

3. Superintendent in Fayette and Somerset counties.

a. Superintendent in rapette and contribution of the superintendents.
4. Powers of the superintendents.
5. Compensation. Accounts.
6. Toll-gates to be erected. Tolls. May be commuted. Certain parties not to be charged toll.
7. When tolls may be increased. How payment may be enforced.

forced.

Rates of toll increased. Exemptions.
 Suits for collection of tolls. Plea of non-joinder not to be received. Vehicles may be detained till tolls be paid.
 Drivers to report number of passengers. Penalty for ne-

glect. 11. Book of entries to be evidence of unpaid tolls. 12. Estimates to be made of tolls, not reported. Commuta-

 Penalty for fraudulent evasion of toll.
 Penalty for fraudulent evasion of toll.
 Commissioners to establish rules. Subject to approval of tions.

the courts. 15. Tolls to be collected although no gates be passed. To be collected by action. 16. Location of gates may be changed. Rates of toll may be

raised in certain cases.

17. Toll-gatherers to be appointed; who shall account quarterly. Commissioners to render annual accounts, on oath.
18. Tolls to be applied to preservation of road. Limitation of power to increase tolls.
19. Directors to be set up. Penalty for violation.
20. Penalty for delaying travellers, or demanding excessive tolls.

tolls 21. Penalty for injuring or obstructing road.

Toll-gatherers to keep accounts.
 How penalties recoverable.

Penalty for driving rough-locked, &c.
 Culverts to be constructed along the road.
 Payment of salaries and expenses. Repairs of road.
 When proceeds may be applied to payment of creditors.

Road accept 1. The surrender by the United States of so inted by this state; and the commis-ed from U.S. within the state of Pennsylvania, is hereby accepted by this state; and the commis-1. The surrender by the United States of so much of the Cumberland road as lies sioners to be appointed under this act are authorized to erect toll-gates on the whole or any part of said road, at such times as they may deem it expedient and proper to do so.

Appoint-ment of superintendents.

Term.

Vacancies. how filled. Oath of office. Bond.

Superintendent in Fayette and Somerset counties.

Powers of the superintendents.

Compensation.

Accounts.

Toll-gates to be erected.

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.

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.

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.

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.

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.

5. Ibid. 3. 6. Act 4 April 1831, § 2. P. L. 419.

(a) See infra 3.

 Act 1 May 1861, § 1. P. L. 678.
 Act 22 April 1856, § 2. P. L 523. (b) See act 8 April 1848. P. L. 395-7 Add. 103

# MISCELLANEOUS.

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.

 $\S 2$ . 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,

shall be responsible for the payment of the expenses of

# MISCELLANEOUS.

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 twentyfive 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

313

#### MISCELLANEOUS.

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, onethird 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

314

#### STATUTES AT LARGE

A. D. 1870. dred dollars, and one per cent. for all sums over that amount; for search for each paper, fifteen cents; for certificate and seal, fifty cents; for copying papers on file in office, per copy sheet of one hundred words, twentyfive cents; for final discharge of executor, administrator or guardian, two dollars; for proceedings in dower, inclusive of all charges, twenty dollars; for proceedings in lunacy, inclusive, five dollars. Approved March 1, 1870.

#### No. 287. AN ACT TO INCORPORATE THE COOPERS' TRADES-UNION, OF CHARLES-TON.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, Corporators. and by the authority of the same, That A. R. Mitchell, A. F. Gregorie, Edward Jones, James Chapman, and such other persons as may now, or hereafter shall be, associated with them, are hereby made and declared to be a body politic and corporate by the name and style of the Coopers' Trades-Union, of Charleston.

privileges.

SEC. 2. That said Coopers' Trades-Union, of Charleston, shall have Powers and succession of officers and members according to its by-laws, and shall have power to make by-laws, not repugnant to the laws of the land, and to have, use and keep a common seal, and the same to alter at will, to sue and be sued, plead and be impleaded, in any Court in this State. It is hereby empowered to retain, possess, and enjoy all such property, real and personal, as it may possess or be entitled to, or which shall hereafter be given, bequeathed to, or in any manner acquired by it, and to scll, alien, or transfer the same.

SEC. 3. That this Act shall be a public Act, and continue in force for the term of twelve years from the date of its ratification.

Approved March 1, 1870.

No. 288. AN ACT TO DEFINE THE CRIMINAL JURISDICTION OF TRIAL JUSTICES.

> SECTION 1. Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authortiy of the same, That Trial Justices shall have and exercise within their respective Counties all the powers, authority and jurisdiction, in criminal cases, hereinafter set forth.

\$100.

SEC. 2. Trial Justices shall have jurisdiction of all offences which may Penalties be subject to the penalties of either fine or forfeiture not exceeding one not exceeding hundred dollars, or imprisonment in the Jail or Work House not exceeding thirty days, and may impose any sentence within those limits, singly or in the alternative.

SEC. 3. They may punish by fine not exceeding one hundred dollars, Assault and or imprisonment in the Jail or House of Correction not exceeding thirty battery. days, all assault and batteries, and other breaches of the peace, when the offence is not of a high and aggravated nature, requiring, in their judgment, greater punishment.

Rioters, &c.

SEC. 4. They may cause to be arrested all affrayers, rioters, disturbers

Filed: 02/01/2019

#### OF SOUTH CAROLINA.

and breakers of the peace, and all who go armed offensively, to the terror of the people, and such as utter menaces or threatening speeches, or

otherwise dangerous and disorderly persons. Persons arrested for any of said offences shall be examined by the Trial Justice before whom they are brought, and may be tried before him, and, if found guilty, may be required to find sureties of the peace, and be punished within the limits prescribed in Section 2, or, when the offence is of a high and aggravated nature, they may be committed or bound over for trial before the Court of General Sessions.

SEC. 5. They shall have jurisdiction of larcenies, by stealing of the property of another, of money, goods or chattels, or any bank note, bond, promissory note, bill of exchange, or other bill, order or certificate; or any book of accounts for or concerning money or goods due, or to become due, or to be delivered; or any deed or writing containing a conveyance of land or any other valuable contract in force; or any receipt, release or defeasance; or any writ, process or public record, if the property stolen does not exceed twenty dollars in value.

SEC. 6. They shall have jurisdiction of the offences of buying, receiv- stolen Goods. ing or aiding in the concealment of stolen goods or other property, where they would have jurisdiction of the larceny of the same goods or property.

SEC. 7. They shall have jurisdiction of the offences of obtaining property by any false pretence, or by any privy or false token, or by any game, tence. device, slight of hand, pretensions to fortune telling, trick or other means, by the use of cards or other implements or instruments, where they would have jurisdiction of a larceny of the same property, and may punish said offences the same as larceny.

SEC. 8. They shall cause to be arrested all persons, found within their Counties, charged with any offence, and persons who, after committing any offence within the County, escape out of the same; examine into treasons, felonies, grand larcenies, high crimes and misdemeanors; and commit or bind over for trial those who appear to be guilty of crimes or offences not within their jurisdiction, and punish those guilty of such offences within their jurisdiction.

SEC. 9. All proceedings before Trial Justices, in criminal cases, shall be commenced on information, under oath, plainly and substantially set- ceedings commence. ting forth the offence charged, upon which, and only which, shall a warrant of arrest issue.

The information may be amended at any time before trial.

All proceedings before Trial Justices shall be summary, or with only such delay as a fair and just examination of the case requires.

SEC. 10. Every person arrested and brought before a Trial Justice Trial by Jacharged with an offence within his jurisdiction, shall be entitled, on de- ry. mand, to a trial by jury, to be selected in the manner indicated by Section 6 of the Act entitled "An Act to provide for the temporary appointment of Magistrates, and to define their powers and duties," ratified 24th day of September, A. D. 1868. SEC. 11. Trial Justices are authorized to issue all necessary processes

to carry their powers into effect, and may exercise all the powers heretofore conferred by law upon Magistrates.

SEC. 12. Every person convicted before a Trial Justice of any offence whatever, and sentenced, may appeal from the sentence to the next term Appeal.

A. D. 1870.

403

Sureties.

Larceny.

False pre-

When pro-

#### STATUTES AT LARGE

A. D. 1870. of the Court of General Sessions for the County. The appellant shall be committed, to abide the sentence of said Court, until he recognizes to the State in such reasonable sum, and with such sureties, as the Court requires, with condition to appear at the Court appealed to, and at any subsequent term to which the case is continued, if not previously surrendered and discharged, and so, from term to term, until the final decree, sentence or order of the Court thereon; and to abide such final sentence, order or decree, and not depart without leave; and, in the meantime, to keep the peace, and be of good behavior.

> SEC. 13. All Acts and parts of Acts inconsistent or supplied by this Act are hereby repealed.

Approved March 1, 1870.

No. 289. AN ACT TO AUTHORIZE TRUSTEES TO INVEST FUNDS IN THE BONDS OF THE STATE OF SOUTH CAROLINA.

> SECTION 1. Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That Guardians, Trustees, Administrators, Executors, Probate Judges, and Clerks of Courts, and all other persons holding funds in trust for investment, are hereby authorized to invest the same in bonds of the State of South Carolina. And they are hereby relieved from all responsibility for said investment, except for the safe keeping of the bonds: Provided, That as to officers of the Court, there be no order of the Court directing a different investment.

Approved March 1, 1870.

No. 290. AN ACT TO FIX THE PER DIEM AND MILEAGE OF THE MEMBERS OF THE GENERAL ASSEMBLY.

> Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That the members of the next General Assembly shall receive the same mileage and per diem as now allowed the members of the present General Assembly by the provisions of the Constitution of this State, as ratified by the people on the 14th, 15th and 16th days of April, 1868.

Approved March 1, 1870.

No. 291. AN ACT TO INCORPORATE THE COMET LIGHT INFANTRY, AND THE RANDOLPH RIFLEMEN, BOTH OF THE CITY OF CHARLESTON, AND, ALSO, THE LINCOLN GUARDS, OF SAINT STEPHENS, AND THE SANTEE NA-TIONAL GUARDS.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General As-Corporators. sembly, and by the authority of the same, That Samuel Dickerson, P. L.

Filed: 02/01/2019 Pg: 113 of 215

702

PREVENTING THE COMMISSION OF CRIMES. ГСн. 153.

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

Id. § 28. 1 Va. Cas. 151-2.

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, 2 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.

person brought before him, etc. 11. Proceedings where person suspected of un-lawful retailing of spirituous liquors.

SEC SEC. 8. Person going armed with deadly weapon, 1. Conservators of the peace; power to bind to when required to give recognizance, etc. 9. Affray, etc., in the presence of constable. 10. In presence of justice; duty of justice where

good behavior. 2. Duty of, on complaint that a crime is in-3. f tended. 3. j tended.
 4. Proceedings when accused appears.

5. Right of accused to appeal. 6. ) Power of court upon such appeal, and when

7.5 the accused is committed.

1. Every justice and constable shall be a conservator of the Code of Va., p. 817, 21. Const. art. 7, 8 9. peace, within his county. As such conservator, every justice shall Acts of 1863, p. pave power to require from persons not of good fame, security for 234, ch. 132, 21. have power to require from persons not of good fame, security for their good behavior for a term not exceeding one year.

Code Va., p. 817,

2. If complaint be made to any justice, as such conservator, that there is good cause to fear that a person intends to commit an offense against the person or property of another, he shall examine on oath the complainant, and any witnesses who may be produced, reduce the complaint to writing, and cause it to be signed by the complainant.

Id. p. 818, § 3. Munf. 458.

22.

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.

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

4. When such person appears, if the justice, on hearing the par- Code Va., p. 818, ties, consider that there is not good cause for the complaint, he shall discharge the said person, and may give judgment in his favor against the complainant for his costs. If he consider that there is good cause therefor, he may require a recognizance of the person against whom it is, and give judgment against him for the costs of the prosecution, or any part thereof; and, unless such recognizance be given, he shall commit him to jail, by a warrant, stating the sum and time in and for which the recognizance is directed. The justice giving judgment under this section for costs may issue a writ of fieri facias thereon, if an appeal be not allowed; and proceedings there-upon may be according to the two hundred and twenty-seventh section of chapter fifty.

5. A person from whom such recognizance is required may, on Id. §5. giving it, appeal to the circuit court of the county; and in such case the officer from whose judgment the appeal is taken shall recognize such of the witnesses as he thinks proper.

6. The court may dismiss the complaint, or affirm the judgment, Id. § 6. and make what order it sees fit as to the costs. If it award costs against the appellant, the recognizance which he may have given shall stand as a security therefor. When there is a failure to prosecute the appeal, such recognizance shall remain in force, although there be no order of affirmance. On any appeal the court may require of the appellant a new recognizance, if it see fit.

7. Any person committed to jail under this chapter may be dis- Id. § 7. charged by the circuit court, or the judge thereof in vacation, upon such terms as may be deemed reasonable.

8. If any person go armed with a deadly or dangerous weapon, 1d. §s. without reasonable cause to fear violence to his person, family, or property, he may be required to give a recognizance, with the right of appeal, as before provided, and like proceedings shall be had on such appeal.

9. If any person shall, in the presence of a constable and within 1d. §9. his county, make an affray, or threaten to beat, wound, or kill <sup>Acts of 1863, p.</sup> another, or to commit violence against his person or property; or contend with angry words to the disturbance of the peace; or improperly or indecently expose his person; or appear in a state of gross intoxication in a public place; such constable, as such conservator, may, without warrant or other process, or further proof, arrest such offending person and carry him before some justice of the township in which such offense is committed, who, upon hearing the testimony of such constable and other witnesses, if any are then and there produced, if, in his opinion the offense charged be proved, shall require the offender to give a bond or recognizance, with security, to keep the peace and be of good behavior for a term not exceeding one year.

10. If any offense enumerated in the preceding section be com- 1d. p. 235, § 2.

INQUESTS UPON DEAD BODIES.

Сн. 154.

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.

11. If any justice suspect any person of selling, by retail, wine, Acts of 1865, p. 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.
- 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 in-
- quest. 10. Penalty on justice for neglect of duty.
- 11. Inquest may be taken on Sunday.

Filed: 02/01/2019

#### 1322

days' imprisonment.

12 Aug., 1870; took effect 12 Oct., 1870, Vol. 21, part 1, p. 63. Persons not to hear arms at pub-

Social intercourse and elec-

Art. 6512.

prohibited.

Fine \$50 to \$500. Notes, 111, 167.

Scalp-lifting country except-

Armed officials.

ed.

tions not to be made dangerous. 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.

CRIMINAL CODE.

AN ACT REGULATING THE RIGHT TO KEEP AND BEAR ARMS.

ART. 6511. [1] If any person shall go into any church or rebear arms at pub-lic assemblies. ligious 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 Kindsofweapons 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.

AN ACT TO REGULATE THE KEEPING AND BEARING OF DEADLY WEAPONS.

ART. 6512. [1] Any person carrying on or about his person, saddle, or in his saddle-bags, any pistol, dirk, dagger, slungshot, 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 must be immedi- this act, who may offer to prove, by way of defense, that he was

12 April, 1871; 12 April, 1871; took effect 12 June, 1871. Vol. 21, part 2, p. 25. Carrying arms a misdemeanor, punishable by fine and forfeit-ure unless to ure, unless, &c. Patriots and mili-tiamen excepted. Art. 6511.

Fine \$25 to \$100 for first offense.

Imprisonment for second of-fense. Notes 111, 167.

People at home and officials excepted.

Legislators not "civil officers."

Art. 6512. Justification

## CRIMINAL CODE.

in danger of an attack on his person, or unlawful interference ato and pressing danger; 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 and weapon not carried was borne openly and not concealed beneath the clothing; and if it shall appear that this danger had its origin in a diffi- Impending danculty first commenced by the accused, it shall not be considered as a legal defense.

Filed: 02/01/2019

ART. 6514. [3] If any person shall go into any church or relig- Attending public ious assembly, any school-room, or other place where persons are assembled for amusement, or for educational or scientific puni hed in like purposes, or into any circus, show, or public exhibition of any society protected and attempted kind, or into a ball-room, social party, or social gathering, or civilization. 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, character of 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, Fine \$50 to \$100 and shall forfeit to the county the weapon or weapons so found for first offense, on his person; and for every subsequent offense may, in addition ment for perseto such fine and forfeiture, be imprisoned in the county jail for a term of not more than ninety days.

ART. 6515. [4] This act shall not apply to nor be enforced in Governor may by county of the state which may be designated in a proclama- counties by procany 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.

ART. 6516. [5] All fines collected under the provisions of this Art. 6517. act shall be paid into the treasury of the county, and appropriated All fines under this act must be exclusively to the keeping in repair and maintenance of public paid into county treasury. 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. [6] It shall be the duty of all sheriffs, constables, Peace officers to marshals, and their deputies, and all policemen and other peace &c. 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 Payable to State. approved by the magistrate, and conditioned that the defendant will abide the judgment of the district court that may be rendered

Pg: 117 of 215

concealed.

ger.

meetings armed an off use to

arms prohibited.

lamation.

arrest offenders,

Jury trial and appeal allowed, Appeal bond.

Add. 114

Forfeiture.

Art. 6516.

Art. 6517. Officer failing to arrest to be discharged. Arts. 6512, 6514.

And fined not more than \$500.

District courts to have concurrent jurisdiction.

Governor to publish the act. 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.

CRIMINAL CODE.

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. CHAPTER I.—ILLEGAL BANKING AND PASSING SPURIOUS MONEY.

#### Arts. 2035-2038.

2 Dec., 1871; took effect from passage. Vol. 21, part 3. p 82. Obicers to publish semi-annual returns; publishment for failure. Arts. 5932-6011.

How recovered.

#### Arts. 2043.

31 Aug., 1866. Art. 6347 for caption. Selling liquor to Indians.

Who may punish.

11 May, 1871; took effect from passage. Vol. 21, part ?, p. 84. Arts. 2046, 2054.

Keeping a gaming table or bank punished. AN ACT CONCERNING PRIVATE CORPORATIONS.

ART. 6521. [79] Every such corporation shall semi-annually, in the months of July and January, publish in one or more newspapers in the county where such corporation shall have its place of business, a statement, verified by the oath of its president or secretary, setting forth its actual financial condition, and the amount of its property and liabilities, under a penalty of five hundred dollars to the state, to be recovered by indictment against the president, cashier, or directors, and shall also deposit a copy of said statement, verified as aforesaid, in the office of the secretary of state.

#### CHAPTER III .- OF SELLING TO INDIANS.

ART. 6522. [408] If any person shall give or barter, or cause to be sold, given, or bartered, any ardent spirits, or any spirituous or intoxicating liquors, or firearms, or ammunition, to any Indian of the wild or unfriendly tribes, he shall be fined not less than ten nor more than one hundred dollars. Justices of the peace and mayors shall have jurisdiction under this article.

#### CHAPTER IV .-- GAMING.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO ADOPT AND ESTAB-LISH 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 PE-NAL CODE FOR THE STATE OF TEXAS," APPROVED DECEMBER 16, A. D. 1863.

ART. 6523. [412] If any person shall keep or exhibit, for the purpose of gaming, any gaming table or bank, of any name or 55.]

OF THE STATE OF MINNESOTA.

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.

1025

852	•	FIRE ARMS.	[CHAP. LII.	

## Chapter 52.

AN Act to Prevent the Carrying of Fire Arms and Other Deadly Weapons.

Re it enacted by the Council and House of Representatives of the Territory of Wyoming:

Carrying wea-pons within dent of any city, town or village, or for any one not a resident of village limits, any city, town or village, in said Territory, but a sojourner 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 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.

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.

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.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved, December 2nd, 1875.

Non - resident to be first no-tified.

**Violation** of this act a misdemeanor.

Penalty.

In force,

#### LAWS OF ARIZONA.

This Act shall take effect from and after its pass-SEC. 3. age.

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 I. No Court of Justice shall be open, nor shall any Judicial business be transacted on any Legal Holiday, except for the following purposes:

To give, upon their request, instructions to a Jury Ι. when deliberating on their verdict.

To receive a verdict or discharge a Jury. 2.

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 I. 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

Add. 118

CARRYING DEADLY WEAPONS.

around the head of Panther Creek, to the divide between Hat Creek and Ellis Creek, thence on the divide between Hat and Ellis Creeks in an easterly direction to the Salmon River, thence up the main channel of said Salmon River to the place of beginning.

SEC. 2. This act to take effect and be in force, from and after its passage.

Approved February 4, 1889.

## CARRYING DEADLY WEAPONS.

#### AN ACT

#### REGULATING THE USE AND CARRYING OF DEADLY WEAPONS IN IDAHO TERRITORY.

## Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

SECTION 1. That it is unlawful for any person, except United States officials, officials of Idaho Territory, County officials, Peace officers, Guards of any jail, and officers or employees of any Express Company on duty, to carry, exhibit or flourish any dirk, dirk-knife, sword, sword-cane, pistol, gun or other deadly weapons, within the limits or confines of any city, town or village or in any public assembly of Idaho Territory. Every person so doing is guilty of a misdemeanor and is punishable by fine not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for a period of not less than twenty days nor more than fifty days, or by both such fine and imprisonment.

SEC. 2. One half of all fines collected under the provisions of this act shall be paid to the officer making the arrest, which amount shall be payment in full for his services. The other one half shall be paid into the Common School Fund of the county, after deducting the necessary costs of the prosecution of the case.

SEC. 3. All acts or parts of acts in conflict with this act are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved February 4, 1889.

## OFFENCES AGAINST THE .PEACE.

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, (SeeActs 1872-3, ch. 226, § 168.) dirk, bowie knife, razor, slung shot, billy, metallic or other false Acts 1882, ch. knuckles, or any other dangerous or deadly weapon of like kind or 7 Gratt. 597. 34 W. Va. 74. 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-

Add. 120

### OFFENCES AGAINST THE PEACE.

[Сн. 148.

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 selfdefence 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 Add.wi2.1

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:

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;

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;

Third. To forbid and prevent the vending or other disposition of liquors and intoxicating drinks in violation of the laws of the State, and to forbid the selling or giving to be drunk any intoxicating liquors to any child or young person without the consent of his or her parents or guardian and to prohibit, restrain and regulate the sale of all goods, wares and personal property at auction, except in cases of sale authorized by law, and to fix the fees to be paid by and to the auctioneers;

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;

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;

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;

Vice.

Disorderly houses.

Liquors.

Auctions.

Exhibitions.

Nuisances.

Dangerous buildings.

Location of slaughter houses. LOCAL ACTS, 1901-No. 469.

Seventh. To regulate, restrain or prohibit the buying, sell-Firearms, ing, carrying and using of firearms, weapons, gunpowder, fire-combustibles, etc. 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;

Eighth. To prevent the encumbering of streets, sidewalks, Encumbering crosswalks, lanes, alleys, bridges, aqueducts, wharves or slips streets. in any manner whatever:

Ninth. to prevent and punish horse racing and immoder- Horse racing. ate 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;

Tenth. To determine and designate the routes and grades Railroad of any railroad to be laid in said city, and to regulate the use grades, etc. of locomotives, engines and cars upon the railroads within the city; to compel such railroads to erect and maintain safety gates at street crossings;

To regulate, restrain or prohibit bathing in any Bathing, etc. Eleventh. public water, and to provide for (cleansing) cleaning Saginaw river of driftwood and other obstructions;

Twelfth. To restrain and punish drunkards, vagrants, Drunkards, mendicants, street beggars and persons soliciting alms or subscriptions for any purpose whatever;

Thirteenth. To establish one or more pounds, and to re-Pounds. strain, 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;

Fourteenth. To regulate or prevent the running at large Dogs. 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;

Fifteenth. To prohibit any person from bringing and de- carcasses, etc. positing 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

vagrants, etc.

Add. 123

#### CHAP. 25] CRIMES AND PUNISHMENT. Art. 44-45.

(2498) § 579. Every person who commits any extortion under Extortion color of official right, in cases for which a different punishment is not or official prescribed by this chapter, or by some of the statutes which it specifies as continuing in force, is guilty of a misdemeanor.

(2499) § 580. Every person who, by any extortionate means, ob-Obtaining tains from another his signature to any paper or instrument, whereby, signature by if such signature were freely given, any property would be transferred, or any debt, demand, charge or right of action created, is punishable in the same manner as if the actual delivery of such property or payment of the amount of such debt, demand, charge or right of action were obtained.

(2500) § 581. Every person who, with intent to extort any sending money or other property from another, sends to any person any letter or threatening other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat, such as is specified in the second section of this article, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

(2501) § 582. Every person who unsuccessfully attempts by Attempting means of any verbal threat such as is specified in the second section of money. this article, to extort money or other property from another is guilty of a misdemeanor.

#### ARTICLE 45.—CONCEALED WEAPONS.

Section. i Section.	
(2502) 583. Prohibited weapons enumerat- (2507) 588. Degree of punishment.	
(2502) 583. Prohibited weapons enumerat- ed. (2507) 588. Degree of punishment. (2508) 589. Public buildings and gather-	
(2503) 584. Same	
(2504) 585. Minors. (2309) 590. Intent of persons carrying	
(2505) 586. Public officials, when privil- weapons.	
eged. (2310) 591. Pointing weapon at another.	
<ul> <li>(2504) 585. Minors.</li> <li>(2505) 586. Public officials, when privil- egcd.</li> <li>(2506) 587. Arms, when lawful to carry.</li> <li>(2506) 587. Arms, when lawful to carry.</li> <li>(2507) 590. Intent of persons carrying weapons.</li> <li>(2309) 590. Intent of persons carrying weapons.</li> <li>(2310) 591. Pointing weapon at another.</li> <li>(2511) 592. Violation of certain sections.</li> </ul>	

(2502) § 583. It shall be unlawful for any person in the Terri- Prohibited tory of Oklahoma to carry concealed on or about his person, saddle, enumerated. or saddle bags, any pistol, revolver, bowie knife, dirk, dagger, slung-shot, sword, cane, spear, metal knuckles, or any other kind of knife or instrument manufactured or sold for the purpose of defense except as in this article provided.

The provisions of the statute in reference to the crime of carrying concealed weapons are not in conflict with any constitutional provision or organic law and are therefore valid. Walburn v. Territory, 9 Ok., 23, 59 Pac., 972.

(2503) § 584. It shall be unlawful for any person in the Terri-<sub>Same</sub>. tory of Oklahoma, to carry upon or about his person any pistol, revolver, bowie knife, dirk knife, loaded cane, billy, metal knuckles, or any other offensive or defensive weapon, except as in this article provided.

(2504) § 585. It shall be unlawful for any person within this Minors. Territory, to sell or give to any minor any of the arms or weapons designated in sections one and two of this article.

(2505) § 586. Public officers while in the discharge of their Public offiduties or while going from their homes to their place of duty, or returning therefrom, shall be permitted to carry arms, but at no other time and under no other circumstances: Provided, however, That if any public officer be found carrying such arms while under the influence of intoxicating drinks, he shall be deemed guilty of a violation of this article as though he were a private person.

## Астя, 1906. — Снаря. 172, 173.

Repeal.

SECTION 3. Chapter one hundred and eight of the acts of the year nineteen hundred and two and all other acts or parts of acts inconsistent herewith are hereby repealed. SECTION 4. This act shall take effect upon its passage. Approved March 16, 1906.

Chap.172 AN ACT TO REGULATE BY LICENSE THE CARRYING OF CON-CEALED WEAPONS.

#### Be it enacted, etc., as follows:

Licenses may be granted for carrying concealed weapons, etc.

SECTION 1. The justice of a court, or trial justices, the board of police or mayor of a city, or the selectmen of a town, or persons authorized by them, respectively, may, upon the application of any person, issue a license to such person to carry a loaded pistol or revolver in this Commonwealth, if it appears that the applicant has good reason to fear an injury to his person or property, and that he is a suitable person to be so licensed.

SECTION 2. Whoever, except as provided by the laws of this Commonwealth, carries on his person a loaded pistol or revolver, without authority or permission as provided in section one of this act, or whoever carries any stiletto, dagger, dirk-knife, slung-shot or metallic knuckles, shall upon conviction be punished by a fine of not less than ten nor more than one hundred dollars, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment. Approved March 16, 1906.

Chap.173 AN ACT TO PROVIDE FOR THE FURTHER IMPROVEMENT OF THE COMMONWEALTH'S FLATS AT SOUTH BOSTON.

#### Be it enacted, etc., as follows:

Improvement of the Commonwealth's flats at South Boston, SECTION 1. For the purpose of enforcing and executing the provisions and requirements of existing laws relating to the Commonwealth's flats at South Boston, and for the payment of money which may be needed to carry out the provisions of chapter two hundred and thirty-nine of the acts of the year eighteen hundred and seventy-five, the sum of five hundred thousand dollars is hereby appropriated from the Commonwealth's Elats Improvement Fund, established by chapter two hundred and thirty-seven of the acts of the year eighteen hundred and seventy-eight.

SECTION 2. This act shall take effect upon its passage. Approved March 19, 1906.

Penalty for carrying concealed weapon without permission. 1909.

258

To the person raising the best mule colt under six months of age, \$15.09; To the person raising the best horse colt under six months old \$15.00. To the person raising the best acre of corn \$25.00; To the person raising the best acre of wheat, \$15.00; To the person raising the best acre of oats, \$15.00; To the person raising the best acre of sweet or irish potatoes, \$10.00 each; To the person raising the best acre of hay, \$5.00.

2. It shall be the duty of the commissioner of agriculture and industries to provide rules under which the results of the contestants may be declared and awards made.

Payment authorized. al

3. "That the commissioner of agriculture and industries is hereby required and authorized to pay the several prizes enumerated above out of the funds provided for the expense of the agricultural department by sections 52 and 73 of the Code of 1907."

Approved Aug. 26, 1907.

No. 215)

## AN ACT

(8.50)

To regulate the right to carry a pistol in this State.

Unlawful to carry concealed pistol. Section 1. Be it enacted by the Legislature of Alabama, That it shall be unlawful for any person to carry a pistol concealed about his person.

Section 2. It shall be unlawful for any person to carry a pistol about his person on premises not his own or under his control, provided this section shall not apply to any sheriff or his deputy or police officer of an incorporated town or city in the lawful discharge of the duties of his office or United States Marshal or their deputies, rural free delivery mail carriers in the discharge of their duties as such or bonded constable in the discharge of their duties as such.

Section 3. Any person violating the provisions of this act must on conviction be fined not less than fifty dollars and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than six months.

Section 4. The defendant may give evidence that at the time of carrying the pistol he had good reason to apprehend an attack which the

cealed pistol. Does not apply

to sheriff, etc.

Violations.

May give evidence of good reason.

1909.

jury may consider in mitigation of the fine or justification of the offense.

Section 5. In an indictment for a violation Sufficient to of this act, it shall be sufficient to charge that the charge dedefendant carried a pistol concealed about his ried pistol. person or on premises not his own or under his control and the excuse if any must be proved by Excuse must the defendant on the trial, to the satisfaction of the jury.

Section 6. All laws and parts of laws in con-<sub>Conflicting</sub> flict with the provisions of this act be and the laws resame are hereby repealed.

Approved Aug. 26, 1909.

No. 217.)

AN ACT (S. 7.

To authorize and empower the commissioners court, board of revenue, or other court or county officers of similar or like jurisdiction to donate or appropriate funds from the county treasury to aid in the construction or improvement of necessary buildings and the maintenance and support of those State schools known as county high schools established under the act of the Legislature approved August 7, 1907, and to ratify and confirm all appropriations heretofore made for such purposes and to repeal all laws and parts of laws in conflict therewith.

Section 1. Be it enacted by the Legislature of Lawful to ap-Alabama, That on and after the approval of this propriate funds to aid act by the governor it shall be lawful for the com-in construcmissioners court, board of revenue, or other court tion, etc. of or officers of the county of similar or like jur-county high schools. isdiction to donate or appropriate funds from the county treasury to aid in the construction or improvement of necessary buildings and the maintenance and support of those State schools known as county high schools, established in the several counties of the State under an act of the Legislature entitled an act "to provide for the establishment of high schools in this State, and to make appropriations for said schools," approved August 7th, 1907, such donations or appropriations to be applied to the benefits of said schools

App. 054

Add. 127

#### SPECIAL LAWS OF TEXAS.

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, all us 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 corporaton 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,

## Acts, 1911. — Chaps. 547, 548.

# Chap.547 AN ACT TO RATIFY AND CONFIRM CERTAIN ACTS OF THE TOWN OF SOUTH HADLEY.

## Be it enacted, etc., as follows:

Certain acts confirmed. SECTION 1. The action of the town of South Hadley at a special town meeting held on the ninth day of May, nineteen hundred and eleven, in voting that taxes for the year nineteen hundred and eleven be payable September first, nineteen hundred and eleven, and that if taxes are unpaid on October first, nineteen hundred and eleven, interest shall be added thereto at the rate of six per cent per annum from September first, nineteen hundred and eleven, is hereby ratified and confirmed.

SECTION 2. This act shall take effect upon its passage. Approved June 14, 1911.

#### Chap.548 AN ACT RELATIVE TO THE CARRYING OF CONCEALED WEAPONS.

#### Be it enacted, etc., as follows:

1906, 172, § 1, amended.

Licenses may be issued for carrying concealed weapons.

1906, 172, § 2, amended.

Penalty.

SECTION 1. Section one of chapter one hundred and seventy-two of the acts of the year nineteen hundred and six is hereby amended by striking out the word "loaded", in the fifth line, so as to read as follows: — Section 1. The justice of a court, or trial justices, the board of police or mayor of a city, or the selectmen of a town, or persons authorized by them, respectively, may, upon the application of any person, issue a license to such person to carry a pistol or revolver in this commonwealth, if it appears that the applicant has good reason to fear an injury to his person or property, and that he is a suitable person to be so licensed.

SECTION 2. Section two of said chapter one hundred and seventy-two, as amended by section one of chapter three and red and fifty of the acts of the year nineteen hundred and eight, is hereby further amended by striking out the word "loaded", in the third line; by striking out the word "twentyfive", in the seventh line, and inserting in place thereof the word: — fifty, — and by inserting after the word "not", in the ninth line, the words: — less than one month and not, — so as to read as follows: — Section 2. Whoever, except as provided by the laws of this commonwealth, carries on his person a pistol or revolver, without authority or permission as provided in section one of this act, or whoever carries any

## Астя, 1911. — Снар. 549.

stiletto, dagger, dirk-knife, slung-shot or metallic knuckles, shall upon conviction be punished by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment for a term not less than one month and not exceeding one year, or by both such fine and imprisonment.

SECTION 3. Section nine of chapter two hundred and R. L. 211, 59, amended. eleven of the Revised Laws is hereby amended by inserting after the word "billy", in the fourth line, the words: --revolver or pistol. loaded or unloaded, - and also by striking out all after the word "by", in the fifth line, and inserting in place thereof the following: — imprisonment for not less than three months and not more than three years, — so as to read as follows: - Section 9. Whoever, when arrested Penalty for carrying cerupon a warrant for an alleged crime and whoever, when tain weapons. arrested while committing a crime or a breach or disturbance of the public peace, is armed with or has on his person any slung-shot, metallic knuckles, billy, revolver or pistol, loaded or unloaded, or other dangerous weapon, shall be punished by imprisonment for not less than three months and not more than three years.

SECTION 4. Chapter two hundred and eighty-three of the Repeat. acts of the year nineteen hundred and eleven is hereby Approved June 14, 1911. repealed.

AN ACT TO ESTABLISH THE SALARIES OF MARY E. HALLEY Chap.549 AND MARY A. NASON, MEMBERS OF THE INSPECTION DE-PARTMENT OF THE DISTRICT POLICE.

#### Be it enacted, etc., as follows:

SECTION 1. The salaries of Mary E. Halley and Mary Mary E. A. Nason, members of the district police, shall hereafter be Mary A. at the rate of fifteen hundred dollars per annum.

SECTION 2. All acts and parts of acts inconsistent here- Repeal. with are hereby repealed.

SECTION 3. This act shall take effect upon its passage.

(The foregoing was laid before the governor on the eighth day of June, 1911, and after five days it had "the force of a law", as prescribed by the Constitution, as it was not returned by him with his objections thereto within that time.)

569

Act 22. Carrying Deadly Weapons.

## **ACT 22**

## AN ACT

TO AMEND SECTION 3089 OF THE REVISED LAWS OF HAWAII.

Be it Enacted by the Legislature of the Territory of Hawaii:

SECTION 1. Section 3089 of the Revised Laws of Hawaii is hereby amended so as to read as follows:

"Section 3089. Persons not authorized; punishment. Any person not authorized by law, who shall carry, or be found armed with any bowie-knife, sword-cane, pistol, air-gun, slung-shot, or other deadly weapon, shall be liable to a fine of not more than Two Hundred and Fifty Dollars and not less than Ten Dollars, or in default of payment of such fine, to imprisonment for a term not exceeding one year, nor less than three months, upon conviction for such offense, unless good cause be shown for having such dangerous weapon; and any such person may be immediately arrested without warrant by the high sheriff, or any sheriff, policeman, or other officer or person."

SECTION 2. This Act shall take effect from and after the date of its approval.

Approved this 19th day of March, A. D. 1913.

WALTER F. FREAR, Governor of the Territory of Hawaii.

#### 608.7 LAWS OF NEW YORK, 1913.

<sup>1</sup> Where a male person of the age of sixteen years and under the age of eighteen years has been convicted of juvenile delinquency or of a misdemeanor, the trial court may, instead of sentencing him to imprisonment in a state prison or in a penitentiary, direct him to be confined in a house of refuge established by the managers of the society for the reformation of juvenile delinquents in the city of New York; under the provisions of the statute relating thereto. Where a female person not over the age of twelve years is convicted of a crime amounting to felony, or where a female person of the age of twelve years and not over the age of sixteen years is convicted of a crime, the trial court may, instead of sentencing her to imprisonment in a state prison or in a penitentiary, direct her to be confined in the New York State Training School for Girls, under the provisions of the statute relating thereto, but nothing in this section shall affect any of the provisions contained in section twenty-one hundred and ninety-four.

§ 2. All acts or parts of acts inconsistent with this act are hereby repealed.

§ 3. This act shall take effect immediately.

## Chap. 608.

AN ACT to amend the penal law generally, in relation to the carrying, use and sale of dangerous weapons.

Became a law May 21, 1913, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section eighteen hundred and ninety-seven of chap- I. 1900, ter eighty-eight of the laws of nincteen hundred and nine, entitled 1 1897, and 1 1897, and "An act providing for the punishment of crime, constituting chap- L 1911, ter forty of the consolidated laws," as amended by chapter one amended. hundred and ninety-five of the laws of nineteen hundred and eleven, is hereby amended to read as follows:

§ 1897. Carrying and use of dangerous weapons. A person who attempts to use against another, or who carries, or possesses. any instrument or weapon of the kind commonly known as a blackjack,

1627

<sup>&</sup>lt;sup>1</sup> Following sentence new.

ł

LAWS OF NEW YORK, 1913.

[UHAP.

slungshot, billy, sandelub, sandbag, metal knuckles, bludgeon, bomb or bombshell,<sup>1</sup> or who, with intent to use the same unlawfully against another, carries or possesses a dagger, dirk, dangerous knife, razor, stiletto, or any other dangerous or deadly instrument or weapon, is guilty of a felony.

Any person under the age of sixteen years, who shall have, carry, or have in his possession, any of the articles named or described in the last section, which is forbidden therein to offer, sell, loan, lease or give to him, shall be guilty of a misdemeanor.

Any person over the age of sixteen years, who shall have in his possession in any city, village or town of this state, any pistol, revolver or other firearm of a size which may be concealed upon the person, without a written license therefor, issued to him<sup>2</sup> as hereinafter prescribed, shall be guilty of a misdemeanor.

Any person over the age of sixteen years, who shall have or carry concealed upon his person in any city, village, or town of this state, any pistol, revolver, or other firearm without a written license therefor, <sup>8</sup> issued as hereinafter prescribed and licensing such possession and concealment, shall be guilty of a felony.

Any person not a citizen of the United States, who shall have or carry firearms, or any dangerous or deadly weapons in any <sup>4</sup>place, at any time, shall be guilty of a felony, <sup>5</sup>unless authorized by license issued as hereinafter prescribed.

<sup>6</sup> It shall be the duty of any magistrate in this state to whom an application therefor is made by a commissioner of correction of a city or by any warden, superintendent or head keeper of any state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted of or accused of crime, or offences, or held as witnesses in criminal cases, to issue to each of such persons as may be designated in such applications, and who is in the regular employ in such institution of the state, or of any county, city, town or village therein, a license authorizing such

<sup>&</sup>lt;sup>1</sup> Inclusion of bomb and bombshell, new.

<sup>2</sup> Remainder of sentence formerly read: "by a police magistrate of such city or village, or by a justice of the peace of such town, or in such manner as may be prescribed by ordinance in such city, village or town, shall be guilty of a misdemeanor."

<sup>&</sup>lt;sup>3</sup> Remainder of sentence formerly read: "theretofore issued to him by a police magistrate of such city or village, or by a justice of the peace of such town, or in such manner as may be prescribed by ordinance of such city, village or town, shall be guilty of a felony." 4 Word "public" omitted.

<sup>5</sup> Remainder of sentence new

<sup>•</sup> Following paragraph new,

608.]

LAWS OF NEW YORK, 1913.

person to have and carry concealed a pistol or revolver while such person remains in the said employ.

<sup>6</sup> It shall be the duty of any magistrate in this state, upon application therefor, by any householder, merchant, storekeeper or messenger of any banking institution or express company in the state, nd provided such magistrate is satisfied of the good moral character of the applicant, and provided that no other good cause exists for the denial of such application, to issue to such applicant a license to have and possess a pistol or revolver, and authorizing him (a) if a householder, to have such weapon in his dwelling, and (b) if a merchant, or storekeeper, to have such weapon in his place of business, and (c) if a messenger of a banking institution or express company, to have and carry such weapon concealed while in the employ of such institution or express company.

<sup>6</sup> In addition, it shall be lawful for any magistrate, upon proof before him that the person applying therefor is of good moral character, and that proper cause exists for the issuance thereof, to issue to such person a license to have and carry concealed a pistol or revolver without regard to employment or place of possessing such weapon, provided, however, that no such license shall be issued to any alien, or to any person not a citizen of and usually reident in the state of New York, except by a judge or justice of a court of record in this state, who shall state in such license the particular reason for the issuance thereof, and the names of the persons certifying to the good moral character of the applicant.

<sup>6</sup>Any license issued in pursuance of the provisions of this section may be limited as to the date of expiration thereof and may be vacated and cancelled at any time by the magistrate, judge or justice who issued the same or by any judge or justice of a court of record. Any license issued in pursuance of this section and not otherwise limited as to place or time or possession of such weapon, shall be effective throughout the state of New York, \*notwitstanding the provisions of any local law or ordinance.

This section shall not apply to the regular and ordinary transportation of firearms as merchandise, nor to sheriffs, pelicemen, or to other duly appointed peace officers, nor to duly authorized military or civil organizations, when parading, nor to the members thereof when going to and from the place of meeting of their respective organizations. 1629

<sup>\*</sup> So in original.

<sup>6</sup> Following paragraph new.

## LAWS OF NEW YORK, 1913.

[CHAP.

f 1914, an added by L. 1911, ch. 195, amended.

§ 2. Section nineteen hundred and fourteen of such chapter. as added by chapter one hundred and ninety-five of the laws of nineteen hundred and eleven, is hereby amended to read as follows:

§ 1914. Sale of pistols, revolvers and other firearms. <sup>7</sup>No pistol, revolver or other firearms of a size which may be concealed upon the person, shall be sold, or given away, or otherwise disposed of, except to a person expressly authorized under the provisions of section eighteen hundred and ninety-seven of the penal law to possess and have such firearm.

<sup>7</sup>Any person selling or disposing of such firearm in violation of this provision of this section shall be guilty of a misdemeanor.

Every person selling a pistol, revolver or other firearm of a size which may be concealed upon the person, whether such seller is a retail dealer, pawnbroker, or otherwise, shall keep a register in which shall be entered at the time of sale, the date of sale, name, age, occupation and residence of every purchaser of such a pistol, revolver or other firearm, together with the calibre, make, model, manufacturer's number or other mark of identification on such pistol, revolver or other firearm. Such person shall also, before delivering the same to the purchaser, require such purchaser to produce a license<sup>8</sup> for possessing or carrying the same, as required by law, and shall also enter in such register the date of such permit, the number thereof, if any, and the name of the magistrate or other officer by whom the same was issued. Every person who shall fail to keep a register and to enter therein the facts required by this section or who shall fail to exact the production of a permit to possess or carry such pistol, revolver or other firearm, if such permit is required by law, shall be guilty of a misdemeanor. Such register shall be open at all reasonable hours for the inspection of any peace officer. Every person becoming the lawful possessor of such a pistol, revolver or other firearm, who shall sell, give or transfer the same to another person without first notifying the police authorities, shall be guilty of a misdemeanor. This section shall not apply to wholesale dealers.

In effect Sept. 1, 1913. § 3. This act shall take effect September first, nineteen hundred and thirteen.

<sup>7</sup> Following sentence new.

<sup>\*</sup> Word "license" substituted for word "permit."

## GENERAL ACTS, 1919. — CHAPS. 206, 207.

before the injury and the average weekly wages which he is able to earn thereafter, but not more than sixteen dollars a week; and in no case shall the amount of such compensation be more than four thousand dollars.

Approved May 29, 1919.

## Chap.206 An Act relative to the salary of the parole clerk at THE MASSACHUSETTS REFORMATORY.

### Be it enacted, etc., as follows:

1917, 293 (G), amended.

Parole clerk at Massachusetta reformatory, salary, etc.

Chapter two hundred and ninety-three of the General Acts of nineteen hundred and seventeen is hereby amended by striking out the words "an annual salary of sixteen hundred dollars", in the ninth and tenth lines, and substituting the words: — such annual salary, not to exceed nineteen hundred dollars, as shall be fixed by the director of prisons with the approval of the governor and council, - so as to read as follows: - The director of the bureau of prisons is hereby authorized to designate as parole clerk one of the officers at the Massachusetts reformatory mentioned in section twenty-one of chapter two hundred and twenty-three of the Revised Laws, as affected by chapter four hundred and fifty-four of the acts of the year nineteen hundred and ten. He shall perform such duties relating to the parole of inmates of the reformatory as the director may prescribe. While performing the duties of parole clerk, such officer shall receive such annual salary, not to exceed nineteen hundred dollars, as shall be fixed by the director of prisons with the approval of the governor and council, in full for all services rendered by him, and shall be subject to the provisions of chapter six hundred and one of the acts of the year nineteen hundred and eight and acts in amendment thereof. Approved May 29, 1919.

Chap.207 An Act relative to the carrying of concealed weapons. Be it enacted, etc., as follows:

1906, 172, § 1, etc., amended.

SECTION 1. Section one of chapter one hundred and seventy-two of the acts of nineteen hundred and six, as amended by section one of chapter five hundred and fortyeight of the acts of nineteen hundred and eleven, is hereby further amended by inserting after the word "property", in the seventh and eighth lines, the words: — or for any GENERAL ACTS, 1919. — CHAP. 207.

other proper purpose, - so as to read as follows: - Section Licenses for 1. The justice of a court, or trial justices, the board of carrying weapons may police or mayor of a city, or the selectmen of a town, or persons authorized by them, respectively, may, upon the application of any person, issue a license to such person to carry a pistol or revolver in this commonwealth, if it appears that the applicant has good reason to fear an injury to his person or property, or for any other proper purpose, and that he is a suitable person to be so licensed.

SECTION 2. Section two of said chapter one hundred 1906, 172, § 2, and seventy-two, as amended by section one of chapter three hundred and fifty of the acts of nineteen hundred and eight and by section two of said chapter five hundred and forty-eight is hereby further amended by striking out all after the word "than", in the sixth line, and substituting the words: — one hundred nor more than five hundred dollars or by imprisonment for a term of not less than six months and not more than five years, or by both such fine and imprisonment, — so as to read as follows: — Section 2. Who- Penalty for ever, except as provided by the laws of this commonwealth, carrying certain weapons withcarries on his person a pistol or revolver, without authority out a liconse. or permission as provided in section one of this act, or whoever carries any stiletto, dagger, dirk-knife, slung-shot or metallic knuckles, shall upon conviction be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for a term of not less than six months and not more than five years, or by both such fine and imprisonment.

SECTION 3. Section nine of chapter two hundred and R. L. 211, 6 9, etc., amended. eleven of the Revised Laws, as amended by section three of chapter five hundred and forty-eight of the acts of nineteen hundred and eleven, is hereby further amended by striking out all after the word "punished", in the sixth line, and substituting the following: — by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment for a term of not less than six months and not more than five years, or by both such fine and imprisonment, - so as to read as follows: - Section 9. Whoever, when Ponalty for arrested upon a warrant for an alleged crime and whoever, weapon when when arrested while committing a crime or a breach or dis- arrested. turbance of the public peace, is armed with or has on his person any slung-shot, metallic knuckles, billy, revolver or pistol, loaded or unloaded, or other dangerous weapon, shall be punished by a fine of not less than one hundred nor more

otc., amondod.

## GENERAL ACTS, 1919. — CHAP. 208.

than five hundred dollars, or by imprisonment for a term of not less than six months and not more than five years, or by both such fine and imprisonment.

Approved May 29, 1919.

## Chap.208 An Act relative to the settlement by public admin-ISTRATORS OF THE ESTATES OF CERTAIN DECEASED PER-SONS.

#### Be it enacted, etc., as follows:

Appointment of public administrators as administrators with the will annexed or as administrators of goods and estates not already administered, etc.

R. L. 138, § 12, etc., amended.

trators with the will annexed to deposit balances of estates with treasurer and receiver general, etc.

SECTION 1. If there is occasion for the appointment of an administrator with the will annexed, under the provisions of section six of chapter one hundred and thirty-seven of the Revised Laws, as amended by chapter five hundred and eighty-eight of the acts of nineteen hundred and eleven, or for the appointment of an administrator of the goods and estates not already administered of a deceased person, under the provisions of section eight of the said chapter, and it appears that there are no known heirs of the deceased person living, a public administrator of the county shall be appointed to such trust.

SECTION 2. Section twelve of chapter one hundred and thirty-eight of the Revised Laws, as amended by section one of chapter ninety of the General Acts of nineteen hundred and seventeen, is hereby further amended by inserting after the word "administrator", in the second line, the words: — or by the executor or administrator with the will annexed of a person who died leaving no known heirs, - so as to Public adminis- read as follows: - Section 12. When an estate has been trators, execu-tors or adminis- fully administered by a public administrator, or by the exccutor or administrator with the will annexed of a person who died leaving no known heirs, he shall deposit the balance of such estate remaining in his hands with the treasurer and receiver general, who shall receive and hold it for the benefit of those who may have lawful claims thereon. At any time within six years after a public administrator has made such deposit, the probate court may, upon the application of the administrator and if it appears that there are reasonable grounds to believe that certain persons have lawful claims upon the said balance, enter a decree directing that the same be repaid to the public administrator. The treasurer and receiver general shall thereupon pay over all money deposited in the treasury to the credit of the estate to the public ad-

Add. 138

Repayment to Watuppa Reservoir Company of oertain expense, etc., apportionment of expense, etc.

Appointment of new assessment commission.

Repeals, etc.

Assessment commissioners not obliged to comply with certain requirements of law. Астя, 1922. — Снар. 485.

the real estate in, along or by the Quequechan river under the provisions of chapter eighty of the General Laws.

The expense of maintaining and operating said dam and pumping station shall be annually repaid to the Watuppa Reservoir Company by the city of Fall River and the amount so paid, not in excess of the special benefit arising therefrom, shall be apportioned by the assessment commission on the real estate in, along or by the Quequechan river. Such apportionment shall remain in force until changed as hereinafter provided, and shall be assessed annually upon the designated real estate. The provisions of chapter eighty of the General Laws with relation to the collection and abatement of betterment assessments and to interest thereon shall apply to such assessments.

After five years from the date of such apportionment the mayor of Fall River shall, on the petition of any party in interest, appoint a new assessment commission, which shall be appointed and act and shall make a new apportionment in the manner and form hereinbefore provided; and such apportionment shall remain in force until changed in like manner.

SECTION 5. All provisions of chapter three hundred and eleven of the Special Acts of nineteen hundred and sixteen, as amended by chapter five hundred and forty-four of the acts of nineteen hundred and twenty, which are inconsistent with the provisions of this act are hereby repealed, but no action taken under the authority of said statute is hereby made invalid, and the improvement therein authorized is to proceed without interruption.

In the assessment of betterments under this act the assessment commissioners shall not be obliged to include in the order of taking or to prepare or file the description, plan and estimate required by the provisions of section two of chapter eighty of the General Laws.

SECTION 6. This act shall take effect upon its passage. Approved May 29, 1922.

Chap.485 AN ACT RELATIVE TO THE SALE AND CARRYING OF FIRE-ARMS.

### Be it enacted, etc., as follows:

G. L. 140, § 121, amended.

d. SECTION 1. Section one hundred and twenty-one of chapter one hundred and forty of the General Laws is hereby amended by striking out all after the word "inches" in the

## Астя, 1922. — Снар. 485.

sixth line down to and including the word "towns" in the seventh line, so as to read as follows: - Section 121. In sale of firesections one hundred and twenty-two to one hundred and Definition of twenty-nine, inclusive, "firearms" includes a pistol, revolver word "fire-arms." or other weapon of any description, loaded or unloaded, from which a shot or bullet can be discharged and of which the length of barrel, not including any revolving, detachable or magazine breech, does not exceed twelve inches. Said sec- Sections not tions shall not apply to antique firearms incapable of use as applicable to certain firefirearms nor to sales of firearms at wholesale.

SECTION 2. Said chapter one hundred and forty is hereby G. L. 140, § 122, amended by striking out section one hundred and twenty-two and inserting in place thereof the following: - Section 122. Licenses to soll, rent, etc., The licensing authorities in any town may, in their discretion, firearma. grant licenses to persons to sell, rent or lease firearms and may fix a fee for such license. Every such license shall specify the street and number, if any, of the building where the business is to be carried on and the license shall not protect a licensee who carries on his business in any other place.

SECTION 3. Said chapter one hundred and forty is hereby G. L. 140, new further amended by inserting after section one hundred and \$ 122. twenty-two the following new section: - Se tion 122A. The Record of licensing authorities shall record all licenses issued under the lissued, etc. preceding section in books kept for the purpose, shall furnish the licensee with a sales record book to be kept by him as provided in section one hundred and twenty-three and shall, upon the granting of any license, send notice thereof to the Notice to commissioner of public safety. The said books shall be of public supplied by the commissioner, upon application of the licens- safety, etc. ing authorities, at a price not in excess of the cost thereof.

SECTION 4. Said chapter one hundred and forty is hereby G. L. 140, § 123, amended. further amended by striking out section one hundred and twenty-three and inserting in place thereof the following: --Section 123. The license shall be expressed to be and shall be Conditions of subject to the following conditions: First, That the provisions in regard to the nature of the license and the building in which the business may be carried on under it shall be strictly adhered to. Second, That every licensee shall before delivery of a firearm make or cause to be made a true entry in a sales record book to be furnished by the licensing authorities and to be kept for that purpose, specifying the description of the firearm, the make, number, whether single barrel, magazine, revolver, pin, rim or central fire, whether sold, rented or leased, the date and hour of such delivery, and the full

amended

licenses.

561

## Астя, 1922. — Снар. 485.

name, sex, residence and occupation of the purchaser, ex-

Conditions of licenses.

changer or hirer. The said book shall be open at all times to the inspection of the licensing authorities and of the police. Third, That the license or a copy thereof, certified by the recording officer of the licensing authorities or by the clerk of the town by which it is issued, shall be displayed on the premises in a position where it can easily be read. Fourth, That no firearms shall be displayed in any outer window of said premises or in any other place where they can readily be seen from the outside. Fifth, That the licensee shall, once a week, send a copy of the record of sales made by him for the preceding seven days to the licensing authorities and to the commissioner of public safety. Sixth, That every firearm shall be delivered securely wrapped and fastened and shall be unloaded when delivered. Seventh, That no delivery of a firearm shall be made on the day of the application for the purchase, rent or lease thereof, except to a person having a permit to carry a firearm issued under section one hundred and thirty-one. Eighth, That the license shall be subject to forfeiture as herein provided for breach of any of its conditions, and that, if the licensee is convicted of a violation of any such condition, his license shall thereupon become void. SECTION 5. Section one hundred and twenty-five of said chapter one hundred and forty is hereby amended by striking out, in the first line, the word "board" and inserting in place thereof the word: — authorities, — and by striking out all after the word "heard" in the second line down to and including the word "council" in the third line, so as to read as follows: --- Section 125. The licensing authorities, after notice to the licensee and reasonable opportunity for him to be heard, may declare his license forfeited, or may suspend his license for such period of time as they may deem proper, upon satisfactory proof that he has violated or permitted a violation of any condition thereof or has violated any law. The pendency of proceedings before a court shall not suspend or interfere with the power to declare a forfeiture. If the license is declared forfeited, the licensee shall be disqualified to re-

the license so forfeited. SECTION 6. Section one hundred and twenty-seven of said chapter one hundred and forty is hereby amended by striking out, in the first line, the word "boards" and inserting in place thereof the word: — authorities, — so as to read as follows: — Section 127. Licensing authorities may trans-

ceive a license for one year after the expiration of the term of

G. L. 140, § 125, amended.

Forfeiture or suspension of licenses.

Transfer of licenses

G. L. 140, § 127,

amended.

## Acts, 1922. — Снар. 485.

fer licenses from one location to another within the town in which the licenses are in force, but such transfer shall be granted only to the original licensee and upon the same terms and conditions upon which the license was originally granted.

SECTION 7. Said chapter one hundred and forty is hereby G. L. 140, new further amended by inserting after section one hundred and section after twenty-nine the following new section: - Section 129A. No Permit required unnaturalized foreign born person shall, within the common- etc., of firewealth, own or have in his possession or under his control a arms by aliens. firearm as defined in section one hundred and twenty-one, unless such person has a permit under section one hundred and thirty-one to carry such firearm. Any violation of this Penelty. section shall be punished by a fine of not less than one hundred dollars or by imprisonment for not more than three months, or both.

SECTION 8. Section one hundred and thirty of said chap- G. L. 140, § 130, amondod. ter one hundred and forty is hereby amended by inserting after the word "fifteen" in the second line the words: ---, or to an unnaturalized foreign born person who has not a permit to carry firearms under section one hundred and thirty-one, - so as to read as follows: - Section 130. Wheever sells or Femalty for furnishes to a minor under the age of fifteen, or to an un- arms, oto, to naturalized foreign born person who has not a permit to carry cortain minors and to cortain firearms under section one hundred and thirty-one, any fire- aliens. arm, air gun or other dangerous weapon or ammunition therefor shall be punished by a fine of not less than ten nor more than fifty dollars, but instructors and teachers may furnish military weapons to pupils for instruction and drill.

SECTION 9. Said chapter one hundred and forty is hereby G. L. 140, \$ 131, amended. further amended by striking out section one hundred and thirty-one and inserting in place thereof the following: — Section 131. The justice of a court or a trial justice, the board of police or mayor of a city, the selectmen of a town, or the commissioner of public safety, or persons authorized by them may, upon the application of any person residing or having a place of business within the jurisdiction of the person issuing the license, issue a license to such person to carry a pistol or revolver in the commonwealth if it appears that the applicant has good reason to fear an injury to his person or property or for any other proper purpose, and that he is a suitable person to be so licensed. Such license shall be issued for a term not to exceed one year, but may be for a less period, and all such licenses shall be revocable at the will of the person or body issuing the same. Said licenses shall be issued

for possession,

Астя, 1922. — Снар. 486.

on forms furnished by the commissioner of public safety and a copy of every license so issued shall within one week after the granting thereof be sent to the said commissioner.

SECTION 10. Section twelve of chapter two hundred and

sixty-nine of the General Laws is hereby amended by inserting after the word "shot" in the third line the words: —, sword cane, pistol cane, bludgeon, blackjack, — so as to read

G. L. 269, § 12, amended.

Penalty for manufacture, sale, etc., of slung shots, sword canes, etc.

Expiration of licenses heretofore issued. as follows: — Section 12. Whoever manufactures or causes to be manufactured, or sells or exposes for sale, an instrument or weapon of the kind usually known as slung shot, sword cane, pistol cane, bludgeon, blackjack, or metallic knuckles, shall be punished by a fine of not less than fifty nor more than two hundred dollars or by imprisonment for not more than six months. SECTION 11. All licenses heretofore issued under section one hundred and thirty-one of chapter one hundred and forty

one hundred and thirty-one of chapter one hundred and forty of the General Laws or the corresponding provisions of earlier laws shall expire on January first, nineteen hundred and twenty-three. *Approved May 29, 1922.* 

Chap.486 AN ACT MAKING UNIFORM THE LAWS RELATIVE TO PARTNERSHIPS.

## Be it enacted, etc., as follows:

G. L. new chapte: after chapter 108.

SECTION 1. The General Laws is hereby amended by inserting after chapter one hundred and eight the following new chapter, to be numbered one hundred and eight A, and to be entitled, "Partnerships."

### CHAPTER 108A.

### PARTNERSHIPS.

Uniform Partnership Act. Definition of terms.

Section 1. This chapter may be cited as the Uniform Partnership Act.

Section 2. In this chapter, "court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation, or profession. "Bankrupt" includes bankrupt under the Federal Bank-

ruptcy Act or insolvent under any state insolvent law.

"Conveyance" includes every assignment, lease, mortgage or encumbrance.

"Real property" includes land and any interest or estate in land.

Interpretation of knowledge and notice.

Section 3. (1) A person has "knowledge" of a fact within the meaning of this chapter, not only when he has actual

Ch. 338]

#### FORTY-FIFTH SESSION.

treasurer or the inheritance tax appraiser of the county of the superior court having jurisdiction as provided in section fifteen of this act.

(6) This act shall become effective and in force contempo- Act takes rancously with the taking effect of amendments to sections one effect. thousand four hundred one and one thousand four hundred two of the Civil Code, which amendments were enacted at the forty-fifth session of the legislature of the State of California and known as chapter eighteen of the statutes of 1923, and not otherwise.

### CHAPTER 338.

An act to add a new section to the Civil Code to be numbered three thousand fifty-one a, fixing a limit on the amount of a lien on property held under the provisions of section three thousand fifty-one of said code.

### [Approved June 13, 1923.]

### The people of the State of California do enact as follows:

SECTION 1. A new section is hereby added to the Civil Code to be numbered three thousand fifty-one a and to read as follows:

3051*a.* That portion of any lien, as provided for in the limitation next preceding section, in excess of one hundred dollars, for recoverable any work, services, care, or safekeeping rendered or performed where at the request of any person other than the holder of the legal title, shall be invalid, unless prior to commencing any such work, service, care, or safekeeping, the person claiming such lien shall give actual notice in writing either by personal service or by registered letter addressed to the holder of the legal title to such property, if known. In the case of automobiles, the person named as legal owner in the registration certificate, shall be deemed for the purpose of this section, as the holder of the legal title.

#### CHAPTER 339.

An act to control and regulate the possession, sale and use of pistols, revolvers and other firearms capable of being concealed upon the person; to prohibit the manufacture, sale, possession or carrying of certain other dangerous weapons within this state; to provide for registering all sales of pistols, revolvers or other firearms capable of being concealed upon the person; to prohibit the carrying of concealed firearms except by lawfully authorized persons; to provide for the confiscation and destruction of such weapons in certain cases; to prohibit the ownership, use, or possession of any of such weapons by certain classes of persons; to prescribe penalties for violations of this act and increased penalties for repeated violations hereof; to

STATUTES OF CALIFORNIA.

[Ch. 339]

authorize, in proper cases, the granting of licenses or permits to carry firearms concealed upon the person; to provide for licensing retail dealers in such firearms and regulating sales thereunder; and to repeal chapter one hundred forly-five of California statutes of 1917, relating to the same subject.

### [Approved June 13, 1923.]

### The people of the State of California do enact as follows:

Manufacture, sale, carrying, etc., certain dangerous weapons prohibited.

SECTION 1. On and after the date upon which this act takes effect, every person who within the State of California manufactures or causes to be manufactured, or who imports into the state, or who keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandelub, sandbag, or metal knuckles, or who carries concealed upon his person any explosive substance, other than fixed ammunition, or who carries concealed upon his person any dirk or dagger, shall be guilty of a felony and upon a conviction thereof shall be punishable by imprisonment in a state prison for not less than one year nor for more than five years.

SEC. 2. On and after the date upon which this act takes effect, no unnaturalized foreign born person and no person who has been convicted of a felony against the person or property of another or against the government of the United States or of the State of California or of any political subdivision thereof shall own or have in his possession or under his custody or control any pistol, revolver or other firearm capable of being concealed upon the person. The terms "pistol," "revolver," and "firearms capable of being concealed upon the person" as used in this act shall be construed to apply to and include all firearms having a barrel less than twelve inches in length. Any person who shall violate the provisions of this section shall be guilty of a felony and upon conviction thereof shall be punishable by imprisonment in a state prison for not less than one year nor for more than five years.

SEC. 3. If any person shall commit or attempt to commit any felony within this state while armed with any of the weapons mentioned in section one hereof or while armed with any pistol, revolver or other firearm capable of being concealed upon the person, without having a license or permit to carry such firearm as hereinafter provided, upon conviction of such felony or of an attempt to commit such felony, he shall in addition to the punishment prescribed for the crime of which he has been convicted, be punishable by imprisonment in a state prison for not less than five nor for more than ten years. Such additional period of imprisonment shall commence upon the expiration or other termination of the sentence imposed for the crime of which he stands convicted and shall not run concurrently with such sentence. Upon a second conviction under like circumstances such additional period of impris-

Aliens and felons must not possess certain firearms.

Committing felony while carrying dangerous weapon,

Add. 145.

### Ch. 339]

#### FORTY-FIFTH SESSION.

onment shall be for not less than ten years nor for more than fifteen years, and upon a third conviction under like circumstances such additional period of imprisonment shall be for not less than fifteen nor for more than twenty-five years, such terms of additional imprisonment to run consecutively as before. Upon a fourth or subsequent conviction under like circumstances the person so convicted may be imprisoned for life or for a term of years not less than twenty-five years, within the discretion of the court wherein such fourth or subsequent conviction was had.

In the trial of a person charged with committing or attempting to commit a felony against the person of another while armed with any of the weapons mentioned in section one hereof, or while armed with any pistol, revolver or other firearm capable of being concealed upon the person, without having a license or permit to carry such firearm as hereinafter provided, the fact that he was so armed shall be prima facie evidence of his intent to commit such felony.

SEC. 4. In no case shall any person punishable under the No probation preceding sections of this act be granted probation by the or suspension trial court, nor shall the execution of the sentence imposed upon such person be suspended by the court.

SEC. 5. Except as otherwise provided in this act, it shall Carrying be unlawful for any person within this state to carry condifference of the section of the section of the section and person or within any vehicle which is under without the section of the section of the section of the section of the section shall be guilty of a misdemeanor, and if he has been convicted previously of any felony, or of any crime made punishable by this act, he is guilty of a felony.

This section shall not be construed to prohibit any citizen Exceptions. of the United States, over the age of eighteen years, who resides or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by section two hereof, from owning, possessing or keeping within his place of residence or place of business any pistol, revolver or other firearm capable of being concealed upon the person, and no permit or license to purchase, own, possess or keep any such firearm at his place of residence or place of business shall be required of any such citizen. Firearms carried openly in belt holsters shall not be deemed to be concealed within the meaning of this section, nor shall knives which are carried openly in sheaths suspended from the waist of the wearer.

SEC. 6. Nothing in the preceding section shall be construed rolice to apply to or affect sheriffs, constables, marshals, policemen, diers, soldiers, etc., whether active or honorably retired, or other duly appointed excepted. peace officers, nor to any person summoned by any such officers to assist in making arrests or preserving the peace while said person so summoned is actually engaged in assisting such officer; nor to the possession or transportation by any merehant of unloaded firearms as merchandise; nor to members of

#### STATUTES OF CALIFORNIA.

[Ch. 339

the army, navy, or marine corps of the United States, or the national guard, when on duty, or to organizations which are by law authorized to purchase or receive such weapons from the United States, or from this state; nor to duly authorized military or eivil organizations while parading, nor to the members thereof when going to and from the places of meeting of their respective organizations; nor to members of any club or organization now existing, or hereafter organized, for the purpose of practicing shooting at targets upon the established target ranges, whether public or private, while such members are using any of the firearms referred to in this act upon such target ranges, or while going to and from such ranges; or to licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from such hunting or fishing expedition.

SEC. 7. The unlawful concealed carrying upon the person or within the vehicle of the carrier of any dirk, dagger, pistol, revolver, or other firearm capable of being concealed upon the person, is a nuisance. Any such weapons taken from the person or vehicle of any person unlawfully carrying the same are hereby declared to be nuisances, and shall be surrendered to the magistrate before whom said person shall be taken, except that in any city, city and county, town or other municipal corporation the same shall be surrendered to the head of the police force or police department thereof. The officers to whom the same may be so surrendered, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the preservation thereof is necessary or proper to the ends of justice, shall arnually, between the first and tenth days of July, in each year, destroy or cause to be destroyed such weapons to such extent that the same shall become and be wholly and entirely ineffective and useless for the purpose for which it was manufactured; provided, however, that in the event any such weapon has been stolen and is thereafter recovered from the thief or his transferee, the same shall not be destroyed but shall be restored to the lawful owner thereof, so soon as its use as evidence has been served. upon his identification of the weapon and proof of ownership thereof. Blackjacks, slungshots, billys, sandelubs, sandbags and metal knuckles are hereby declared to be nuisances and shall be subject to confiscation and summary destruction whenever found within the state; *provided*, that upon the certificate of a judge or of the district attorney that the ends of justice will be subserved thereby, such weapon shall be preserved until the necessity for its use ceases.

SEC. 8. It shall be lawful for the sheriff of a county, and the board of police commissioners, chief of police, city marshal, town marshal, or other head of the police department of any city, city and county, town, or other municipal corporation of this state, upon proof before said board, chief, marshal or other police head, that the person applying therefor is of good moral character, and that good cause exists for the issuance thereof, to issue to such person a license to carry con-

Nuisances.

Destruction of weapons.

Licenses to carry firearms.

Add. 147

Ch. 339]

#### FORTY-FIFTH SESSION.

cealed a pistol, revolver or other firearm for a period of one year from the date of such license. All applications for such Applications. licenses shall be filed in writing, signed by the applicant, and shall state the name, occupation, residence and business address of the applicant, his age, height, weight, color of eyes and hair, and reason for desiring a license to carry such weapon. Any license issued upon such application shall set forth the foregoing data and shall, in addition, contain a description of the weapon authorized to be carried, giving the name of the manufacturer, the serial number and the caliber thereof. When such licenses are issued by a sheriff a record thereof shall be kept in the office of the county Record. clerk; when issued by police authority such record shall be maintained in the office of the authority by whom issued. Such applications and licenses shall be uniform throughout the state, upon forms to be prescribed by the attorney general.

SEC. 9. Every person in the business of selling, leasing or Dealers otherwise transferring a pistol, revolver or other firearm, of registers. a size capable of being concealed upon the person, whether such seller, lessor or transferrer is a retail dealer, pawnbroker or otherwise, except as hereinafter provided, shall keep a register in which shall be entered the time of sale, the date of sale, the name of the salesman making the sale, the place where sold, the make, model, manufacturer's number, caliber or other marks of identification on such pistol, revolver or other firearm. Such register shall be prepared by and obtained from the state printer and shall be furnished by the state printer to said dealers on application at a cost of three cost. dollars per one hundred leaves in duplicate and shall be in the form hereinafter provided. The purchaser of any firearm, capable of being concealed upon the person shall sign, and the dealer shall require him to sign his name and affix signatures. his address to said register in duplicate and the salesman shall affix his signature in duplicate as a witness to the signatures of the purchaser. Any person signing a fictitious name or address is guilty of a misdemeanor. The duplicate sheet of such Disposition of duplicate register shall on the evening of the day of sale, be placed in sheets. the mail, postage prepaid and properly addressed to the board of police commissioners, chief of police, city marshal, town marshal or other head of the police department of the city, city and county, town or other municipal corporation wherein the sale was made; *provided*, that where the sale is made in a district where there is no municipal police department, said duplicate sheet shall be mailed to the county clerk of the county wherein the sale is made. A violation of any of the Penalty. provisions of this section by any person engaged in the business of selling, leasing or otherwise transferring such firearm is a misdemeanor. This section shall not apply to wholesale dealers in their business intercourse with retail dealers, por to wholesale or retail dealers in the regular or ordinary transportation of unloaded firearms as merchandise by mail, express or other mode of shipment, to points outside of the city, city and county, town or municipal corporation wherein

Add. 148

STATUTES OF CALIFORNIA.

[Ch. 339

Form of register,

they are situated. The register provided for in this act shall be substantially in the following form :

### Form of Register.

Series No.\_\_\_\_\_ Sheet No.\_\_\_\_\_

### ORIGINAL.

### Dealers' Record of Sale of Revolver or Pistol.

#### State of California.

Notice to dealers: This original is for your files. If spoiled in making out, do not destroy. Keep in books. Fill out in duplicate.

Carbon duplicate must be mailed on the evening of the day of sale, to head of police commissioners, chief of police, eity marshal, town marshal or other head of the police department of the municipal corporations wherein the sale is made, or to the county clerk of your county if the sale is made in a district where there is no municipal police department. Violation of this law is a misdemeanor. Use carbon paper for duplicate. Use indelible pencil.

Sold by Salesman		
City, town or township		
Description of arm (state whether revolver or pistol)		
Maker Number Caliber		
Name of purchaserageyears.		
Permanent residence (state name of city, town or township,		
street and number of dwelling)		
Heightfeetinches. Occupation		
Colorskineyeshair		
If traveling or in locality temporarily, give local address		

Signature of purchaser\_\_\_\_\_ (Signing a fictitious name or address is a misdemeanor.) (To be signed in duplicate.)

Witness\_\_\_\_\_, salesman.

(To be signed in duplicate.)

Series No.....

#### DUPLICATE.

Dealers' Record of Sale of Revolver or Pistol.

### State of California.

Notice to dealers: This carbon duplicate must be mailed on the evening of the day of sale as set forth in the original of this register page. Violation of this law is a misdemeanor. Sold by \_\_\_\_\_\_ Salesman\_\_\_\_\_ City, town or township \_\_\_\_\_\_ Salesman\_\_\_\_\_ Description of arm (state whether revolver or pistol)\_\_\_\_\_\_ Maker \_\_\_\_\_\_ number\_\_\_\_\_\_ caliber\_\_\_\_\_

Ch.	339]	
-----	------	--

FORTY-FIFTH SESSION.

Name of purchaser \_\_\_\_\_years. Permanent address (state name of eity, town or township, street and number of dwelling)\_\_\_\_\_ Height.....feet.....inches. Occupation \_\_\_\_\_ Color .....hair\_\_\_\_\_skin\_\_\_\_\_eyes\_\_\_\_\_hair\_\_\_\_\_ If traveling or in locality temporarily, give local address Signature of purchaser\_\_\_\_\_ (Signing a fictitious name or address is a misdemeanor.) (To be signed in duplicate.)

Witness\_\_\_\_\_, salesman.

(To be signed in duplicate.)

SEC. 10. No person shall sell, deliver or otherwise transfer Restrictions any pistol, revolver. or other firearm capable of being con- of certain cealed upon the person to any person whom he has cause to fream, believe to be within any of the classes prohibited by section two hereof from owning or possessing such firearms, nor to any minor under the age of eighteen years. In no event shall any such firearm be delivered to the purchaser upon the day of the application for the purchase thereof, and when delivered such firearm shall be securely wrapped and shall be unloaded. Where neither party to the transaction holds a dealer's license, no person shall sell or otherwise transfer any such firearm to any other person within this state who is not personally known to the vendor. Any violation of the provisions of this section shall be a misdemeanor.

SEC. 11. The duly constituted licensing authorities of Local any county, city and county, city, town or other municipality sale of cerwithin this state, may grant licenses in form prescribed by the tain firearms. attorney general, effective for not more than one year from date of issue, permitting the licensee to sell at retail within the said county, eity and county, eity, town or other municipality pistols, revolvers, and other firearms capable of being concealed upon the person, subject to the following conditions, for breach of any of which the license shall be subject to forfeiture:

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

3. No pistol or revolver shall be delivered

(a) On the day of the application for the purchase, and when delivered shall be unloaded and securely wrapped; nor

(b) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity.

4. No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of said premises where it can readily be seen from the outside.

STATUTES OF CALIFORNIA.

|Ch, 339

Penalty for dealing in certain firearms without license.

Tampering with marks on certain fireatms.

Penalty.

Expiration of current licenses,

Antique pistols, etc.

Constitutionality.

Stats. 1917, p. 221, repealed.

SEC. 12. Any person who, without being licensed as
 above provided, engages in the business of selling or otherwise
 <sup>ut</sup> transferring, or who advertises for sale, or offers or exposes for sale or transfer, any pistol, revolver or other firearm capable of being concealed upon the person is guilty of a misdemeanor.

SEC. 13. No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol or revolver. Possession of any such firearm upon which the same shall have been changed, altered, removed, or obliterated, shall be presumptive evidence that such possessor has changed, altered, removed, or obliterated the same. Violations of this section shall be punished by imprisonment in the state prison for not less than one year nor more than five years.

SEC. 14. All licenses heretofore issued within this state permitting the carrying of pistols or revolvers concealed upon the person shall expire at midnight of December 31, 1924.

SEC. 15. This act shall not apply to antique pistols or revolvers incapable of use as such.

. SEC. 16. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

SEC. 17. That certain act entitled, "An act relating to and regulating the carrying, possession, sale or other disposition of firearms capable of being concealed upon the person; prohibiting the possession, carrying, manufacturing and sale of certain other dangerous weapons and the giving, transferring and disposition thereof to other persons within this state; providing for the registering of the sales of firearms; prohibiting the carrying or possession of concealed weapons in municipal corporations; providing for the destruction of certain dangerous weapons as nuisances and making it a felony to use or attempt to use certain dangerous weapons against another," approved May 4, 1917. is hereby repealed.

Add. 151

1923.] SALE AND USE OF PISTOLS AND REVOLVERS.

3707 Силр. 252

## SUBSTITUTE FOR SENATE BILL NO. 265.

### CHAPTER 252

## AN ACT CONCERNING THE POSSESSION, SALE AND USE OF PISTOLS AND REVOLVERS.

## Be it enacted by the Senate and House of Representatives in General Assembly convened:

SECTION 1. The term "pistol" and the term "revolver", as used in this act, shall mean any firearm having a barrel less than twelve inches in length.

SEC. 2. No person shall advertise, sell, deliver, offer or expose for sale or delivery or have in his possession with intent to sell or deliver any pistol or revolver at retail without having a permit therefor issued as hereinafter provided.

SEC. 3. The chief of police or, where there shall be no chief of police, the warden of the borough or the first selectman of the town, as the case may be, may, upon the application of any person, issue a permit in such form as may be prescribed by the superintendent of state police for the sale at retail of pistols and revolvers within the jurisdiction of the authority issuing such permit. Upon the application of any person having a bona fide residence or place of business within the jurisdiction of any such authority or, upon the application of any bona fide resident of the United States having a permit or license to carry any firearm issued by the authority of any state or sub-division of the United States, such chief of police, warden or selectman may issue a permit to such person to carry a pistol or revolver within the jurisdiction of the authority issuing the same, provided such authority shall find that such applicant intends to make no use of any pistol or revolver which he may be permitted to carry thereunder other than a proper use and that such person is a suitable person to receive such permit. The superintendent of state police may, upon application, issue to any holder of any permit to carry any vistol or revolver hereinbefore provided for, a permit to carry a pistol or revolver within the state. Each permit to carry any pistol or revolver shall be issued in triplicate and one of the copies issued by the superintendent of state police shall be delivered to the person to whom issued, one shall be delivered forthwith to the authority issuing the local permit and one shall be retained by the superintendent of state police, and the local authority issuing any such permit shall forthwith deliver one of such copies to the person to whom issued and one copy to the superintendent of state police and shall retain one of such copies.

SEC. 4. The fee for each permit originally issued under the provisions of this act shall be one dollar and for each renewal

Terms "pistol" and "revolver" defined.

Permit for solling pistol or revolver to be obtained.

Local authority may issue permit.

Local authorities may issue permit to carry any fire arm within their jurisdiction.

Superintendent of state police may grant permits to carry pistol or revolver in confincs of state.

Fees for permits.

3708 Снар. 252

> Sales to be made in place of business mentioned in permit.

Vendor to keep record of sale of fire arms.

Permit to carry fire arms may be revoked.

Sale of pistols or revolvers to aliens restricted. SALE AND USE OF PISTOLS AND REVOLVERS. [Jan.,

thereof twenty-five cents, which fees shall be paid by the authority issuing the same to the municipality wherein issued or the state, as the case may be, and each permit issued hereunder shall be valid for one year from the date of issuance.

No sale of any pistol or revolver shall be made ex-SEC. 5. cept in the room, store or place described in the permit for the sale of pistols and revolvers, and such permit or a copy thereof certified by the authority issuing the same shall be exposed to view within the room, store or place where pistols or revolvers shall be sold or offered or exposed for sale, and no sale or delivery of any pistol or revolver shall be made unless the purchaser or person to whom the same is to be delivered shall be personally known to the vendor of such pistol or revolver or the person making delivery thereof or unless the person making such purchase or to whom delivery thereof is to be made shall provide evidence of his identity. The vendor of any pixtol or revolver shall keep a record of every pistel or revolver sold in a book kept for that purpose, which record shall be in such form as shall be prescribed by the superintendent of state police and shall include the date of the sale, the caliber, make, model and manufacturer's number of such pistol or revolver and the name, address and occupation of the purchaser thereof, which record shall be signed by the purchaser and by the person making the sale, each in the presence of the other, and shall be preserved by the vendor of such pistol or revolver for a period of at least six years.

SEC. 6. Any permit for the carrying of any pistol or revolver issued under the provisions of this act may be revoked by the authority issuing the same. The revocation of either of such permits shall be a revocation of the other and, upon the revocation of any permit, such permit shall be forthwith delivered to the authority issuing the same. Upon the revocation of any local permit, the authority issuing the same shall forthwith notify the superintendent of state police and upon the revocation of any permit issued by the superintendent of state police, said superintendent shall forthwith notify the authority issuing such local permit.

SEC. 7. No person, firm or corporation shall sell at retail, deliver or otherwise transfer any pistol or revolver to any alien, nor shall any person deliver any pistol or revolver at retail except upon written application therefor and no sale or delivery of any pistol or revolver shall be made upon the date of the filing or receipt of any written application for the purchase thereof, and when any pistol or revolver shall be delivered in connection with the sale or purchase, such pistol or revolver shall be enclosed in a package, the paper or wrapping of which shall be securely fastened, and no pistol or revolver when delivered on any sale or purchase shall be loaded or con-

### 1923.] SALE AND USE OF PISTOLS AND REVOLVERS.

3709 Снар. 252

tain therein any gunpowder or other explosive or any bullet, ball or shell. Upon the delivery of any pistol or revolver the purchaser shall sign in triplicate a receipt for such pistol or revolver which shall contain the name, address and occupation of such purchaser, the date of sale, caliber, make, model and manufacturer's number and a general description thereof. One of such triplicate receipts shall, within twenty-four hours thereafter, be forwarded by the vendor of such pistol or revolver to the superintendent of state police and one to the authority issuing the permit for the sale of such pistol or revolver and the other shall be retained by such vendor for at least six years.

SEC. 8. No person shall make any false statement or give any false information connected with any purchase, sale or delivery of any pistol or revolver, and no person shall sell, barter, hire, lend, give or deliver to any minor under the age of eighteen years any pistol or revolver.

SEC. 9. No person shall carry any pistol or revolver in or upon any vehicle or upon his person, except when such person shall be within his dwelling house or place of business, without a permit to carry the same issued as heroinbefore provided.

SEC. 10. The provisions of section nine of this act shall not apply to the carrying of any pistol or revolver by any marshal, sheriff or peace officer, or to any soldier, sailor or marine in the service of the United States or this state when on duty or going to or from duty, or to any member of any military organization when on parade or when going to or from any place of assembly, or to the transportation of pistols or revolvers as merchandise, or to any person carrying any pistol or revolver while contained in the package in which it was originally wrapped at the time of sale and while carrying the same from the place of sale to the purchaser's residence or place of business, or to any person removing his household goods or effects from one place to another, or to any person while carrying any such pistol or revolver from his place of residence or business to a place or person where or by whom such pistol or revolver is to be repaired or while returning to his place of residence or business after the same shall have been repaired.

SEC. 11. No person shall change, alter, remove or obliterate the name of any maker or model or any maker's number or other mark of identification on any pistol or revolver. The possession of any pistol or revolver upon which any identifying mark, number or name shall have been changed, altered, removed or obliterated shall be prima facie evidence that the person owning or in possession of such pistol or revolver has changed, altered, removed or obliterated the same.

Giving of false information or the sale to persons under eightcon years of age prohibited.

Carrying of pistol or revolver without permits restricted.

When and by whom pistols and revolvers may be carried without securing a permit.

Tampering with identification mark of any pistol or revolver prohibited.

[Jan.,

3710 Снар. 253

Ponalty.

Repeal.

SEC. 12. Any person violating any provision of section nine or eleven of this act shall be fined not more than one thousand dollars or imprisoned not more than five years or Loth, and any person violating any other provision of this act shall be fined not more than five hundred dollars or imprisoned not more than three years or both, and any pistol or revolver found in the possession of any person in violation of any provision of this act shall be forfeited.

LICENSING OF INSURANCE AGENTS.

SEC. 13. Section 2678 of the general statutes, chapter 206 of the public acts of 1919, chapter 127 of the public acts of 1921 and those portions of sections 6369, 6370, 6371 and 6372 of the general statutes which relate to pistols and revolvers are repealed.

Approved June 2, 1923.

## SUBSTITUTE FOR SENATE BILL No. 227.

### CHAPTER 253

## AN ACT PROVIDING FOR THE LICENSING OF INSURANCE AGENTS.

## Be it enacted by the Senate and House of Representatives in General Assembly convened:

Insurance agent defined.

Agent to have license.

Form of application. SECTION 1. An insurance agent is defined as a person authorized in writing, by any insurer authorized to transact business in the state, to solicit, negotiate or effect contracts of insurance, surety or indennity; or any member of a copartnership or association, or any stockholder, officer or agent of a corporation authorized to solicit, negotiate or effect such contracts, when such copartnership, association or corporation shall hold a direct agency appointment from any insurer.

SEC. 2. No person shall engage in business as an insurance agent until he shall have obtained from the insurance commissioner a license therefor under the provisions of this Each applicant for such license shall file with the comact. missioner his written application for a license authorizing him to engage in business as an agent in the general or some specified line or lines of insurance, surety or indemnity coverage, which, under the provisions of the general statutes, may be written in the state, which application shall be accompanied by a statement, signed and sworn to by such applicant, on a blank furnished by the commissioner, setting forth such facts as he may require, and by the affidavit of an official or representative of an insurer authorized to transact business in the state or of a licensed insurance agent of the state, that the applicant is personally known to him; that the applicant has experience, or will be instructed, in the general or some specified PERJURY

CHAPTER 265

# PERJURY

#### CHAPTER 265.

(S. B. No. 232-Stevens.)

#### OATH.

An Act to Amend and Re-enact Section 9367 of the Compiled Laws of North Dakota for the year 1913, Relating to the Prescribing of an Oath.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Sec. 1. AMENDMENT.) That Section 9367 of the Compiled Laws of North Dakota for the year 1913 be amended and re-enacted to read as follows:

Sec. 9367. OATH DEFINED.) The term oath as used in Section 9366 of the Compiled Laws of 1913, includes an affirmation and every other mode of attesting the truth of that which is stated, which is authorized by law, and the signing of any writing purporting to be made under oath, in the presence of an officer authorized to administer oaths, or the acknowledgment of the signing thereof, to or before any such officer, or the presentation thereof to such officer by the person signing or by his direction to be authenticated as an oath, shall be deemed to be the taking of an oath within the meaning of said section and the certificate of the officer purporting to take such oath shall be prima facie evidence of the taking thereof.

Approved March 1st, 1923.

# PISTOLS AND REVOLVERS

#### CHAPTER 266.

(S. B. No. 256-McLachlin.)

#### PISTOLS AND REVOLVERS.

An Act To Control the Possession, sale, and use of pistols and revolvers, to provide penalties, and for other purposes.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Sec. 1. DEFINITION.) "Pistol or revolver," as used in this Act, shall be contrued as meaning any firearm with barrel less than twelve inches in length.

Add. 156

1

CHAPTER 266

PISTOLS

Sec. 2. COMMITTING CRIME WHEN ARMED.) If any person shall commit or attempt to commit a crime when armed with a pistol or revolver, and having no permit to carry the same, he shall be in addition to the punishment provided for the crime, be punished by imprisonment for not less than ten years.

Sec. 3. PUNISHMENT.) The judge shall have the power to sentence any person who may be convicted for a second or third offense under section 2 of this Act, to double and triple the penalty imposed thereby, and for a fourth offense the person so convicted may be sentenced to life imprisonment.

Sec. 4. BEING ARMED PRIMA FACIE EVIDENCE OF INTENTION.) In the trial of a person for the commission of a felony or of an attempt to commit a felony against the person of another, the fact that he was armed with a pistol or revolver and having no permit to carry the same shall be prima facie evidence of his intention to commit said felony.

Sec. 5. Aliens and Criminals Must Not Possess Arms.) No unnaturalized foreign-born person and no person who has been convicted of a felony against the person or property of another or against the Government of the United States or of any State or subdivision thereof, shall own or have in his possession or under his control, a pistol or revolver. Violations of this section shall be punished by imprisonment for not to exceed five years.

Sec. 6. CARRYING PISTOL CONCEALED.) No person shall carry a pistol or revolver concealed in any vehicle or in any package, satchel, grip, suit case or carry in any way or upon his person, except in his dwelling house or place of business, without a license therefor as hereinafter provided. Violations of this section shall be punished by imprisonment for not less than one year, and upon conviction the pistol or revolver shall be confiscated and destroyed.

Sec. 7. EXCEPTIONS.) The provisions of the preceding section shall not apply to marshals, sheriffs, policemen, or other duly appointed peace officers, nor to the regular and ordinary transportation of pistols or revolvers as merchandise, nor to members of the Army, Navy or Marine Corps of the United States, or the National Guard, when on duty, or organizations by law authorized to purchase or receive such weapons from the United States, or this State, nor to duly authorized military or civil organizations when parading, nor to the members thereof when at or going to or from their customary places of assembly.

Sec. 8. Issue of Licenses to Carry.) The justice of a court of record, the chief of police of a city or town and the sheriff of a county, or persons authorized by any of them

#### PISTOLS

### CHAPTER 266

shall upon the application of any persons having a bona fide residence or place of business within the jurisdiction of said licensing authority, or of any person having a bona fide residence or place of business within the United States and a license to carry a fire arm concealed upon his person issued by the authorities of any State or sub-division of the United States, issue a license to such person to carry a pistol or revolver within this State for not more than one year from date of issue, if it appears that the applicant has good reason to fear an injury to his person or property or for any other proper purpose, and that he is a suitable person to be so licensed. The license shall be in triplicate, in form to be prescrived by the Secretary of State, and shall bear the name, address, description, and signature of the licensee and the reason given for desiring a license. The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent by registered mail to the Secretary of State, and the triplicate shall be preserved for six years by the authority issuing said license.

SELLING TO MINORS.) Any person or persons who Sec. 9. shall sell, barter, hire, lend or give to any minor under the age of eighteen years any pistol or revolver shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined not less than \$100, nor more than \$1,000, or be imprisoned not less than three months, nor more than one year, or both.

Sec. 10. SALES REGULATED.) No person shall sell, deliver, or otherwise transfer a pistol or revolver to a person who he has reasonable cause to believe either is an unnaturalized foreign born person or has been convicted of a felony against the person or property of another, or against the Government of the United States or any State or subdivision thereof, nor in any event shall he deliver a pistol or revolver on the day of the application for the purchase thereof, and when delivered, said pistol or revolver shall be securely wrapped and shall be unloaded. Before a delivery be made the purchaser shall sign in triplicate and deliver to the seller a statement containing his full name, address, occupation, and nationality, the date of sale, the caliber, make, model, and manufacturer's number of the weapon. The seller shall, within seven days, sign and forward by registered mail one copy thereof to the Secretary of State, and one copy thereof to the chief of police of the city or town, or the sheriff of the county of which the seller is a resident, and shall retain the other copy This section shall not apply to sales at wholefor six years. sale. Where neither party to the transaction holds a dealer's license, no person shall sell or otherwise transfer a pistol or revolver to any person not personally known to him. Violations of this section shall be punished by a fine of not less than \$100 or by

CHAPTER 266

PISTOLS

imprisonment for not less than one year, or by both such fine and imprisonment.

Sec. 11. DEALERS TO BE LICENSED.) Whoever, without being licensed as hereinafter provided, sells, or otherwise transfers, advertises, or exposes for sale, or transfers or has in his possession with intent to sell, or otherwise transfer, pistols or revolvers, shall be punished by imprisonment for not less than two years.

Sec. 12. DEALERS' LICENSES: BY WHOM GRANTED, AND CON-DITIONS THEREOF.) The duly constituted licensing authorities of any city, town or subdivision of this state, may grant licenses in form prescribed by the Secretary of State, effective for not more than one year from date of issue, permitting the licensee to sell at retail within the said city or town or political subdivision, pistols and revolvers, subject to the following conditions, for breach of any of which the license shall be subject to forfeiture:

The business shall be carried on only in the building 1. designated in the license.

The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

No pistol or revolver shall be delivered---3.

- (a) On the day of the application for the purchase, and when delivered shall be unloaded and securely wrapped; nor
- (b) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity; nor
- If the seller has reasonable cause to believe that (c) the purchaser either is an unnaturalized foreign born person or has been convicted of a felony against the person or property of another, or against the Government of the United States or any State or subdivision thereof.

4. A true record, in triplicate, shall be made of every pistol or revolver sold, said record to be made in a book kept for the purpose, the form of which may be prescribed by the Secretary of State, and shall be personally signed by the purchaser and by the person affecting the sale, each in the presence of the other, and shall include the date of sale, the caliber, make, model, and manufacturer's number of the weapon, the name, address, occupation, and nationality of the purchaser. One copy of said record shall, within seven days, be forwarded by registered mail to the Secretary of State and one copy thereof to the chief of police of the city or town or the sheriff of the county of which the seller is a resident, and the other copy retained for six years.

PISTOLS
---------

5. No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of said premises where it can readily be seen from the outside.

Sec. 13. PENALTY FOR FALSE INFORMATION.) If any person in purchasing or otherwise securing delivery of a pistol or revolver or in applying for a permit to carry the same, shall give false information or offer false evidence of his identity he shall be punished by imprisonment for not less than five nor more than ten years.

Sec. 14. ALTERATION OF IDENTIFYING MARKS PROHIBITED.) No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol or revolver. Possession of any such firearm upon which the same shall have been changed, altered, removed, or obliterated, shall be presumptive evidence that such possessor has changed, altered, removed, or obliterated the same. Violations of this section shall be punished by imprisonment for not less than one year nor more than five years.

Sec. 15. EXISTING LICENSES REVOKED.) All Licenses heretofore issued within this State permitting the carrying of pistols or revolvers concealed upon the person shall expire at midnight of June 30th, 1923.

Sec. 16. EXCEPTIONS.) This Act shall not apply to antique pistols or revolvers incapable of use as such.

Sec. 17. CERTAIN ACTS REPEALED.) All laws or parts of laws inconsistent herewith are hereby repealed.

Approved March 7th, 1923.

# PLEDGE

#### CHAPTER 267.

(H. B. No. 177-Cole.)

#### SALE OF PROPERTY PLEDGED.

An Act to Amend and Re-enact Section 6790 of the Compiled Laws of North Dakota for 1913.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Sec. 1. AMENDMENT.) Section 6790 of the Compiled Laws of the State of North Dakota for 1913 is amended and re-enacted to read as follows:

#### CHAPTER 118.

[1923

### CHAPTER 118.

#### AN ACT TO CONTROL THE POSSESSION, SALE, AND USE OF PISTOLS AND REVOLVERS.

SECTION

SECTION

- 1. Definition of pistol or revolver.
- Commission of crime by one armed 2. with pistol and unlicensed, how punished.
- 3. What persons forbidden to carry pistols or revolvers; penalty for violation.
- Carrying concealed weapon without 4. license; penalty for violation.
- 5 Persons exempt from application of preceding section.
- 6. License to carry loaded weapon, to whom and by whom to be granted.
- 7. Sales, etc., of weapons to minors, how punished; exemption.

8. Sale, etc., to unnaturalized foreignborn persons, etc., or to a felon, prohibited except upon permit.

- 9. Selling, etc., of weapons without license, how punished.
- Licenses to sell, how granted; rec-10 ord of sales to be kept.
- 11. Purchasing weapon by false information or evidence, how punished.
- 12. Removing maker's name from or other mark weapon. of identification, how punished.
- 13. Existing licenses to expire July 31, 1923.
- 14. Antique weapons not included in act.
- 15. Repealing clause; takes effect on passage.

Be it enacted by the Senate and House of Representatives in General Court convened:

Definition of

Commission of how punished.

What persons

Carrying concealed weapon without license penalty for viola-tion.

Persons exempt from application of preceding section.

SECTION 1. Pistol or revolver, as used in this act shall be conpistol or revolver. strued as meaning any firearm with a barrel less than twelve inches in length.

SECT. 2." If any person shall commit or attempt to commit a crime by one armed with pistol crime when armed with a pistol or revolver, and having no permit and unlicensed, to carry the same, he shall in addition to the punishment provided to carry the same, he shall in addition to the punishment provided for the crime, be punished by imprisonment for not more than five years.

SECT. 3. No unnaturalized foreign-born person and no person forbidden to carry who has been convicted of a felony against the person or property pistols or revolvers; penalty for of another shall own or have in his possession or under his control violation. a pistol or revolver, except as hereinafter provided. Violations of this section shall be punished by imprisonment for not more than two years and upon conviction the pistol or revolver shall be confiscated and destroyed.

> SECT. 4. No person shall carry a pistol or revolver concealed in any vehicle or upon his person, except in his dwelling house or place of business, without a license therefor as hereinafter provided. Violations of this section shall be punished by a fine of not more than one hundred dollars or by imprisonment not exceeding one year or by both fine and imprisonment.

> SECT. 5. The provisions of the preceding sections shall not apply to marshals, sheriffs, policemen, or other duly appointed peace and other law enforcement officers, nor to the regular and ordinary trans

1923]

#### CHAPTER 118.

portation of pistols or revolvers as merchandise, nor to members of the army, navy, or marine corps of the United States, nor to the national guard when on duty, nor to organizations by law authorized to purchase or receive such weapons, nor to duly authorized military or civil organizations when parading, or the members thereof when at or going to or from their customary places of assembly.

SECT. 6. The selectmen of towns or the mayor or chief of police License to carry loaded weapon of cities may, upon application of any person issue a license to to whom and by such person to carry a loaded pistol or revolver in this state, for granted. not more than one year from date of issue, if it appears that the applicant has good reason to fear an injury to his person or property or for any other proper purpose, and that he is a suitable person to be licensed. The license shall be in duplicate and shall bear the name, address, description, and signature of the licensee. The original thereof shall be delivered to the licensee, the duplicate shall be preserved by the selectmen of towns and the chief of police of the cities wherein issued for a period of one year.

SECT. 7. Any person or persons who shall sell, barter, hire, sales, etc., of weapons to lend or give to any minor under the age of twenty-one years any weapon minors, pistol or revolver shall be deemed guilty of a misdemeanor and punished; exshall upon conviction thereof be fined not more than one hundred dollars or be imprisoned not more than three months, or both. This section shall not apply to fathers, mothers, guardians, administrators, or executors who give to their children, wards, or heirs to an estate, a revolver.

SECT. 8. No person shall sell, deliver, or otherwise transfer a sale, etc., to pistol or revolver to a person who is an unnaturalized foreign-born foreign-born person or has been convicted of a felony against the person or persons, etc., property of another, except upon delivery of a written permit to hibited except purchase, signed by the selectmen of the town or the mayor or chief of police of the city. Before a delivery be made the purchaser shall sign in duplicate and deliver to the seller a statement containing his full name, address, and nationality, the date of sale, the caliber, make, model, and manufacturer's number of the weapon. The seller shall, within seven days, sign and forward to the chief of police of the city or selectmen of the town one copy thereof and 'shall retain the other copy for one year. This section shall not apply to sales at wholesale. Where neither party to the transaction holds a dealer's license, no person shall sell or otherwise transfer a pistol or revolver to any person not personally known to him. Violations of this section shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

SECT. 9. Whoever, without being licensed as hereinafter pro-Selling. etc., of weapons without vided, sells, advertises, or exposes for sale, or has in his possession license, how pun

01

be

Licenses to sell,

how granted; record of sales to be kept.

#### CHAPTER 118.

[1923

with intent to sell, pistols or revolvers, shall be punished by imprisonment for not more than two years.

Sect. 10. The selectmen of towns and the chief of police of cities may grant licenses, the form of which shall be prescribed by the secretary of state, effective for not more than one year from date of issue, permitting the licensee to sell at retail pistols and revolvers subject to the following conditions, for breach of any of which the license shall be subject to forfeiture:

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

3. No pistol or revolver shall be delivered (a) to a purchaser not personally known to the seller or who does not present clear evidence of his identity; nor (b) to an unnaturalized foreign-born person or a person who has been convicted of a felony and has no permit as required by section 8 of this act.

A true record, in duplicate, shall be made of every pistol or revolver sold, said record to be made in a book kept for the purpose, the form of which shall be prescribed by the secretary of state and shall be signed by the purchaser and by the person effecting the sale, and shall include the date of sale, the caliber, make, model, and manufacturer's number of the weapon, the name, address, and nationality of the purchaser. One copy of said record shall, within seven days, be forwarded to the selectmen of the town or the chief of police of the city and the other copy retained for one year.

SECT. 11. If any person in purchasing or otherwise securing delivery of a pistol or revolver shall give false information or offer false evidence of his identity he shall be punished by imprisonment for not more than two years.

SECT. 12. No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol or revolver. Possession of any such firearms upon which the same shall have been changed, altered, removed, or obliterated, shall be presumptive evidence that such possessor has changed, altered, removed or obliterated the same. Violations of this section shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than one year, or both.

SECT. 13. All licenses heretofore issued within the state permitting the carrying of pistols or revolvers upon the person shall expire at midnight of July 31, 1923.

SECT. 14. This act shall not apply to antique pistols or revolvers incapable of use as such.

Purchasing weapon by false information or evidence. how punished.

Removing maker's name from weapon, or other mark of identification, how punished.

Existing licenses to expire July 31 1923.

Antique weapons not included in act.

Add. 163

1923]

### CHAPTER 119.

141

SECT. 15. All acts and parts of acts inconsistent herewith are Repealing clause; hereby repealed, and this act shall take effect upon its passage.

[Approved May 4, 1923.]

#### CHAPTER 119.

#### AN ACT TO PROHIBIT THE SALE AND MANUFACTURE OF INFLAMMABLE STOVE POLISHES.

SECTION	SECTION
1. Manufacture or sale of certain in-	2. Penalty for violation.
flammable stove polishes forbid-	3. Repealing clause; takes effect on
den.	passage.

Be it enacted by the Senate and House of Representatives in General Court convened:

SECTION 1. It shall be unlawful to manufacture for sale, keep for Manufacture or sale, or sell for domestic use, any articles or compounds designed infamile or intended as stove polish, which flash at a temperature below one stove polishes hundred and twenty degrees Fahrenheit, open cup test. The selling or having for sale of such compounds by retail stores shall be deemed as presumptive evidence of their being intended for domestic use.

SECT. 2. Any violation of this act shall be punished by a fine Penalty for not exceeding one hundred dollars (\$100) or by imprisonment not violation. exceeding six months or both.

SECT. 3. So much of chapter 101, Laws of 1921, as is incon-Repealing clause; isstent herewith and all other acts and parts of acts inconsistent passage. herewith are hereby repealed and this act shall take effect upon its passage.

[Approved May 4, 1923.]

#### PISTOLS AND REVOLVERS.

laying out, opening, changing or vacating of any street, alley, or public place in any city are hereby extended and shall apply to all proceedings had under the provisions of section 1 of this act, including the ascertainment, award and payment of damages to, and the fixing, assessment and collection of assessments from, the owners of property beneficially or injuriously affected by such proceeding.

## CHAPTER 207.

AN ACT to regulate and control the possession, sale, and use of pistols and revolvers in the State of Indiana, to provide penalties, and for other purposes.

[S. 55. Approved March 12, 1925.]

## Pistols and Revolvers Defined.

SECTION 1. Be it enacted by the general assembly of the State of Indiana, That the term "pistol or revolver," as used in this act, shall be construed as meaning any firearm with a barrel less than twelve inches in length.

## Crime—Committing When Armed With Pistol or Revolver.

SEC. 2. If any person shall, within the State of Indiana, commit or attempt to commit a crime, when armed with a pistol or revolver, and having no permit to carry the same, he shall, in addition to the punishment provided for the crime, be guilty of a felony and shall be punished by imprisonment for not less than one year and not more than five years.

### Subsequent Offenses.

SEC. 3. The judge shall have the power to sentence any person who may be convicted for a second or third, or other subsequent offense under section 2 of this act, to double or triple the penalty imposed thereby.

## Felony—Conviction For—Prohibited From Possessing Pistol.

SEC. 4. No person who has been convicted of a felony committed against the person or property of another shall own or have in his possession or under his control, within the State of Indiana, a pistol or revolver. A violation

### GENERAL LAWS.

of this section shall constitute a felony and be punishable by imprisonment for not less than one year, and not more than five years.

## Pistol or Revolver—Possession Without Permit.

SEC. 5. No person shall carry, within the State of Indiana, a pistol or revolver concealed in any vehicle or upon his person, except in his dwelling house or place of business, without a permit therefor as hereinafter provided. Violations of this section shall constitute a misdemeanor and be punished by a fine of one hundred dollars (\$100.00), to which may be added imprisonment for not more than one year, and upon conviction the pistol or revolver shall be confiscated and destroyed by the sheriff on order of the court.

## Persons Exempt From Act.

SEC. 6. The provisions of the preceding section shall not apply to marshals, sheriffs, deputy sheriffs, policemen or any other duly appointed peace officers, nor the pistols or revolvers of any bank, trust company, or common carriers, or to the officers or employes of any bank, trust company, or common carriers, while such officers or employes are guarding money or valuables within the line of their duties as such employes, nor to the regular and ordinary transportation of pistols or revolvers as merchandise, nor to members of the army, navy, or marine corps or the mail service of the United States, or the national guard, when on duty, or organizations by law authorized to purchase or receive such weapons from the United States, or the State of Indiana, nor to duly authorized military or civil organizations when parading, nor to the members thereof when at or going to or from their customary places of assembly.

## Permits—Clerk of Circuit Court—Application—Form— Fee.

SEC. 7. The clerk of any circuit court of the State of Indiana, shall, upon application of any citizen having a bona fide residence or place of business within the State of Indiana, or of any person having a bona fide residence or place of business within the United States, and a permit

### PISTOLS AND REVOLVERS.

497

to carry a firearm concealed upon his person issued by the authorities of any other state or subdivision of the United States, issue a permit to such citizen to carry a pistol or revolver within the State of Indiana, during the period of one year or until revoked, as herein provided. Such application for permit shall be signed by two resident householders and freeholders of the county in which the applicant lives, and it shall appear from such application that the applicant is a suitable person to be granted a permit under the law. The permit shall be in duplicate, in form to be prescribed by the adjutant general of the State of Indiana, and shall bear the name, address, description and signature of the applicant and reason given for desiring a permit. The original thereof shall be delivered to the applicant, the duplicate shall be preserved for six years by the clerk of the circuit court issuing the same. For each permit so issued, the applicant shall pay the sum of one dollar (\$1.00).

### Minors—Sale of Pistols or Revolvers to Prohibited.

SEC. 8. Any person or persons who shall, within the State of Indiana, sell, barter, hire, lend, or give to any minor under the age of twenty-one years, any pistol or revolver shall be deemed guilty of a misdemeanor and shall upon conviction thereof be fined not more than one hundred dollars (\$100.00), or be imprisoned for not more than three months, or both, except for uses as hereinbefore provided.

## Sale of Pistols and Revolvers-Record-Penalty.

SEC. 9. No person shall within the State of Indiana sell, deliver or otherwise transfer a pistol or revolver to a person who he has reasonable cause to believe either is not a citizen or has been convicted of a felony against the person or property of another, nor in any event shall he deliver a pistol or revolver on the day of the application for the purchase thereof, and when delivered said pistol or revolver shall be securely wrapped and shall be unloaded. Before a delivery be made, the purchaser or his duly authorized agent and the seller or his duly authorized agent shall in the presence of each other sign in duplicate a statement containing the purchaser's full name, age, ad-

32-80944

### GENERAL LAWS.

dress, place of birth, and nationality, the date of sale, the caliber, make, model, and manufacturer's number of the weapon. The seller shall, within seven days, forward by registered mail, to the clerk of the circuit court of the county in which the seller resides, one copy thereof and shall retain the other copy for six years. This section shall not apply to sales at wholesale. Where neither party to the transaction holds a dealer's license, no person shall sell or otherwise transfer a pistol or revolver to any person not personally known to him. Violations of this section shall constitute a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100.00), or by imprisonment for not more than one year, or by both such fine and imprisonment.

## Pistols and Revolvers-Sale Without License.

SEC. 10. Whoever, within the State of Indiana, without being licensed as hereinafter provided, sells, delivers, transfers, advertises, or exposes for sale, or has in his possession with intent to sell, pistols or revolvers, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment for not less than one year nor more than two years.

## Dealers' Licenses—Conditions on Which Sold—Record— Advertisement.

SEC. 11. The clerk of the circuit court of any county may grant licenses, to any reputable, established dealer, on forms to be prescribed by the adjutant general, permitting the licensee to sell at retail within the State of Indiana pistols and revolvers, subject to the following conditions, for breach of any of which the license shall be subject to forfeiture:

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

3. No pistol or revolver shall be delivered:

(a) On the day of the application for the purchase, and when delivered shall be unloaded and securely wrapped; nor,

(b) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity; nor,

(c) If the seller has reasonable cause to believe that the purchaser is an unnaturalized foreign-born person or has been convicted of a felony against the person or property of another.

4. A true record, in duplicate, shall be made of every pistol or revolver sold, said record to be made in a book kept for the purpose, the form of which shall be prescribed by the adjutant general and shall be signed by the purchaser and by the person effecting the sale, and in the presence of each other, and shall include the date of sale, the caliber, make, model, and manufacturer's number of the weapon, the name, address, age, place of birth, nationality of the purchaser. One copy of said record shall, within seven days, be forwarded by registered mail to the clerk of the circuit court of the county in which the seller resides, and the other copy shall be retained by the seller for six years.

5. No pistol or revolver, or placard advertising the sale thereof, or imitation thereof, shall be displayed in any part of said premises where it can readily be seen from the outside.

## False Information.

SEC. 12. If any person in purchasing or otherwise securing delivery of a pistol or revolver or applying for a permit to carry same within the State of Indiana shall give false information or offer false evidence of his identity he shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment for not less than one year nor more than five years.

## Obliteration of Make, Model, Number-Penalty.

SEC. 13. No person shall within the State of Indiana, change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol or revolver. Possession of any such firearms upon which the same shall have been changed, altered, removed, or obliterated, shall be prima facie evidence that such possessor has changed, altered, removed,

### GENERAL LAWS.

or obliterated the same. Violations of this section shall be a misdemeanor and shall be punished by imprisonment for not less than six months nor more than one year.

## Felony—Possession of Revolver Prima Facie Evidence.

SEC. 14. In the trial of a person charged with committing or attempting to commit a felony against the person or property of another while armed with a pistol or revolver, without having a permit to carry such firearm as hereinbefore provided, the fact that such person was so armed shall be prima facie evidence of his intent to commit such felony.

## Weapons Exempt.

SEC. 15. This act shall not apply to antique pistols or revolvers incapable of use as a deadly weapon.

## Prior Licenses.

SEC. 16. Any or all licenses heretofore issued to carry or possess revolver or pistol shall be revoked and rendered null and void on and after thirty days from the taking effect of this act.

## **Revocation of License**.

SEC. 17. Hereafter in any court of record upon trial of any person for a penal offense, and upon a showing that such person is not a fit person to carry concealed weapons, the court may enter an order revoking such person's license to carry concealed weapons and such fact shall be communicated to the public officer issuing the same.

## Licensed Dealers-Statement-Penalty.

SEC. 17½. It shall be unlawful from and after the taking effect of this act, for any person, firm or corporation to receive or have in his or its possession within the State of Indiana any pistol or revolver purchased or acquired after the taking effect of this act, except a licensed dealer, who shall not have signed and forwarded to the clerk of the county in which he resides the statements provided for in section 9 of this act, before or at the time of taking possession of such pistol or revolver. Whoever shall violate the provisions of this section of this act shall be FORTY-NINTH JUDICIAL CIRCUIT.

501

deemed guilty of a misdemeanor and shall upon conviction thereof be fined not more than \$100, to which may be added imprisonment for not more than sixty days.

### Repeal.

SEC. 18. All laws and parts of laws in conflict herewith are hereby repealed.

## Unconstitutional Provisions.

SEC. 19. If any provision or section of this act shall be held void or unconstitutional, all other provisions and all other sections of this act, which are not expressly held to be void or unconstitutional, shall remain in full force and effect.

## CHAPTER 208.

AN ACT fixing the terms of the circuit court, in the forty-ninth judicial circuit, composed of the counties of Daviess and Martin, and repealing all laws in conflict therewith, and declaring an emergency.

[S. 173. Approved March 12, 1925.]

#### Daviess and Martin Counties—Terms of Court.

SECTION 1. Be it enacted by the general assembly of the State of Indiana, That there shall be four terms each year of the circuit court in each of the counties of Daviess and Martin, comprising the forty-ninth judicial circuit. The terms in the county of Martin shall begin on the first Monday in January, the fourth Monday in March, the first Monday in August, and the fourth Monday in October of each year, and the terms beginning on the first Monday of January, and the fourth Monday of March, shall continue for four weeks each, and the terms beginning on the first Monday of August, and the fourth Monday of October, shall continue for three weeks each.

The terms in the county of Daviess shall begin on the first Monday of February, the fourth Monday of April, the first Monday of September, and the third Monday of November, and the terms beginning on the first Monday of February, and the first Monday of September, shall continue for six weeks, and the terms beginning on the fourth Monday of April and the third Monday of Novem-

## [No. 313.]

AN ACT to regulate the possession and sale of pistols, revolvers and guns; to provide a method of licensing those carrying such weapons concealed; and to provide penalties for violations of such regulations.

### The People of the State of Michigan enact:

SECTION 1. A pistol, revolver or gun as used in this act Pistol, etc., shall be construed to mean any pistol, revolver or gun not defined. exceeding thirty inches in length that can be concealed on or about the person.

SEC. 2. Any person who shall commit or attempt to commit Felony, a felony when armed with a pistol, revolver or gun, as defined penalty for. in section one, shall, in addition to the punishment provided for committing the crime, be punished by imprisonment for not less than two nor more than five years within the discretion of the court.

SEC. 3. The court shall have power to sentence any person second who may be convicted of a second offense to double the addi- offense. tional penalty imposed under section two hereof for carrying such concealed weapon without a license.

SEC. 4. In the trial of a person for the commission of mur- what der, assault with intent to do great bodily harm, robbery, deemed larceny, or of an attempt to commit any of such offenses, the evidence. fact that he was armed with a pistol, revolver or gun as herein defined and had no permit to carry the same, shall be prima facie evidence of his intention to commit the crime with which he is charged. If any peace officer shall arrest a person on suspicion and with probable cause and without a warrant, for carrying concealed weapons, as herein provided, without a license therefor, and the arrest was in other respects legal and such person was actually in possession of a concealed weapon without a license to carry the same, it shall be presumed that the officer making the arrest had reasonable cause to believe that the alleged offense was being committed.

SEC. 5. No person shall carry a pistol, revolver or gun con- Pistol, etc., cealed on or about his person or in any vehicle owned or when unlaw-ful to carry. operated by him, except in his dwelling house, place of business or on his premises, without a license therefor, as hereinafter provided. The provisions of this section, however, shall not apply to the regular and ordinary transportation of pistols, revolvers or guns as merchandise, or to any member of the army, navy or marine corps of the United States, or to the national guard when on duty, or organizations by law authorized to purchase or receive such weapons from the United States or from this state, nor to duly authorized military organizations when on duty, nor to the members thereof when going to or returning from their customary places of assembly, nor to wholesale or retail dealers therein, nor to peace officers of the state.

#### PUBLIC ACTS, 1925-No. 313

Permit to carry, who to issue.

SEC. 6. The prosecuting attorney, sheriff and chief of police of any city or incorporated village in which an applicant for a license to carry a concealed weapon, as herein defined, resides, shall constitute a licensing board for applicants living in cities and incorporated villages of each county. The prosecuting attorney and sheriff shall constitute a board to act upon applications for such a license by applicants not residing in a city or incorporated village in such county. The county clerk of each county shall be clerk of such board. The board as herein constituted may issue a permit to carry concealed, a revolver or gun within the state, to such person residing within the jurisdiction of the licensing board, if it appears that the applicant is a suitable person to be granted a license and there is reasonable cause therefor. The license so issued shall state the reason for granting the same and the length of time for which granted. Such license shall be void when the reason for granting it ceases to exist. A license may also be issued, as herein provided, to any person having a bona fide residence or place of business within the United States, and holding a license to carry the weapons herein mentioned concealed upon his person, issued by the authorities of the United States. The license herein mentioned shall te in a form prescribed by the secretary of state and shall be in triplicate. It shall give the name, address and description of the licensee and the reason for granting a license. Each of said copies shall be signed by the licensee. The original shall be delivered to such licensee; one copy shall be mailed by registered letter within thirty days to the secretary of state and the other copy shall be preserved by the person issuing the license.

SEC. 7. No person shall deliver or otherwise transfer a pistol, revolver or gun, as defined in this act, to a person, unless it be securely wrapped and unloaded. Before the same is delivered to the purchaser, he shall sign in triplicate and deliver to the seller a statement containing his full name, address, occupation, nationality, the date of sale, the caliber, make, model and manufacturer's number of the weapon. The seller shall, within thirty days thereafter, sign and mail by registered letter one copy thereof to the secretary of state, one copy to the chief of police of the city or village in which t the same was sold or to the sheriff of the county of which the seller is a resident and shall retain the other copy. This section shall not apply to sales at wholesale. Any person convicted of wilfully violating the provisions of this section shall be punished by a fine of not less than one hundred dollars or by imprisonment for not more than one year or by both such fine and imprisonment, in the discretion of the magistrate.

SEC. 8. No person, firm or corporation shall hereafter sell or otherwise transfer a pistol, revolver or gun without having obtained a dealer's license therefor. The duly constituted licensing authorities herein mentioned may grant licenses on a form prescribed by the secretary of state, effective for not

Form of license.

Delivery to purchaser; statement required.

Dealer's license.

PUBLIC ACTS, 1925-No. 313.

more than one year from the date thereof permitting the licensee to sell at retail the firearms herein mentioned, subject to the following conditions:

1. The business shall be conducted only in the building occupied by the licensed dealer.

2. The license or a copy thereof certified by the issuing authority shall be displayed on the premises where it can be readily seen.

**3.** A true record in triplicate shall be made of every pistol, revolver or gun, as defined in this act, sold, said record to be made in a book kept for the purpose, the form of which shall be prescribed by the secretary of state as hereinbefore provided. The form shall show the date of sale, the caliber, make, model and manufacturer's number of the weapon and the name, address, occupation and nationality of the purchaser.

SEC. 9. If any person in purchasing or otherwise securing False delivery of a pistol, revolver, or gun, as defined in this act, or information. in applying for a permit to carry the same, shall give any false information or offer false evidence of his identity, he shall be subject to the penalty hereinafter provided.

SEC. 10. No person shall deliberately change, alter, remove Not to or obliterate the name of the maker, model, manufacturer's change, etc., name of number or other mark of identity of any pistol, revolver or maker, etc. gun. Possession of any such firearm upon which the name or number shall have been deliberately changed, altered, removed or obliterated shall be presumptive evidence that such possessor has changed, altered, removed or obliterated the same.

SEC. 11. On or before the first day of July, nineteen hun- Registration. dred twenty-five, any person within this state who owns or has in his possession, a pistol, revolver or gun, as herein described, and which have not been by that time legally registered, shall register the same in the office of the sheriff of the county or the chief of police of the city or village in which such person resides. A certificate of registration shall be certificate, issued in triplicate and on a form to be prescribed by the what to consecretary of state, containing the name, address, description and signature of the person registering the same, together with a full description of such firearm. The original shall be delivered to the person registering the same, one copy thereof shall be mailed to the secretary of state by registered letter within thirty days from the date of said registration, and the other copy thereof shall be retained and filed in the office of said sheriff or chief of police. The provisions of this section shall not apply to wholesale or retail dealers or to persons having in their possession pistols, revolvers or guns used solely for the purposes of display as relies, souvenirs or curios and kept as a collection of such.

SEC. 12. All licenses heretofore issued within the state, when license permitting a person to carry a pistol, revolver or gun, as de- to expire. fined in this act, concealed upon his person, shall expire at midnight, December thirty-first, nineteen hundred twentysix.

Conditions.

Hearing.

#### PUBLIC ACTS, 1925-No. 314.

**Revocation.** SEC. 13. Any officer issuing a license under the provisions of this act may revoke the same upon receiving a certificate of any magistrate showing that such licensee has been convicted of violating any of the provisions of this act. Such license may also be revoked by the official issuing the same whenever in his judgment the holder thereof has violated any of the provisions of this act or is an unfit person to carry a concealed weapon as mentioned herein. Such official shall not revoke a license as herein mentioned, except after a hearing of which reasonable notice shall be given to the licensee either personally or by registered mail to the last known residence of the licensee. No such license shall be revoked except upon the written complaint of a peace officer or person living within the jurisdiction of the licensing official. Such complaint shall be addressed to the licensing official and shall set forth the reasons for requesting that the license be revoked.

When inapplicable.

Penalty for violation.

Saving clause.

SEC. 14. This shall not apply to antique pistols, revolvers or guns.

SEC. 15. Any person convicted of a violation of this act for which a penalty is not provided shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the state prison for a period of not more than three years, or by both such fine and imprisonment, in the discretion of the court.

SEC. 16. This act is declared to be severable and if any section or part of a section shall be held to be unconstitutional, the validity of the balance of the act shall not be affected thereby.

Approved May 26, 1925.

## [No. 314.]

AN ACT to amend section one of act number thirty-two of the public acts of eighteen hundred seventy-three, entitled "An act to extend aid to the university of Michigan and to repeal an act entitled 'An act to extend aid to the university of Michigan.' approved March fifteen, eighteen hundred sixtyseven, being sections three thousand five hundred six and three thousand five hundred seven of the compiled laws of eighteen hundred seventy-one," being section one thousand one hundred eighty-three of the compiled laws of nineteen hundred fifteen, as amended by act number two hundred fifty-two of the public acts of the state of Michigan for the year nineteen hundred twenty-three.

## The People of the State of Michigan enact:

Section amended.

SECTION 1. Section one of act number thirty-two of the public acts of eighteen hundred seventy-three, entitled "An act to CHAPTER 64, LAWS OF 1925.

## CHAPTER 64.

An Act to amend an act entitled "A further supplement to an act entitled 'An act for the punishment of crimes' (Revision of 1898), approved June fourteenth, one thousand eight hundred and ninety-eight," which supplementary act was approved March cleventh, one thousand nine hundred and twenty-four.

BE IT ENACTED by the Schate and General Assembly of the State of New Jersey:

1. The act of which this act is amendatory be and Actamended. the same hereby is amended so that the same shall read as follows:

1. Any person who shall carry any revolver, pistol Carrying conor other firearm, or other instrument of the kinds known cealed weapas a blackjack, slungshot, billy, sandclub, sandbag, or in vehicle a misdemeanor. bludgeon, metal knuckles, dagger, dirk, dangerous knife, stiletto, bomb or other high explosive, other than fixed ammunition, concealed in or about his clothes or person, or in any automobile, carriage, motor cycle, or other vehicle, shall be guilty of a misdemeanor; pro- Proviso: legal vided, however, that nothing in this act contained shall carrying. be construed in any way to apply to the sheriff, or the undersheriffs of any county, nor to the regularly employed members of any uniformed police department in any municipality of this State, nor to any prosecutor or assistant prosecutor of any county, jailer, regular fish and game wardens, constable, railway police, canal police, and steamboat police and prosecutor's detectives; nor to any member of the State Police, nor to any motor vehicle inspector; nor to duly authorized military organizations when under orders, nor to the members thereof when going to or from places of meeting of their respective organizations, carrying the weapons prescribed for such drill, exercise or parade; and provided, Proviso. *further*, nothing in this act contained shall be construed to apply to any person having a written permit to carry

Proviso.

## CHAPTER 64, LAWS OF 1925.

any revolver, pistol or other firearm, when such permit has been obtained pursuant to the provisions of this act; nor to public utility corporations in the transportation of explosives; *provided*, *however*, that nothing herein contained shall prevent any person from keeping or carrying about his or her place of business, dwelling, house or premises, any such revolver, pistol, firearm or other weapon, or from carrying the same from any place of purchase to his or her dwelling, house or place of business, or from his or her dwelling, house or place of business to any place where repairing is done, to have the same repaired and returned, or to carry a gun, rifle or knife in the woods or fields or upon the waters of the State for the purpose of hunting or target practice.

2. Any person desirous of obtaining a permit to carry a revolver, pistol or other firearm, pursuant to the provisions of this act, shall in the first instance, make application therefor either 'to the chief police official of the municipality in which the applicant resides or to the sheriff of the county wherein the applicant resides. If such application is approved by the chief police official or by the sheriff, as the case may be, the applicant shall then present such application, so approved as aforesaid, to a Common Pleas judge of the county or to the justice of the Supreme Court or to the judge holding the circuit for the county in which the applicant is resident, who, after investigation, and being satisfied of the sufficiency of the application, and of the need of such person carrying concealed upon his person, a revolver, pistol or other firearm, shall issue a permit therefor. A permit so issued pursuant to the provisions of this act is sufficient authority for the holder thereof to carry concealed upon his person a revolver, pistol or other firearm in all parts of the State of New Jersey. All permits issued pursuant to the provisions of this act shall expire on the thirty-first day of December subsequent to the date of issue, and may thereafter be renewed for a period of five years.

3. Every person engaged in the retail business of selling, leasing or otherwise transferring a pistol, revolver or other firearm of a size capable of being concealed

carry weapons.

License to

Application.

Approval.

Permit.

Expiration and renewal.

Record of sale kept.

## CHAPTER 64, LAWS OF 1925.

upon the person, whether such seller, lessor or transferror is a retail dealer, pawnbroker or otherwise, shall keep a register in which shall be entered the time of sale, date of sale, the name, age, color, nationality, occupation and residence of the purchaser, the name of the salesman making the sale, the place where sold, the make, model, manufacturer's number, calibre or other marks of identification on such pistol, revolver or other firearm. Such register shall be open at all reasonable hours for the inspection of any police or other peace officer.

The form of such register shall be prepared by the Registry. Secretary of State, and by him transmitted to the clerk of every municipality. The clerk of such municipality Furnished shall thereupon prepare said register in accordance with said form so transmitted, and furnish the same to each person, firm or corporation within his said municipality engaged in the business of selling, leasing or otherwise transferring pistols, revolvers or other firearms. The purchaser of any pistol, revolver or other firearm Signature of capable of being concealed upon the person shall sign, seller. and the dealer shall require him to sign his name and affix his address to said register, in duplicate, and the salesman shall affix his name, in duplicate, as a witness to the signature of the purchaser. Any person signing False reprea fictitious name or address, or giving any false information in connection with the making of any such purchase shall be guilty of a high misdemeanor.

The duplicate sheet of such register shall before Duplicate twelve o'clock midnight of the day of sale, lease or transfer be delivered to the office of the chief of police of such municipality, or to the office of the captain of the precinct of any such city, within which the dealer resides, and a receipt shall be given to such dealer therefor; provided, however, that where a sale, lease or Proviso. transfer is made in any municipality having no chief of police, it shall then be the duty of the dealer, from the day of sale to mail to the county clerk of the county within which the sale, lease or transfer was made a duplicate copy of such register. Any person violating Penalty. any of the provisions hereof shall be guilty of a misdemeanor.

scutation.

delivered.

Form of register.

# CHAPTER 64, LAWS OF 1925.

The register provided for in this act shall be substantially in the following form: Sold, leased or transferred by ..... Salesman ..... City, town or township ..... ..... Description of arm (state whether revolver or pistol) ...... Maker ..... chaser ..... Years ..... Permanent residence (state name of city, town or township, street and number of dwelling) ..... Height ..... feet ..... inches ..... Eyes ..... Hair .... If traveling or in locality temporarily, give local address ..... Signature of purchaser ..... ..... (Signing a fictitious name or address is a misdemeanor.) (To be signed in duplicate.) Witness ..... Salesman. (To be signed in duplicate.)

4. No person engaged in the retail business of selling, leasing or otherwise transferring any pistol, revolver or other firearm of a size capable of being concealed upon the person shall exhibit for purposes of sale, lease or hire any pistol, revolver or other firearm after the hour of five P. M.; and provided, further, that no pistol, revolver or other firearm shall be delivered to any purchaser until twenty-four hours shall have elapsed from the time of application therefor.

5. The president of any National bank, building and loan association, trust company or other banking institution located in any municipality of this State may make application to the chief of police of such municipality for permits, in blank, to be used by the messengers, clerks or other employees or agents of such institutions for use while engaged in the performance of their respective duties. Upon such issue, as aforesaid, he shall transmit to the chief of police from whom such permits were obtained a record of the persons to whom the same were issued; *provided*, *however*, that such permits, so as aforesaid issued under this section, shall not exceed twenty in number to any one bank.

No sale after five P. M.

Proviso.

Permits for banking institutions.

Police notified.

Proviso.

# CHAPTERS 64 & 65, LAWS OF 1925.

189

6. Any person who shall alter, change, disfigure or Notatter deface the serial number of any pistol or revolver shall ber. be guilty of a misdemeanor; any person engaged in the retail business of selling, leasing or otherwise transferring pistols, revolvers, or other firearms who shall sell or lease any pistol, or revolver having the serial number thereof altered, changed, disfigured or defaced shall be guilty of a misdemeanor.

7. This act shall take effect immediately. Approved March 12, 1925.

# CHAPTER 65.

# An Act concerning building and loan associations (Revision of 1925).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

# ARTICLE I. AS TO BUILDING AND LOAN AS-SOCIATIONS OF THIS STATE.

#### I. FORMATION.

1. Purposes.

Upon executing, recording and filing a certificate pur- rormation of suant to this act, nine or more persons, citizens of loan apsociations. this State, may become an incorporated association for the purpose of assisting each other and all who may become associated with them in acquiring real estate, making improvements thereon and for removing incumbrances therefrom by the payment of periodical installments, as its constitution shall provide; and for the Purposes. further purpose of accumulating a fund, to be repaid to its members, subject to the right of earlier redemption, who do not obtain advances for purposes above mentioned when the funds of such association shall amount to a certain sum per share, to be specified in the certificate of incorporation.

13 Laws

#### GENERAL LAWS OF OREGON, 1925 [Chap. 260]

9. County school superintendent, \$1,500. The county school superintendent shall be allowed a deputy or clerk whose salary shall be determined by the county court; all claims of deputy for salary or services must be approved by the county school superintendent \*[and the same shall be audited by the county court and paid as other claims against the county are paid. The county school superintendent] shall be allowed such sum as the county court may deem necessary for traveling expenses incurred in the discharge of his duties, which claims shall be audited and paid by the county court out of the general fund of the county.

Approved by the governor February 26, 1925. Filed in the office of the secretary of state February 26, 1925.

## CHAPTER 260

## AN ACT

[H. B. 452]

To control the possession, sale and use of pistols and revolvers, to provide penalties.

Be It Enacted by the People of the State of Oregon:

Section 1. On and after the date upon which this act takes effect, any person who within the state of Oregon manufactures or causes to be manufactured or who imports into the state of Oregon or who keeps for sale or offers or exposes for sale or who gives, lends or possesses a pistol or revolver otherwise than in accordance with the provisions of this act shall be guilty of a felony, and, upon conviction thereof, shall be punishable by imprisonment in the state penitentiary for not more than five years.

Section 2. On and after the date upon which this act takes effect no unnaturalized foreign-born person and no person who has been convicted of a felony against the person or property of another or against the government of the United States or of the state of Oregon or of any political subdivision thereof shall own or have in his possession or under his custody or control any pistol, revolver or other firearm capable of being concealed upon the person. The terms "pistol," "revolver," and "firearms capable of being concealed upon the person," as used in this act, shall be construed to apply to and include all firearms having a barrel less than twelve inches in length. Any person who shall violate the provisions of this section shall be guilty of a felony, and, upon conviction thereof, be punishable by imprisonment in the state penitentiary for not less than one year nor for more than five years.

<sup>\*</sup> The phrase inserted in brackets appears in the original and engrossed bills, but was not incorporated in the enrolled act.

### Chap. 260] GENERAL LAWS OF OREGON, 1925

Section 3. If any person shall commit or attempt to commit any felony within this state while armed with any of the weapons mentioned in section 1 hereof or while armed with any pistol, revolver or other firearm capable of being concealed upon the person, without having a license or permit to carry such firearm, as hereinafter provided, upon conviction of such felony or of an attempt to commit such felony, he shall, in addition to the punishment prescribed for the crime of which he has been convicted, be punishable by imprisonment in the state penitentiary for not less than five nor for more than ten years. Such additional period of imprisonment shall commence upon the expiration or other termination of the sentence imposed for the crime of which he stands convicted and shall not run concurrently with such sentence. Upon a second conviction under like circumstances such additional period of imprisonment shall be for not less than ten years nor for more than fifteen years, and upon a third conviction under like circumstances such additional period of imprisonment shall be for not less than fifteen nor for more than twenty-five years; such terms of additional imprisonment to run consecutively as before. Upon a fourth or subsequent conviction under like circumstances the person so convicted may be imprisoned for life or for a term of years not less than twenty-five years, within the discretion of the court wherein such fourth or subsequent conviction was had. In the trial of a person charged with committing or attempting to commit a felony against the person of another while armed with any of the weapons mentioned in section 1 hereof, or while armed with any pistol, revolver or other firearm capable of being concealed upon the person, without having a license or permit to carry such firearm, as hereinafter provided, the fact that he was so armed shall be prima facie evidence of his intent to commit such felony.

Section 4. In no case shall any person punishable under the preceding sections of this act be granted probation by the trial court, nor shall the execution of the sentence imposed upon such person be suspended by the court.

Section 5. Except as otherwise provided in this act, it shall be unlawful for any person within this state to carry concealed upon his person or within any vehicle which is under his control or direction any pistol, revolver or other firearm capable of being concealed upon the person without having a license to carry such firearm, as hereinafter provided in section 8 hereof. Any person who violates the provisions of this section shall be guilty of a misdemeanor, and if he has been convicted previously of any felony, or of any crime made punishable by this act, he is guilty of a felony. This section

#### GENERAL LAWS OF OREGON, 1925 [Chap. 260]

shall not be construed to prohibit any citizen of the United States, over the age of eighteen years, who resides or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by section 2 hereof, from owning, possessing or keeping within his place of residence or place of business any pistol, revolver or other firearm capable of being concealed upon the person, and no permit or license to purchase, own, possess or keep any such firearm at his place of residence or place of business shall be required of any such citizen. Firearms carried openly in belt holsters shall not be deemed to be concealed within the meaning of this section.

Section 6. Nothing in the preceding section shall be construed to apply to or affect sheriffs, constables, marshals, policemen, whether active or honorably retired, or other duly appointed peace officers, nor to any person summoned by any such officers to assist in making arrests or preserving the peace while said person so summoned is actually engaged in assisting such officer; nor to the possession or transportation by any merchant of unloaded firearms as merchandise; nor to members of the army, navy or marine corps of the United States, or the national guard, when on duty, nor to organizations which are by law authorized to purchase or receive such weapons from the United States, or from this state; nor to duly authorized military or civil organizations while parading. nor to the members thereof when going to and from the places of meeting of their respective organizations; nor to members of any club or organization now existing, or hereafter organized, for the purpose of practicing shooting at targets upon the established target ranges, whether public or private, while such members are using any of the firearms referred to in this act upon such target ranges, or while going to and from such ranges; nor to licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from such hunting or fishing expedition.

Section 7. The unlawful concealed carrying upon the person or within the vehicle of the carrier of any pistol, revolver or other firearm capable of being concealed upon the person, is a nuisance. Any such weapons taken from the person or vehicle of any person unlawfully carrying the same are hereby declared to be nuisances, and shall be surrendered to the magistrate before whom said person shall be taken, except that in any city, county, town or other municipal corporation the same shall be surrendered to the head of the police force or police department thereof. The officers to whom the same may be so surrendered, except upon the certificate of a judge or a court of record, or of the district attorney of the county,

## Chap. 260] GENERAL LAWS OF OREGON, 1925

that the preservation thereof is necessary or proper to the ends of justice, shall annually, between the first and tenth days of July, in each year, destroy or cause to be destroyed such weapons to such extent that the same shall become and be wholly and entirely ineffective and useless for the purpose for which it was [they were] manufactured; provided, however, that in the event any such weapon has been stolen and is thereafter recovered from the thief or his transferee the same shall not be destroyed but shall be restored to the lawful owner thereof, so [as] soon as its use as evidence has been served, upon his identification of the weapon and proof of ownership thereof; provided, that upon the certificate of a judge or of the district attorney that the ends of justice will be subserved thereby such weapon shall be preserved until the necessity for its use ceases.

Section 8. It shall be lawful for the sheriff of a county, and the board of police commissioners, chief of police, city marshal, town marshal, or other head of the police department of any city, county, town, or other municipal corporation of this state, upon proof before said board, chief, marshal or other police head, that the person applying therefor is of good moral character, and that good cause exists for the issuance thereof, to issue to such person a license to carry concealed a pistol, revolver or other firearm for a period of one year from the date of such license. All applications for such licenses shall be filed in writing, signed by the applicant, and shall state the name, occupation, residence and business address of the applicant, his age, height, weight, color of eves and hair, and reason for desiring a license to carry such weapon. Any license issued upon such application shall set forth the foregoing data and shall, in addition, contain a description of the weapon authorized to be carried, giving the name of the manufacturer, the serial number and the caliber thereof. When such licenses are issued by a sheriff a record thereof shall be kept in the office of the county clerk; when issued by police authority such record shall be maintained in the office of the authority by whom issued. Such applications and licenses shall be uniform throughout the state, upon forms to be prescribed by the attorney general.

Section 9. Every person in the business of selling, leasing or otherwise transferring a pistol, revolver or other firearm, of a size capable of being concealed upon the person, whether such seller, lessor or transferor is a retail dealer, pawnbroker or otherwise, except as hereinafter provided, shall keep a register in which shall be entered the time of sale, the date of sale, the name of the salesman making the sale, the place where sold, the make, model, manufacturer's number, caliber

## GENERAL LAWS OF OREGON, 1925

[Chap. 260

or other marks of identification on such pistol, revolver or other firearm. Such register shall be prepared by and obtained from the state printer and shall be furnished by the state printer to said dealers on application at a cost of \$3 per one hundred leaves, in duplicate, and shall be in the form hereinafter provided. The purchaser of any firearm capable of being concealed upon the person shall sign, and the dealer shall require him to sign, his name and affix his address to said register, in duplicate, and the salesman shall affix his signature, in duplicate, as a witness to the signature of the purchaser. Any person signing a fictitious name or address is guilty of a misdemeanor. The duplicate sheet of such register shall, on the evening of the day of sale, be placed in the mail, postage prepaid, and properly addressed to the board of police commissioners, chief of police, city marshal, town marshal or other head of the police department of the city, county, town or other municipal corporation wherein the sale was made; provided, that where the sale is made in a district where there is no municipal police department, said duplicate sheet shall be mailed to the county clerk of the county wherein the sale is made. A violation of any of the provisions of this section by any person engaged in the business of selling, leasing or otherwise transferring such firearm is a misdemeanor. This section shall not apply to wholesale dealers in their business intercourse with retail dealers, nor to wholesale or retail dealers in the regular or ordinary transportation of unloaded firearms as merchandise by mail, express or other mode of shipment, to points outside of the city, county, town or municipal corporation wherein they are situated. The register provided for in this act shall be substantially in the following form:

#### FORM OF REGISTER

Series No..... Sheet No.

#### Original

#### DEALERS' RECORD OF SALE OF REVOLVER OR PISTOL State of Oregon

Notice to Dealers: This original is for your files. If spoiled in making out, do not destroy. Keep in books. Fill out in duplicate.

Carbon duplicate must be mailed on the evening of the day of sale, to head of police commissioners, chief of police, city marshal, town marshal or other head of the police department of the municipal corporations wherein the sale is made, or to the county clerk of your county if the sale is made in a district where there is no municipal police depart-ment. Violation of this law is a misdemeanor. Use carbon paper for duplicate. Use indelible pencil. Salasman

Sold DV			
Description of arm (state whether	revolver or pistol)		
Maker	Number Caliber		

### Chap. 260] GENERAL LAWS OF OREGON, 1925

Name of purchas	ser		Age	years
number of dw	velling)		town or township	**
Height	feet	inches.	Occupation	••••••
Color	Skin	Eyes	Hair .	
If traveling, or i	n locality temp	orarily, give	local address	·····
			s is a misdemea	

signed in duplicate.)

> Series No..... Sheet No.

#### DUPLICATE

#### DEALERS' RECORD OF SALE OF REVOLVER OR PISTOL State of Oregon

Salesman		
revolver or pistol)		
Number Caliber		
of city, town or township, street and		
inches. Occupation		
Eyes Hair		
rily, give local address		
address is a misdemeanor. To be		

(To be signed in duplicate.)

Section 10. No person shall sell, deliver or otherwise transfer any pistol, revolver or other firearm capable of being concealed upon the person to any person whom he has cause to believe to be within any of the classes prohibited by section 2 hereof from owning or possessing such firearms, nor to any minor under the age of eighteen years. In no event shall any such firearm be delivered to the purchaser upon the day of the application for the purchase thereof, and when delivered such firearm shall be securely wrapped and shall be unloaded. When neither party to the transaction holds a dealers' license, no person shall sell or otherwise transfer any such firearm to any other person within this state who is not personally known to the vendor. Any violation of the provisions of this section shall be a misdemeanor.

**GENERAL LAWS OF OREGON, 1925** 

[Chap. 260

Section 11. The duly constituted licensing authorities of any city, county, town or other municipality within this state may grant licenses in form prescribed by the attorney general, effective for not more than one year from date of issue, permitting the licensee to sell at retail within the said city, county, town or other municipality pistols, revolvers and other firearms capable of being concealed upon the person, subject to the following conditions, for breach of any of which the license shall be subject to forfeiture:

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

3. No pistol or revolver shall be delivered:

(a) On the day of the application for the purchase, and when delivered shall be unloaded and securely wrapped; or

(b) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity.

4. No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of said premises where it can readily be seen.

Section 12. Any person who, without being licensed as above provided, engages in the business of selling or otherwise transferring, or who advertises for sale or offers or exposes for sale or transfer, any pistol, revolver or other firearm capable of being concealed upon the person is guilty of a misdemeanor.

Section 13. No person shall change, alter, remove or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol or revolver. Possession of any such firearm upon which the same shall have been changed, altered, removed or obliterated, shall be presumptive evidence that such possessor has changed, altered, removed or obliterated the same. Violation of this section shall be punished by imprisonment in the state penitentiary for not more than five years.

Section 14. All permits heretofore issued within this state permitting the carrying of pistols or revolvers concealed upon the person shall expire at midnight of June 1, 1925.

Section 15. This act shall not apply to antique pistols or revolvers incapable of use as such.

Section 16. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, subsection,

Chap. 261] GENERAL LAWS OF OREGON, 1925

sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 17. All acts and parts of acts in conflict herewith are hereby repealed.

Approved by the governor February 26, 1925.

Filed in the office of the secretary of state February 26, 1925.

### CHAPTER 261

## AN ACT

[H. B. 460]

Providing for the election of county school superintendents in certain counties, prescribing their powers and duties and providing for payment of salaries and expenses of the office.

#### Be It Enacted by the People of the State of Oregon:

Section 1. In all counties of this state having a population of 25,000 or more children of school age the county superintendent of schools shall have jurisdiction only of the schools of that county as shall be outside of the corporate limits of districts of the first class. He shall be elected at the biennial election in the year 1928, and every four years thereafter, by the legal voters of the county outside of districts of the first class. He shall take his office on the first Monday of January following his election; provided, that the present county school superintendent at no decrease in salary shall be ex officio county school superintendent until the expiration of his term of office. In districts of the first class, in addition to the authority now conferred upon the city superintendent of such districts, said city superintendent shall be and he hereby is vested with the authority now exercised by the county school superintendent in such districts and all reports heretofore rendered by said district to the \*[county school superintendent shall be made to the state superintendent of public instruction.

Section 2. In all counties coming under the provisions of this act the salaries of the county school superintendent, assistant superintendents, and all expenses for clerical help, traveling expenses or for any other expenses of the office of said county school superintendent shall be paid from a fund known as the county school superintendent's fund, hereinafter provided, by warrants drawn on this fund in the same manner that warrants may be drawn for the salaries for other county officials

Section 3. In all counties coming under the provisions of this act on the first Monday of November of each year the

<sup>\*</sup> The phrase inclosed in brackets appears in the engrossed bill, but was omitted in the enrolled act.

 $\mathbf{24}$ 

USE AND POSSESSION OF FIREARMS

[Ch. 3

# CHAPTER 3

(House Bill No. 7-By Mr. Robinson from the Select Committee)

AN ACT to amend and re-enact section seven of chapter one hundred and forty-eight of the code of West Virginia, as amended and re-enacted by chapter fifty-one of the acts of the legislature of West Virginia, one thousand nine hundred and nine, regular session, and as further amended and re-enacted by an act of the legislature of West Virginia, regular session, one thousand nine hundred and twenty-five, relating to offenses against the peace; providing for the granting and revoking of licenses and permits respecting the use, transportation and possession of weapons and fire arms; restricting the manner of the sale and display of weapons and fire arms; imposing liability upon certain persons for the accidental or improper, negligent or illegal discharges of weapons and fire arms; defining the powers and duties of certain officers in the granting and revocation of said licenses and permits, and providing penalties for the violation of this act and any part thereof.

[Passed June 5, 1925; in effect 90 days from passage. Approved by the Governor.] Sec. [ Sec.

- Sec.
  7. (a) Penalty for carrying dangerous or deadly weapon without license; second offense; duties of prosecuting attorneys; application for license; what to show; publication; issuance; fee; bond; term of license; territory covered; deputy sheriffs and railway police licenses co-extensive with state; accounting for fees; forms by tax commissioner; certified copy of license to superintendent of department of public safety; list of all licenses to the same; lawful to carry arms on own premises, or from place of purchase and repair, not applicable to employee; permits to express company employees and railway police; bonds; emergency permits; reports of violations, and penalty
- for failure so to do; certain officers permitted to carry arms; bond; unlawful to carry or use weapon in a manner likely to cause breach of peace; penalty; revocation of license; notice; reinstatement.
  7. (b) Permits for possession of machine
  - (b) Fermits for possession of mathic gun and high-powered rifle; regulations; exception of rifle club members and licensed hunters; granting of permit; fee; revocation; confiscation of arms; alien prohibited from owning or possessing arms; display of arms for sale or rent prohibited; report of sales by dealers to superintendent of department of public safety; unlawful to arm alien; penalty for violations of this sub-section; inconsistent acts repealed.

# Be it enacted by the Legislature of West Virginia:

That section seven of chapter one hundred and forty-eight of the code of West Virginia, as amended and re-enacted by chapter fifty-one of the acts of the legislature of West Virginia of one thousand nine hundred and nine, regular session, and as further amended and re-enacted by the legislature of West Virginia, one thousand nine hundred and twenty-five, regular session, in House Bill number four hundred six, be amended and re-enacted so as to read as follows: Ch. 3]

USE AND POSSESSION OF FIREARMS

Section 7 (a). If any person, without a state license therefor, 2 carry about his person any revolver or other pistol, dirk, 3 bowie-knife, slung shot, razor, billy, metallic or other false 4 knuckles, or any other dangerous or deadly weapon of like 5 kind or character, he shall be guilty of a misdemeanor and 7 upon conviction thereof be confined in the county jail for a 8 period of not less than six nor more than twelve months for 9 the first offense; but upon conviction of the same person for 10 the second offense in this state, he shall be guilty of a felony 11 and be confined in the penitentiary not less than one or more 12 than five years, and in either case fined not less than fifty 13 nor more than two hundred dollars, in the discretion of the 14 court; and it shall be the duty of the prosecuting attorney 15 in all cases to ascertain whether or not the charge made by 16 the grand jury is the first or second offense, and if it shall be 17 the second offense, it shall be so stated in the indictment re-18 turned, and the prosecuting attorney shall introduce the rec-19 ord evidence before the trial court of said second offense, and 20 shall not be permitted to use his discretion in charging said 21 second offense nor in introducing evidence to prove the same 22 on the trial; provided, that boys or girls under the age of 23 eighteen years, upon the second conviction, may, at the dis-24 cretion of the court, be sent to the industrial homes for boys 25 and girls, respectively, of the state. Any person desiring to 26 obtain a state license to carry any such weapon within one or 27 more counties in this state shall first publish a notice in some 28 newspaper, published in the county in which he resides, setting 29 forth his name, residence and occupation, and that on a cer-30 tain day he will apply to the circuit court of his county for 31 such state license; and after the publication of such notice for 32 at least ten days before said application is made and at the 33 time stated in said notice upon application to said court, it 34 may grant such person a license in the following manner, 35 to-wit:

36 The applicant shall file with said court his application in 37 writing, duly verified, which said application shall show:

38 First: That said applicant is a citizen of the United States 39 of America.

40 Second: That such applicant has been a bona fide resident 41 of this state for at least one year next prior to the date of 42 such application, and of the county sixty days next prior 43 thereto.

USE AND POSSESSION OF FIREARMS [Ch. 3

44 *Third*: That such applicant is over twenty-one years of 45 age; that he is a person of good moral character, of temper-46 ate habits, not addicted to intoxication, and has not been 47 convicted of a felony nor of any offense involving the use on 48 his part of such weapon in an unlawful manner.

49 Fourth: The purpose or purposes for which the applicant 50 desires to carry such weapon and the necessity therefor and 51 the county or counties in which said license is desired to be 52 effective.

53 Upon the hearing of such application the court shall hear 54 evidence upon all matters stated in such application and upon 55 any other matter deemed pertinent by the court, and if such 56 court be satisfied from the proof that there is good reason and 57 cause for such person to carry such weapon, and all of the 58. other conditions of this act be complied with, said circuit 59 court or the judge thereof in vacation, may grant 60 said license for such purposes, and no other, as said 60-a circuit court may set out in the said license (and the word 60-b "court" as used in this act shall include the circuit judge acting in vacation); but before 60-c thereof,  $\mathbf{the}$ said 61 license shall be effective such person shall pay to the 62 sheriff, and the court shall so certify in its order granting the 63 license, the sum of twenty dollars, and shall also file a bond 64 with the clerk of said court, in the penalty of three thousand 65 five hundred dollars, with good security, signed by a respon-66 sible person or persons, or by some surety company, author-67 ized to do business in this state, conditioned that such appli-68 cant will not carry such weapon except in accordance with his 69 said application and as authorized by the court, and that he 70 will pay all costs and damages accruing to any person by the 71 accidental discharge or improper, negligent or illegal use of 72 said weapon or weapons. Any such license granted after this 73 act becomes effective shall be good for one year, unless sooner 74 revoked, as hereinafter provided, and be co-extensive with the 75 county in which granted, and such other county or coun-76 ties as the court shall designate in the order granting such 77 license; except that regularly appointed deputy sheriffs having 78 license shall be permitted to carry such revolver or other 79 weapons at any place, within the state, while in the perfor-80 mance of their duties as such deputy sheriffs and except that 81 any such license granted to regularly appointed railway police

## Ch. 3] USE AND POSSESSION OF FIREARMS

82 shall be co-extensive with the state, and all license fees col-83 lected hereunder shall be paid by the sheriff and accounted for 84 to the auditor as other license taxes are collected and paid, and 85 the state tax commissioner shall prepare all suitable forms for 86 licenses and bonds and certificates showing that such license 87 has been granted and to do anything else in the premises to 88 protect the state and see to the enforcement of this act.

89 The clerk of the court shall immediately after license is 90 granted as aforesaid, furnish the superintendent of the de-91 partment of public safety a certified copy of the order of the 92 court granting such license, for which service the clerk shall 93 be paid a fee of two dollars which shall be taxed as cost in 94 the proceeding; within thirty days after this act becomes 95 effective it shall be the duty of the clerks of each court in this 96 state having jurisdiction to issue pistol licenses to certify 97 to the superintendent of the department of public safety a 98 list of all such licenses issued in his county.

Provided, that nothing herein shall prevent any person 99 100 from carrying any such weapon, in good faith and not for a 101 felonious purpose, upon his own premises, nor shall anything 102 herein prevent a person from carrying any such weapon 103 (unloaded) from the place of purchase to his home 104 or place of residence, or to a place of repair and 105 back to his home or residence; but nothing herein 106 shall be construed to authorize any employee of any person, 107 firm or corporation doing business in this state to carry on 108 or about the premises of such employer any such pistol, or 109 other weapon mentioned in this act for which a license is 110 herein required, without having first obtained the license and 111 given the bond as herein provided; and, provided, further, 112 that nothing herein shall prevent agents, messengers and 113 other employees of express companies doing business as com-114 mon carriers, whose duties require such agents, messengers 115 and other employees to have the care, custody or protection 116 of money, valuables and other property for such express com-117 panies, from carrying any such weapon while actually en-118 gaged in such duties, or in doing anything reasonably inci-119 dent to such duties; provided, such express company shall 120 execute a continuing bond in the penalty of thirty thousand 121 dollars, payable unto the state of West Virginia, and with 122 security to be approved by the secretary of state of the state

 $\mathbf{28}$ 

# USE AND POSSESSION OF FIREARMS [Ch. 3

123 of West Virginia, conditioned that said express company will 124 pay all damages, accruing to anyone by the accidental dis-125 charge or improper, negligent or illegal discharge or use of such 126 weapon or weapons by such agent, messenger or other employee 127 while actually engaged in such duties for such express com-128 pany, in doing anything that is reasonably incident to such du-129 ties; but the amount which may be recovered for breach of 130 such condition shall not exceed the sum of three thousand five 131 hundred dollars in any one case, and such bond shall be filed 132 with and held by the said secretary of state, for the purpose 133 aforesaid, but upon the trial of any cause for the recovery of 134 damages upon said bond, the burden of proof shall be upon 135 such express company to establish that such agent, messenger 136 or other employee was not actually employed in such duties for 137 such express company nor in doing anything that was rea-138 sonably incident to such duties at the time such damages were 139 sustained; and, provided further, that nothing herein shall 139-a prevent railroad police officers duly appointed and gualified 139-b under authority of section thirty-one of chapter one hun-139-c dred forty-five of Barnes' code or duly qualified under the 139-d laws of any other state, from carrying any such weapon 139-e while actually engaged in their duties or in doing anything 139-f reasonably incident to such duties; provided, such railroad 139-g company shall execute a continuing bond in the penalty of 139-h ten thousand dollars payable unto the state of West Vir-139-*i* ginia and with security to be approved by the secretary of 139-j state of the state of West Virginia conditioned that said 139-k railroad company will pay all damages accruing to anyone 139-1 by the accidental discharge or improper, negligent or illegal 139-m discharge or use of such weapon or weapons by such rail-139-n road special police officer whether appointed in this or some 139-n-1 other state while actually engaged in such duties for such 139-0 railroad company, in doing anything that is reasonably inci-139-p dent to such duties, but the amount which may be recovered 139-q for breach of such condition shall not exceed the sum of 139-r three thousand five hundred dollars in any one case, and 139-s such bond shall be filed with and held by the said secretary 139-t of state for the purpose aforesaid but upon the trial of any 139-u cause for the recovery of damages upon said bond, the bur-139-v den of proof shall be upon such railroad company to estab-139-w lish that such railroad police officer was not actually em-

## Ch. 3] USE AND POSSESSION OF FIREARMS

139-x ployed in such duties for such railroad company nor in 139-y doing anything that was reasonably incident to such duties 139-z at the time such damages were sustained; and provided, fur-140 ther, that in case of riot, public danger and emer-140-a gency, justice of the peace, a or other person 141 issuing a warrant, may authorize a special constable and his 142 posse whose names shall be set forth in said warrant, 142-a to carry weapons for the purpose of executing a pro-143 cess, and a sheriff in such cases may authorize a deputy or 144 posse to carry weapons, but the justice shall write in his 145 docket the cause and reasons for such authority and the name 146 of the person, or persons, so authorized, and index the same, 147 and the sheriff or other officer shall write out and file with 148 the clerk of the county court the reasons and causes for such 149 authority and the name, or names of the persons so author-150 ized, and the same shall always be open to public inspection, 151 and such authority shall authorize such special constable, 152 deputies and posses to carry weapons in good faith only for 153 the specific purposes and times named in such authority, and 154 upon the trial of every indictment the jury shall inquire into 155 the good faith of the person attempting to defend such in-156 dictment under the authority granted by any such justice, 157 sheriff or other officer, and any such person or persons so 158 authorized shall be personally liable for the injury caused to 159 any person by the negligent or unlawful use of any such 160 weapon or weapons. It shall be the duty of all ministerial of-161 ficers, consisting of the justices of the peace, notaries public and 162 other conservators of the peace of this state, to report to the 163 prosecuting attorney of the county the names of all persons 164 guilty of violating this section, and any person wilfully failing 165 so to do, shall be guilty of a misdemeanor and shall be fined not 166 exceeding two hundred dollars, and shall, moreover, be liable 167 to removal from office for such wilful failure; and it shall 168 likewise be the duty of every person having knowledge of the 169 violation of this act, to report the same to the prosecuting 170 attorney, and to freely and fully give evidence concerning 171 the same, and any one failing so to do, shall be guilty of a 172 misdemeanor and upon conviction thereof shall be fined not 173 exceeding one hundred dollars; provided, further, that noth-174 ing herein contained shall be so construed as to prohibit sher-175 iffs, their regularly appointed deputies, who actually collect

30 USE AND POSSESSION OF FIREARMS [Ch. 3

176 taxes in each county, and all constables in their respective 177 counties and districts, and all regularly appointed police offi-178 cers of their respective cities, towns or villages, all jailors and 179 game protectors who have been duly appointed as such, and 179-a members of the department of public safety of this 179-b state, from carrying such weapons as they are now 180 authorized by law to carry, who shall have given 181 bond in the penalty of not less than three thousand five hun-182 dred dollars, conditioned for the faithful performance of their 183 respective duties, which said officers shall be liable upon their 184 said official bond, for the damages done by the unlawful or 185 careless use of any such weapon or weapons, whether such 186 bond is so conditioned or not.

It shall be unlawful for any person armed with a pistol, 187 188 gun, or other dangerous or deadly weapon, whether licensed 189 to carry same or not, to carry, expose, brandish, or use, such 190 weapon in a way or manner to cause, or threaten, a breach 191 of the peace. Any person violating this provision of this act 192-4 shall be guilty of a misdemeanor, and upon conviction, shall 195 be fined not less than fifty nor more than three hundred 196 dollars or imprisoned in the county jail not less than thirty 197 nor more than ninety days, or be punished by both fine and 198 imprisonment in the discretion of the court.

199 Any circuit court granting any such license to carry any 200 of the weapons mentioned in this act, the governor, or the su-201 perintendent of the department of public safety, with the con-202 sent of the governor, may, for any cause deemed sufficient by 203 said court, or by the governor or by the superintendent of the 204 department of public safety with the approval of the governor 205 aforesaid, as the case may be, revoke any such license to carry 205-a a pistol or other weapon mentioned in this act for which a 205-b license is required, and immediate notice of such revocation 206 shall be given such licensee in person, by registered mail or in 207 the same manner as provided by law for the service of other 208 notices, and no person whose license has been so revoked shall 209 be re-licensed within one year thereafter; provided, that the 210 authority so revoking such license may, after a hearing, sooner 211 reinstate such licensee.

212(b) It shall be unlawful for any person to carry, transport, 213 or to have in his possession any machine gun, sub-machine gun, 214 and what is commonly known as a high powered rifle, or any

Add. 195

## Ch. 3] USE AND POSSESSION OF FIREARMS

215 gun of similar kind or character, or any ammunition therefor, 216 except on his own premises or premises leased to him for a 217 fixed term, until such person shall have first obtained a per-218 mit from the superintendent of the department of public 219 safety of this state, and approved by the governor, or until a 220 license therefor shall have been obtained from the circuit 221 court as in the case of pistols and all such licenses together 222 with the numbers identifying such rifle shall be certified to 223 the superintendent of the department of public safety. Pro-224 vided, further, that nothing herein shall prevent the use of 225 rifles by bona fide rifle club members who are freeholders or 226 tenants for a fixed term in this state at their usual or cus-227 tomary place of practice, or licensed hunters in the actual 228 hunting of game animals. No such permit shall be granted 229 by such superintendent except in cases of riot, public danger, 230 and emergency, until such applicant shall have filed his writ-231 ten application with said superintendent of the department 232 of public safety, in accordance with such rules and regula-233 tions as may from time to time be prescribed by said depart-234 ment of public safety relative thereto, which application shall 235 be accompanied by a fee of two dollars to be used in defraying 236 the expense of issuing such permit, and said application shall 237 contain the same provisions as are required to be shown under 238 the provisions of this act by applicants for pistol license, and 239 shall be duly verified by such applicant, and at least one 240 other reputable citizen of this state. Any such permit as 241 granted under the provisions of this act may be revoked by the 242 governor at his pleasure and upon the revocation of any such 243 permit the department of public safety shall immediately seize 244 and take possession of any such machine gun, sub-machine 245 gun, high powered rifle, or gun of similar kind and character, 246 held by reason of said permit, and any and all ammunition 247 therefor, and the said department of public safety shall also 248 confiscate any such machine gun, sub-machine gun, and what 249 is commonly known as a high powered rifle, or any gun of 250 similar kind and character and any and all ammunition there-251 for so owned, carried, transported or possessed contrary to the 252 provisions of this act, and shall safely store and keep the same, 253 subject to the order of the governor. No alien shall own, keep 254 or possess any firearm of any kind or character. It shall be 255 unlawful for any person, firm or corporation to place or keep

[Ch.4 GENERAL APPROPRIATIONS

256 on public display to passersby on the streets, for rent or sale, 257 any revolver, pistol, dirk, bowie knife, slung shot or other 258 dangerous weapon of like kind or character or any machine 259 gun, sub-machine gun or high powered rifle or any gun of 260 similar kind or character, or any ammunition for the same.

All dealers licensed to sell any of the foregoing arms or 261 262 weapons shall take the name, address, age and general appear-263 ance of the purchaser, as well as the maker of the gun, manu-264 facturer's serial number and caliber, and report the same at 265 once in writing to the superintendent of the department of 266 public safety.

267It shall be unlawful for any person to sell, rent, give or 268 lend any of the above mentioned arms to an unnaturalized 269 person.

270 Any person violating the provisions of sub-section (b) of 271 this act shall be guilty of a misdemeanor and upon conviction 272 thereof shall be fined not less than fifty dollars, nor more than 273 three hundred dollars, or confined in the county jail not less 274 than thirty days nor more than six months, or both such fine 275 and imprisonment, in the discretion of the court.

276All acts and parts of acts inconsistent herewith are hereby 277 repealed.

# CHAPTER 4

#### (Senate Bill No. 4-By Joint Special Committee)

AN ACT making appropriations of public moneys to pay general charges upon the treasury.

[Passed June 6, 1925; in effect from passage. Approved by the Governor.]

Sec.

5.

- Sec. Appropriations made from the 1. treasury.
- Fiscal years of 1926 and 1927.  $\frac{2}{3}$ Appropriations under sub-sections "A," "B" and "C" payable out of the general revenue of the state.
  - Sub-Section "A"
- Construction and equipment of second unit of office building of new capitol; Governor to sell all state property on Cap-4. itol and Summers streets in Charleston; proceeds to be paid into the treasury as a special capitol building fund; Governor may continue cap-ital building commission itol building commission, by re-appointment; limit of total

cost of new capitol; authorizing construction and limiting

- Appropriations for maintenance and repair of roads; in "state fund general revenue" not otherwise appropriated to be used for road maintenance.
- Recodification commission; 5-a. ary and expenses of the com-mission, assistants and sten-ographers; expenses of the legislative committee; this an additional appropriation. Sub-Section "B'
- 6. Appropriations appearing under sub-section "B" payable only sub-section "B" payable only on requisition and approval of the state board of control. on

Add. 197

## Астя, 1936. — Снар. 302.

follows: -- Section 33. Should there be due to the estate of a Payments to deceased member of any of the retirement associations established under the preceding sections, except sections one to five, members of city or town inclusive, and sections twenty to twenty-five, inclusive, any retirement sum of money payable from the funds of the association, the systems. same shall be paid to his legal representatives; provided, that if the sum so due does not exceed three hundred dollars if due from the funds of the teachers' retirement association, or one hundred dollars if due from the funds of any other such association, and there has been no demand therefor by a duly appointed executor or administrator, payment may be made, after the expiration of three months from the date of the death of such member, to the persons appearing, in the judgment of the board, to be entitled thereto, and such payment shall be a bar to recovery by any other person.

Approved May 28, 1936.

An Act relative to the issuance of licenses to carry Chap.302A PISTOL OR REVOLVER FOR THE PURPOSE OF TARGET PRACTICE AND RELATIVE TO THE CONTENTS OF LICENSES TO CARRY SUCH A WEAPON OR TO POSSESS A MACHINE GUN.

### Be it enacted, etc., as follows:

Chapter one hundred and forty of the General Laws is G. L. (Ter. hereby amended by striking out section one hundred and  $\frac{1}{5}$  131, 140, 131, thirty-one, as appearing in the Tercentenary Edition, and amended. inserting in place thereof the following: - Section 131. The License to justice of a court or a trial justice, the board of police or etc. mayor of a city, the selectmen of a town or the commissioner of public safety, or persons authorized by them, respectively, may, upon the application of any person residing or having a place of business within their respective jurisdictions, except an alien, a person who has been convicted of a felony or of the unlawful use or sale of drugs or a minor other than one fifteen years of age or over in the employ of a bank, public utility corporation or business of a similar nature whose application is endorsed by his employer, issue a license to such applicant to carry a pistol or revolver in the commonwealth or to possess therein a machine gun, if it appears that he is a suitable person to be so licensed and that he has good reason to fear an injury to his person or property or for any other proper purpose, and the carrying of a pistol or revolver for use for target practice only shall be held to be a proper purpose aforesaid. Such license shall be issued for a term not to exceed one year, but may be for a less period, and all such licenses shall be revocable at the will of the person or body issuing the same, who shall forthwith send written notice of such revocation to the commissioner of public safety. Said licenses shall be issued on forms furnished by said commissioner. Said form shall contain blank spaces to be filled in with the following information relat-

Penalty.

Астя, 1936. — Снар. 303.

ing to the license and to the licensee: — Name, residence or place of business, commencement and expiration date of license, reason for issuing said license, license number, date of issuance of said license, place of birth, height, weight, complexion, color of hair, color of eyes, date of naturalization if formerly an alien, and signature, of said licensee; and no further information from, or act of, the said licensee shall be required. A copy of every license so issued shall within one week after the granting thereof be sent to the said commissioner. The fee for each license issued under this section shall be fifty cents. Whoever issues a license in violation of this section shall be punished by imprisonment for not less than six months nor more than two years in a jail or house of correction.

(The foregoing was laid before the governor on the eighteenth day of May, 1936, and after five days it had "the force of a law", as prescribed by the constitution, as it was not returned by him with his objections thereto within that time.)

## Chap.303 An Act relative to the construction and leasing by the commonwealth of a fish and commercial pier in gloucester harbor.

Emergency preamble.

Whereas, The deferred operation of this act would defeat its purpose, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Chapter three hundred and eleven of the acts of nineteen hundred and thirty-one is hereby amended by striking out section one and inserting in place thereof the following: - Section 1. For the purpose of improving and developing Gloucester harbor for the promotion of the fish industry and the commercial facilities of the city of Gloucester, the state department of public works, hereinafter called the department, is hereby authorized to construct a fish pier in said harbor on a site to be determined by the department with the approval of the municipal council of said city and the Gloucester Planning Board, to erect thereon such buildings as said purposes may require and properly equip the same, to do all dredging necessary for the proper use of said pier, and to provide necessary water and sewerage facilities therefor. Said construction may extend beyond existing harbor lines. All contracts for work authorized by this section shall be subject to the approval of the governor and council.

SECTION 2. Said chapter three hundred and eleven is hereby further amended by striking out section two and inserting in place thereof the following: — Section 2. Said city may take by eminent domain under chapter seventynine of the General Laws or acquire by purchase or other-

## ORDINANCES OF.

all the charges and remove the same for the period of twenty-four hours after the service of such notice, the said officer shall proceed to sell the same at public auction, first giving two days notice, by not less than five hand-bills conspicuously posted, of the time and place of said sale, which said notice shall also contain a brief description and the name of the owner or custodian thereof, if known.

SEC. 4. If the owner or custodian shall not be known to said officer he shall immediately advertise the same for sale for at least three days prior to such sale, by three handbills conspicuously posted in said city, which said notice shall contain a description of the swine to be sold, where the same were taken up, the time and place of said sale.

SEC. 5. The officer's fees for proceedings under this ordinance shall be as follows, to-wit: One dollar per head for impounding the necessary expenses for keeping; twenty-five cents for each notice served, and twenty per cent of sales for selling.

SEC. 6. From the proceeds of the sale of each hog or lot of swine belonging to one individual the officer shall pay the fees and expenses as hereinbefore provided for, and the balance if any there be, shall be paid to the city treasurer and be kept by him as a separate fund and shall only be paid out by warrant duly drawn and made payable to the party justly entitled thereto.

SEC. 7. This ordinance shall take effect and be in force from and after its passage and approval.

Approved, April 16, A. D. 1872.

## 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

Add. 200

#### ORDINANCES.

## CHAPTER 108.

#### CARRYING PISTOLS, BOWIE-KNIVES, ETC.

SECTION

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.

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 pocketknife 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

Digitized by Google

Add. 201

#### ORDINANCES.

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

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-

keepers and apothecaries excepted.

4. Vendors of ice, ice-cream, soda water, cigars and tobacco excepted.

5. No games allowed on Sunday.

Digitized by GOOGLE

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, keelboat, 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

341

Add. 202

## OF THE CITY OF LOS ANGELES.

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 limitsAdd. 203

# ORDINANCES OF THE CITY OF SALINA.

## ORDINANCE No. 268.

An Ordinance relating to the carrying of deadly weapons.

Be it ordained by the Mayor and Councilmen of the city of Salina :

SECTION I. 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 that 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.

Add. 204

## THE CITY OF SYRACUSE.

215

three months, or to both such fine and imprisonment.

§ 5. Any person who shall immoderately ride or Immoderate driving drive any horse or other animal whether attached and riding. 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 Soliciting city for any purpose whatever, without permission from the mayor, shall be subject to a fine of two dollars or to imprisonment in the penitentiary of <sup>Penalty.</sup> the county for ten days for each offense.

§7. Any person who shall carry about his or her Carrying of deadly person any dirk, bowie knife, sword or spear cane, weapons. 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 Penalty. 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 Ringing of or cry any auction in any street, lane for alley, or bells. upon any sidewalk, or upon any piazza, step or

Add. 205

#### Filed: 02/01/2019

80

# ORDINANCES.

# 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, swordcane, 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.

REVISED ORDINANCES OF THE TOWN OF CHECOTAH

37

# ORDINANCE NO. 11.

An ordinance relating to the public peace.

Be it ordained by the town council of the incorporated town of Checotah:

Section 1. That it shall be a misdemeanor to do or cause to be done any of the following acts, and any person convicted thereof shall be fined not more than Twenty Five dollars.

Section 2. To be connected with or participate in any masked ball not authorized by the mayor 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 bandle, 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 ianguage 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, or164 JURORS OF CITY COURT-LAMPS.

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.

# 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.

# 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 Add. 208





## CITY OF RAWLINS.

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.

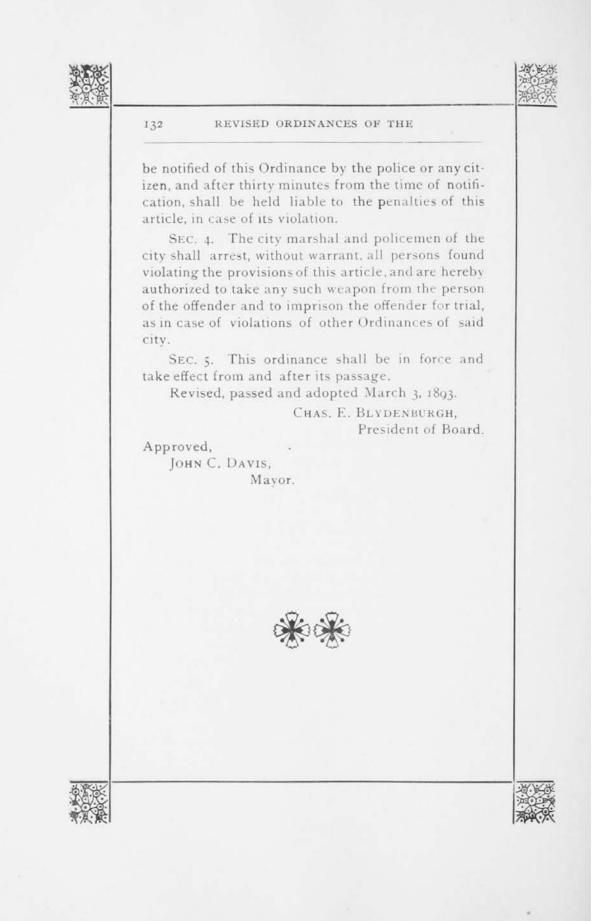
SEC. 3. Persons not residing in said city shall





## Filed: 02/01/2019

Pg: 213 of 215



Doc: 26-2

OF THE CITY OF WICHITA.

SECTION.

- 80. Selling Wearing Apparel by Club Drawing,
- 81. Stealing Parts of a House.
- Moving Houses with Unpaid Tax.
- Time for Hauling Slops Along Street.
- 84. Dead Animals, Disposition of.
- 85. Traction and Threshing Engine on Paved Streets.
- Manure not to be Thrown in Streets or Alleys; Limits; Provisions to Make Pen for.
- Privy Vaults to be Cleaned and not to be Transferred.
- Stables and Water Closets to be on Line of Alley.
- Secondhand and Junk Dealers; Buying from Minors; Description book; Night Purchases.
- 90. Leaving Holes for Stagnant Water.
- 91. Advertisement on Street Poles.
- 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 Permitor 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.** SEC-TION 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

#### BOOK OF ORDINANCES

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