Nos. 10-56971, 11-16255

In the United States Court of Appeals for the Ninth Circuit

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

v.

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

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

v.

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

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

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

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CORPORATE DISCLOSURE STATEMENT

Amicus Curiae Everytown for Gun Safety has no parent corporations. It has no

stock, and therefore, no publicly held company owns 10% or more of its stock.

<u>/s/ Deepak Gupta</u> Deepak Gupta

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INTRODUCTION AND INTEREST OF AMICUS CURIAE

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

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

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

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

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

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

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

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

BACKGROUND

A. English History

1. Beginning in 1328, England broadly restricts public carry in

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

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

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

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

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

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

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

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to take him, and arrest him, notwithstanding he doth not break the peace in his presence."); *King v. Hutchinson*, 168 Eng. Rep. 273, 276 (1784) (holding that "guns [and] pistols" are "dangerous" and "offensive" weapons). Blackstone traced this prohibition back to "the laws of Solon," under which "every Athenian was finable who walked about the city in armour." Blackstone, *Commentaries* 149.²

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

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

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

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

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

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

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

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

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

family]," as well as those responsible for "saving and maintaining the peace." Carpenter & Whitington, *Liber Albus: The White Book of the City of London* 335 (1419) (1861 reprint) (emphasis added).⁷

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

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

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

B. Founding-Era American History

1. The colonies begin importing England's tradition of regulating

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

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

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

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

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

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

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

⁹ The Statute of Northampton also applied in Maryland by virtue of that State's constitutional guarantee of all rights granted by "the Common Law of

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

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

C. Early-19th-Century American History

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

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

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Massachusetts amended its public-carry prohibition to provide a narrow exception for those having "reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property." 1836 Mass. Laws 748, 750 ch. 134, § 16. Absent such "reasonable cause," no person could "go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon." *Id.* Those who did so could be punished by being made to pay sureties for violating the statute, *id.*; if they did not do so, they could be arrested. *See* 1784 Mass. Laws 105, ch. 27.¹⁰

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

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

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

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

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

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

This "lash and pistol" model is perhaps attributable to widespread concerns about slave rebellions in the South, as well as the more prevalent violence there. *See id.* at 21 ("[Frederick Law] Olmsted attributed the need to keep slaves in submission as the reason that, 'every white stripling in the South may carry a dirkknife in his pocket, and play with a revolver before he has learned to swim." (quoting Olmsted, *A Journey in the Back Country* 447 (1860)); *id.* at 18 ("Modern historians . . . conclude that the South was substantially more violent than the North."); *see also McDonald*, 561 U.S. at 844 (Thomas, J., concurring) ("[I]t is difficult to overstate the extent to which fear of a slave uprising gripped slaveholders and dictated the acts of Southern legislatures.").

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

1. States continue to restrict public carry both before and after the

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

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

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

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deadly or dangerous weapon, without reasonable cause to fear violence to his person, family, or property, he may be required to give a recognizance." 1870 W. Va. Laws 702, 703, ch. 153, § 8.¹² Courts construed this self-defense exception narrowly to require specific evidence of a concrete, serious threat. *See, e.g., State v. Barnett,* 34 W. Va. 74 (1890). Texas's law contained a similarly circumscribed exception, barring anyone not acting in "lawful defense of the state" ("as a militiaman" or "policeman") from "carrying on or about his person . . . any pistol" without "reasonable grounds for fearing an unlawful attack on his person" that was "immediate and pressing." 1871 Tex. Laws 1322, art. 6512.¹³

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

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

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

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Respectfully submitted,

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April 30, 2015

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

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

April 30, 2015

<u>/s/ Deepak Gupta</u> Deepak Gupta

CERTIFICATE OF SERVICE

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

> <u>/s/ Deepak Gupta</u> Deepak Gupta

2° EDW. III. Stat. Northampt. c. 2-5.

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of Assise and Gaol-delivery.

Oyers and Terminers.

37 Ed. I. c.3. Grandfather to our Lord the King that now is, wherein ed to take Assises. if is contained, that Justices assigned to take Assise they be Laymen, shall make Deliverance; and if one be a Clerk, and the other a Layman, that the Lay Judge, with another of the Country associate to him, shall deliver the Gaols: Wherefore it is enacted, That such [Justices] shall not be made against the Form of the said Statute; and that the Assisses, Attaints, and Certifications be taken before the Justices commonly assigned, which should be good Men and lawful, having Knowledge of the Law, and none other, after the Form of another Statute made in the Time of the said [King Edward the First ;] and that the Oyers and Terminers shall not be granted but before Justices of the one Bench or the other, or the Justices Errants, and that for great [hurt,] or horrible Trespasses, and of the King's special Grace, after the Form of the Statute thereof ordained in Time of the said Grandfather, and none otherwise.

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

ITEM, It is enacted, That no Man great nor small, of what Condition soever he be, except the King's Ser-vants in his presence, and his Ministers in executing vants in his presence, and his Ministers in executing of the King's Precepts, or of their Office, and such as be in their Company assisting them, and also [upon a Cry made for Arms to keep the Peace, and the same in such places where such Ads 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 anned by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers. nor ride armed by night nor by day, in Fairs, Warkets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere, upon pain to forfeit their Armour to the King, and their Bodies to Prison at the King's pleasure. And that the King's Justices in their presence, Sheriffs, and other Ministers (') in their Baili wicks, Lords of Franchises, and their Bailiffs in the same, and Mayors and Bailiffs of Cities and Boroughs, within the came Cities and Boroughs. same, and Mayors and Bailits of Cities and Boroughs, within the same Cities and Borough, and Borough-Holders, Constables, and Wardens of the Peace within their Wards, shall have Power to execute this A& 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 Perce campot be well keet without

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

V The Statute Westminster the Second, 13 Ldw. I. chapter 59, concerning the Delivery of Writs to the Sheriff, confirmed.

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

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

that might happen 'Committions' Grandfather : upon a Predumation of Deels of Jermi in time of Peace, and that in Placer where such Deels of Jermi in time of Peace, and that in Placer where such Deels are to be show,—See Lib. Rub. Sea: Westin, 6, 122 b. a Writ receiting a Grant of K. Richard J. "qd Tortecafita sint in Augt in v. placias: Inf Sarf & Wilton", Inf Warcewich & Kenelingworth: Inf Stanford & Warneford: Inf Brakele & Mixeb?: Inf Blie & Tykehitt. Ita qd pax fre uice uid infringer, n° portestas Josticiatia minorabit' Nee de to testis nfis dapnů inferent.'' 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, d le dit lais, associe a lui un autre du pais, facent la delivance des gaols; p qoi acorde est & establi, q tiels Justiceries ne soient mes g'ntees countre la forme du dit estatut, & q les assises, atteintes, & Etifications soient p'ses devant les Justices comunement assignez, q soient bones gentz & loialx & conissantz de la lei, & nemie autres; solone la forme dun autre statut fait en temps meisme le ael; et q les oiers & Pminers ne soient grantees forsq. devant les Justices de lun Baunk & de lautre, ou les Justices errantz ; & ce p' led & orrible trespas, & de lespeciale g'ee le Roi, solone forme de statut de ce ordene en temps meisme le ael; & nemie autrement.

Ensement acorde est & establi, q nul, g'nt ne petit de quele condicion qil soit, sauve les sjantz le Roi en la psence le Roi, & les Ministres le Roi, enfesantz execucion des mandementz le Roi, ou de lour office, & ceux qi sont en lour compaignies, eidantz as ditz ministres, & auxint au cri de fait darmes de pees, & ce en lieux ou tielx faitz se ferront, soit si hardi de venir devant les Justices le Roi, ou autres Ministres le Roi enfesant lour office, a force & armes; ne force mesner en affrai de la pees, ne de chivaucher ne daler arme, ne de nuit ne de jour, en faires, marchees, nen psence des Justices, ne dautres Ministres, ne nule part aillours, sur peine de pdre lour armures au Roi & de lour corps a la prisone a la volunte le Roi. Et q Justices le Roi en lour psences, viscountes & autres Ministres le Roi en lour baillies, seign's des fraunchises & lour 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 gils trovont, qi nount mie fait ce q a lour office appent.

Et p'ce q la pees ne poet mie estre bien garde sauntz bons ministres, come Viscountes, Baillifs, & Hundreders qi deivent faire execucion, auxibien des p'vetez le Roi come dautres choses tochantes le Roi & son poeple, acorde est & establi q lestatut fait en temps le Roi Edward, piere le Roi qure est, a Nicole, contenant q Viscontes, Hundreders & Baillifs soient des gentz eantz Pres en meismes les Countez, ou baillies, soit garde en touz pointz solone la forme dycel, & auxint $\tilde{\mathbf{q}}$ 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, tes 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 pindre; et sils refusent de faire bille, mettent autres lour sealx qi Bront psentz; et si le Viscounte ou le Southviscounte ne retorne mie les briefs, soient puniz solone la forme contenue en le dit estatut; & jadumeins eient les Justices as assises pndre assignez poair denquer de ce a chescuny pleinte & de agarder damages, eant regard au delai, & a les ptes & pils qi p'ront avenir.

A.D.1328.

A.D.1351-2.

25° EDW. III. Stat. 5. c.1, 2.

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Statutu apud Westm in p'liamento in festo S'ci hillarii anno regni In Margine Rotuli Regis E. t'cii vicesimo q'nto tento, f'cm.

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

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

U plement somonz a Westm, en la feste de Seint A Hiller lan du regne nre Seign' le Roi Edward Denglettre 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 q home use pmy le Roialme. Et q touz bledz, feyns, litere & bestaill, & touz aut's vitailles & choses quecüqes, queles sont aprendre p' meismes les hosteux, soient p'sez a la vroie value, p les Conestables & aurs 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 Pront 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 sront 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 gen un estatut fait en temps meisme nre l' 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 forso, soulement souz les g'nt ou prive sealx le Roi ; ne q nul home soit tenuz de obeier a autre comission nen autre manie 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.

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 of England the Five and twentieth, and of France the Twellth; our said Lord the King, by the assent of the Prelates, Earls, Barons, and of all the Commonalty of his Realm of England summoned to the Parliament, to the honour of God and Holy Church, and in Amendment of his said Realm. hath ordained and established the Things underwritten.

FIRST, Forasmuch as great and outrageous damage and grievance hath been done to the People by the Takers and Purveyors of Victuals, for the Houses of our Sovereign Lord the King, the Queen, and their Children; It is accorded and assented in the said Parlia-Conders, it is accorded and assented in the said random ment, That the Takers (\cdot) 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 Viduals and Things, which shall be taken for the said Houses, shall be [taken.'] by the very Value, by the Constable and other good People of the Towns where such Taking shall be made, without that that the Praisers by Menace or Duress shall be driven to set any other Price than their Oath will, and as commonly runneth in the next Markets. And that betwixt the Purveyors and them whose Goods shall be taken in the presence of the Constables and Praisers, Tallies be made incontinently, without that that the People whose Goods shall be taken, shall be drawn or travelled elsewhere, and the same Tallies sealed with the Seals of the Takers of the Things so taken, by which Tallies Gree shall be made to them whose Goods shall be so taken; and if any Purveyor or Taker for Shall be so taken; and it any furget of taken for advertised the said Houses, do in any other Manner, he shall be for advertised by the Town where the Taking surder Sizt, shall be made, and brought to the next Gaol; and if the be thereof attainted, it shall be done of him as of a Thief, if the Quantity of the Goods the same require; surder Sizt. according as in a Statute made in the Time of our So-vereign Lord the King that now is, the Fifth Year of his Reign, and in another Statute made in the Time of the King's Grandfather upon such Takings, is contained more at the full: and that from henceforth in the Commissions of such Takers and Purveyors, the Intent and Pain limited in this Statute shall be contained : and that no Commission be made, but only under the And that no commission of made, or only unce 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 veyor of every Manner of Victual in every Taker and Pur-veyor of every Manner of Victual in every part of the Realm, of what Condition soever he be.

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

and Purveyours praysed

• 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 Purveyor shall be rveyors appraised at the very at the Value,

Tallies of the Goods taken.

Punishment

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

11. Declaration what Offences shall be adjudged Treason.

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25° Epw. III. Stat. 5, c.2, 3.

A.D.1351.2.

Compassing the Death of the King, Queen, or their eldest Son ; violating the Queen, or the King's eldest Daughter unmarried, or his eldest Son's Wife ; levying War ; adhering to the King's Enemies ; Counterfeiting's Seal, or Money ; importing counterfeit Money ; killing the Chancellor, Treasurer, or Judges in Execution o on of their Duty. The King shall have the Forfeiture Forfeiture of all the Offenders' Lands. Petit Treason. Forfeiture of the Lands to the Lords. New Questions of Treasons shall be decided in Parliament.

Certain Offences not Treason. In such Cases already happened, the Chief Lords shall have the Escheats.

Saving the King's Year and Waste. Scire facias to Terre-tenants, Scc.

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 Son and Heir; or if a Man do 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 Latinted of open deed by [the 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 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 Deceit of our said Lord the King and of his People; and if a Man slea the Chancellor, Treasurer, of the King's Justices of the one Bench or the other, Justices in Eyre, or Justices of Assise, and all other Plustices assigned to hear and de-termine, being in their Places, doing their Offices: And it is to be understood, that in the Cases above rehearsed, [that] ought to be judged Treason which extends to it is to be understood, that in the Cases above rehearsed, [that] 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 Sovereign 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 pertain⁶] to every Lord of his own Fee: And because that many other like Cases of Treason may happen in Time to come, which cases of Treason may happen in Time to come, which 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 any posites, the Justice similation indice any going to judgement of the Treason, till the [Cause⁴] be shewed [and declared before the King and his Parlia-ment,⁹] whether it ought to be judged Treason or [other⁴] Felony. And if percase any Man of this Realm ride armed [covertly⁴] 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 Dcliverance, 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 Forfeir, the chief Lords of the Fee shall have the Escheats of the Tenements holden of them, whether that the same the Tenements holden of them, whether that the same 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 Sherifis of the Counties where the Lands be, to deliver them out of the King's hands without Delay.

doth compass or imagine the Death of our Lord the

III. Challenge of an Indictor upon an Inquest.

ITEM, It is accorded, That no Indictor shall be put in Inquests upon Deliverance of the Indicees of Felonies or Trespass, if he be challenged for that same cause by him which is so indicted. • Wife ۱of

- + proveably MS. Tr. 2. • Pcople 3 it * such Manner of Treason giveth Forfeiture of Escheats 7 of new, MS. Tr. 2. I Case 9 before the King in his Parliament, and it be declared " else " openly
- Writs " the Protection of our Lord the King

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 home 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 tire 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 Denglet're, 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 mahie de treson la forfait'e des eschetes apptient a nie Seign' le Roi, si bien des Pres & tenz tenuz des aurs, come de lui meismes : et ovesq, ceo il vad autre mahe de treson, cest assavoir g'nt un Svant 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 auis 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 home de cest Roialme chivach arme descovert ou secrement od gentz armees contre ascun autre, p' lui tuer ou derober, ou p' lui pndre & retenir tanqil 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 & teñz solent 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 nie Seign' le Roi lan & le wast, & auis forfait'es des chateux q a lui attenent en les cases suisnomez; et q briefs de Seire 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 seal le Roi, Rat. Parl. 25 E. 3. P. II. nu. vij. (17.) Lusschurgh Rat. Parl. 9 Ce estent Rat. Parl. & Rat. Parl.

App. 3

A.D.1351-2.

25° Epw. 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 masse come le pmer testatour avoit sil fenst 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 auts 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 ceps nie Seign' le Roi, p' overns ne p' aut's 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 aut's q ceux q tiegnent p tiele svice, 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 & auts 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 p 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 ptie, 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 ptie come a la seute nie 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 Englet're deinz franchise & dehots soient acordauntz al estandard nie 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 oner free Custom, unless it be by the Law of the Land; It is accorded assented, and stablished, That from hence-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 People of the same neighbourhood where such Deeds be done, in due Manner, or by Process made by Writ original at the Common Law; nor that none be out of his Franchises, nor of his Frecholds, 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, nd of Goods carried away of the first T estators, and Execution of Statutes Merchants and Recognizances made in Court of Record to the first Testator, in the same Manner as the first Testator should have had if he were in Life, as well of Actions of the Time past, as of the Time to come, in all Cases where Judgement is not yet given betwixt such Executors ('); but that the Judgements given to the contrary to this Article in Times past shall stand in their Force; and that the same Executors of Executors shall answer to other of as much as they have recovered of the Goods of the first Testators, as the first Executors should do if they were in full Life.

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 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 ther Gathering of Victuals, nor other Thing, by colour of their Office, rgainst any Man's Will, within their Bailiwick nor without, but that which is due of old Right.

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

ITEM, Whereas great Damage and Deceit is done to the People, for that divers Merchants use to buy and weigh Wools and other Merchandises, by a Weight which is called Auncel; It is accorded and established, That this Weight called Auncel betwixt Buyers and Sellers, shall be wholly put out; and that every Person do sell and buy by the Balance, so that the Balance be even, and the Wools and other Merchandizes evenly weighed by right Weight; so that the Sack of Wool weigh no more but xxvi Stones, and every Stone to weigh xivl. 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 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 Magna Carta, 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, recited and all the Measures, that is to say, Bushels, Half-bushels, recired an Peck, Gallon, Pottle, and Quart, throughout England, enforced. 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

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

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nor disfranchised, but by Course of Law.

v. Executors of Executors shall have the same Rights and Dutie as the first Executors

V1. Purveyors thall not take

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

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

IX. Auncel Weight abolished, Gunds shal be weighed by Balance.

25° EDW. III. Stat. 5. c. 10-17.

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 aforesaid, and upon the same to do Punishment according to the Trespass, as well at the Party's Suit as at the King's; so always, that all Manner of Franchises be saved to the Lords in all Points without Blenish to be made in any Manner Justices shall inquire of and punish the Offender

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Saving of Franchises

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

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

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

mean in Socage twenty Shillings and no more.

And the Purveyors of the King, of the Queen, and all

Points without Blemish to be made in any Manner.

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

XIII. The current Coin shall not be impaired. be found, the same be put in the antient State, as in

XIV. Process against Persons indicted of Felour

the Sterling. ITEM, It is accorded, That after any Man be indicked of Felony before the Justices in their Sessions to hear and determine, it shall be commanded to the Sheriff to attach his Body by Writ or by Precept, which is called a Capias; and if the Sheriff return in the same Writ or Precept, that the Body is not found, another Writ or Precept of Capias shall be incontinently made, 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 Indicee cometh not, the Exigend shall be awarded, and the Chattels shall be forfeit, as the Law of the Crown ordaineti; but if he come and yield himself; or be taken ITEM, It is accorded, That after any Man be indicted

ordaineth; but if he come and yield himself, or be taken by the Sheriff, or by other Minister, before the Return of the second Capias, then the Goods and Chattels shall be saved.

XV. The Penalty Purveyor aking more Sheep before ihearing Tim than ar wanted.

ITEM, Forasmuch as the Takers and Buyers of the TTEM, Forsmuch as the Takers and Buyers of the King's Prises, do take Sheep from the People betwirt Easter and the Feast of Saint John Bapitst 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 decit of the King, and great Oppres-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: 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.

XVI. Exception of Nontenure of ParceL

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

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

ITF.M, 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 1] the Sheriff's Return, as is used in a Writ of Accompt.

Omit this Word. For for Gold, or Silver for Silver or for Gold, a common Euclange upon

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

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, y bien lise a chescun höme 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 solone 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 gele 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 & Eminer, soit comande au viscont dattach son corps, p brief ou Pcept qest appelle Capias, & le viscount retourn en le dit brief ou Deept 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 sede Capias, adonqs soient les biens & les chateux sauvez.

Ensement p'ce q les achatours & pnours des prises le Roi pnent berbitz du poeple, pentre la Pasch et la fest de Seint Johan od les leines, & les fount preiser a [mene'] pris, & puis les mandent a lours mesons demesne & les fount tounder a lour pfit demesne, en deceit du Roi & g'nt oppission du poeple, Si est acorde & assentuz, q nul des tieux Purveours, pnours & achatours ne pigne nules berbitz devant la seisone du toundeson, forsq, a tantz q p'ront suffire resonablement tantq, 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 forso, p' la quantite de la nounten'e qest alegge. Ensement acorde est & assentue, q autiele pees soit fait en brief de dette, deteneu des chateux, & en prises des avers p brief de Capias, & p pces dexigend, p retourn de viscount, sicome est usee en brief dacompt.

de Chivaler Rot. Parl. 25 E. III. P. II. nu. xix. (29.) petit Printed Copier-mesne Rot. Parl. xxxj. (41.)

A.D. 1351-2.

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 mane, 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 nre Seign' le Roi eit avant ces heures fait preceions as dives gentz q lui estoisent tenuz en ascun mane des dettes, quis ne gront mie empledez des dettes queles ils deivent as aurs, tang, ils eussent fait gre a nre Seign' le Roi de ceo q lui estoit due p eux p resoun de sa progative, & issint durantes tieles pteccions nul hôme 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 det tours, 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 Roi de sa dette; et si les Creansours voillent emondre 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, & aurs 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 ceps 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 Denglerre la ou vyns sont a pndr al ceps 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 21ifient 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 & pouratours q suent & fount execucion de tieles prisions, soient hors de la pteccion nre Seign' le Roi ; & q home pusse faire

ITEM, It is accorded and assented, that notwithstand-I LEM, It is accorded and assented, that notwithstand-ing adjournment made in Eyre, by Writ of Libertate probanda, purchased in favour ofe Villaines to delay the probanda, purchased in favour ofe Villaines, the same Lords and a Ville shall be received to alledge the Exception of Villainage against their Villaines in all Writs, whether that the said Writs of Libertate probanda were purchased by deceit Libertate to their Villaines, as well as they might before that the Writs of Libertate probanda were ordined or that the Writs of Libertate probanda were ordained or purchased.

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

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

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

ITEM, Because that some do purchase in the Court of Rome Provisions, to have 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 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 omit these Words.

XVIII. Villainage may be pleaded, and a Villaine

Stay of Execution, until Payment of King's Debt; or the Creditors

dertake

for it.

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

XXI. Abuses by the King's Butlers in

Regulation therein

Punishment of the Butlers.

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

App. 6

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25° EDW. 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 Possessions, shall be excused against all People, and shall never be impeached nor grieved for the same at any Man's Suit.

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

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

' 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 Westminster, the sixth day of March.

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

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

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

William de 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; et q celui q face contre tiels pvisours en corps ou biens ou en auts possessions, soit excuse debs 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 marke, 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 n
o D' pelanače apud Westm in festo sči Hillar på prito convocato, p Statuti. nos Prelatos Duces Comites Barones & alios de cõitate regni n
n Angt ad dcm pliamentum sümonitos, edita, tibi mittim⁹ sub pede sigilli n
n, mandantes qå statuta pdča in pleno Com tuo legi & ea firmi? observari & teneri fač. T. R. apud Westm vi. die Marč.

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

Conš bre dirigit' Justič Hibii mutatis mutanđ sub eadem data.

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

Joh de Stonore & sociis suis Justič de cii Banco. Theš & Baronib3 de scacčio.

Drdínacio p' Clero f'c'a apud Westm, anno r. R.E. t'cií vicesimo quínto.

In Margine Rotuli.

AN ORDINANCE FOR THE CLERGY,

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

STATUTE THE SIXTH.*

OUR Lord the King, seeing and examining by good Deliberation the Petitions and Articles delivered to him in his Parliament holden at Westminster in the Feast of St. Hilary, the Year of his Reign of England the Five and twentieth, and of France the Twelfth, by the Honourable Father in God, Simon Archbishop of Canterbury, and other Bishops of his Province, upon and for certain Grievances, which they alledged to be done to Holy Church, and to the Clergy, against the Privileges of Holy Church; and then they prayed, that Ex magno Rot. Stat. in Turr. Lond. m. 16 d.

Nre Seignour le Roi, veues & examinez p bone deliberacion les peticions & articles a lui bailliez en son plement, tenuz a Westmonster en la feste de seint Hillar lan de son regne Denglerre vintisme quint, & de France duszisme, p Lon'able piere en Dieu Simon Erceveso, de Cantbirs et aufs Evesõs de sa pvince, s' & p' êteines grevances queles ils disoient estre faites a seinte eglise et a la clergie, encontre les privileges de seinte eglise, & dunk ils prierent õ 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.

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 Excusses. and other the Matters aforesaid shall hear and determine, and the Delinquents and Offenders when they shall be found such, shall punish and chastise, according to the Law and Custom of our Land of Ireland before mentioned; and nevertheless to Us and our Council in England, the Names of those so offending, and the Deceits, Extortions, Oppressions, and Grievances and other Matters aforesaid, under the Seals of him the said Justice and of the others associated with him, distinctly and openly, from Time to Time, for good Cause shall certify.

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

By the King Himself and Council.

Pjudiciū, & ipius populi destruccoem & injuriam manifestas, ac cont' justiciam & forma statuti pdči : Volum? & firmut pcipim? qd Justic në Hibn qui p tempe fuit, in singulis Com & ptiby p quos t'nsierit, associatis sibi Prelato loci, & aliquo Comite seu alio nobili vel Milite eapdem pciù vicinaz, de Pdčis falsitatiby, extorsioniby, opposioniby, g'vaminiby, & excessiby, & offibs sup'deis p ipos firmarios quomodolibet ppettis, & de ipoa füis & gestiba in hac pte, tam ad sectam nram q'nı alioa quoacuq, inde conqueri volenciu tam de tempe prito q m futuro inquirat, & Osus cos pcedat, & contemptus, falsitates, extorsiones, oppssiones, g'vamina & excessus, ac alia Pdča audiat & Pminet, necnon delinquentes & culpabiles cum tales inventi füint castiget & puniat, scdm legem & consuetudinem Fre nre Hibn antedeas; & nos & consiliu nrm in Angt de noib3 sic culpabiliu, ac de falsitatib3, extorsionib3, oppssionib; & g'vaminib; & aliis Pdčis sub sigillis ipius Justië & sibi associator, distincte & apte de tem-pore in tempus nichilomin⁹ Etificet ex Eta causa. [In cujus, &c. T. H. apud Westin xxv. die Octobř.

p ipm Regem & Cons.']

In cujus rei testimoniŭ has tras nras fieri fecim⁹ patentes. Teste me ijo apud Westiñ vicesimo quinto die Octobi, anno regni nii Angt icesimo pino, regni vo nii Franë decimo octavo.

Nos autem Ordinacões Voluntates & pepta plea, ac omia Ros autem Gromatus volunitata e perpin pote, et onin alia & singla in tris pdčis cotenta rata hentes & grta, ez a nob & herediby nřis quantum in nob est, acceptam⁹ approba-mus, ratificam⁹ & confirmam⁹, put lie pilče rationablič testant⁴. In cuj⁹, &c. T. R. apd Westin xxy die Junii. Rot. pat. 13 Ret. 14. Rot. Pat. 17 Ric. 11.

Anno 34° EDWARDI, III. A.D. 1360-1.

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

In Margine Rotuli.

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

"HESE 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 (')

FIRST, That in every County of England shall be

diction over Offenders ; . Ciaters : Barrators :

Vagabonds;

'I liey may take Surety for good Behaviour;

1. FIRST, That in every Lounty of England shall be Institute of 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 diction over other Barators, and to pursue, arrest, take, and chastise them according their Trespass or Offence; and to cause them to be imprisoned and duly punished 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 and the second state of the second state of the second state is a second state of the found, sufficient Surety and Mainprise of their good

I char is to say :

* All Translations read thus

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

Prinlement q en chescun Countee Denglet re soient assignez, p' la garde de la pees, un Seign', & ovesig lui trois ou quatre des meultz vauez du Countee, ensemblement ove ascuns sages de la ley, & cient poer de restreindre les messesours, riotois, & touz aufs bareno's, & de les p'suir, arester, p'ndre, chastier, selone leur l'spas ou mesprision ; & de faire emprisoner, & duement punir selone la ley & custumes du Rojalme. & 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, & sont ore revenuz & vont vagantz, & ne voillent t'vailler come ils solcient avant ces hours; & de Padre & arester touz ceux gils p'ront trov p enditement, ou p suspeción & les mettre en prisone & de jondre de touz ceux [qi sont '] de bone fame, ou ils sront trovez, souffisant seurete & meinprise de

gi ne sont Lib. Since, Weitm, 1X; M.S. Cott. Nera C. 1; and the fild Printed Copies.

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A.D.1360-1.

34° Epw. III. c. 1-6.

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

Item acorde est q prises desore ne soient faites p auts q p les p'veours le Roi, ma Dame la Roine & le Prince lour eisne filtz ; & q si Purveours des aut's 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 ceps la Royne & du Prince, du polaitt & dautres menuz choses, soit paiement fait en poigne s' la prise ; & des auts 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 arraient lour panels en tote mane denquestes des gentz peurez & pluis lointifs du Countee, qi nont conissance du fet dount lenqueste sra prise; Acorde est, q tieu paneles soient faites des plus pscheins gentz, qi ne sont pas suspectes, ne pcurez; & q les viscontes, Coroners & aut's ministres qi font alencontre soient puniz devant les Justices qi la dite enqueste Pndra, selonc la g'intite de leur Pspas, sibien devs le Roi come del's la ptie, p' la q'ntite du damage qil ad suffert en tieu manie.

ltem est accorde, q ceux qi Sront 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 \tilde{q} Psg'nt damage & 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 Escheger; et si nul Achatour face al encontre, soit grevousement puny sibien a la suite de ptie come a la suite nie Seign' le Roi.

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

Behaviour towards the King and his People, and the other duly to punish; to the Intent that the l'eople 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 intercor mate, and that one Justices which shall be thereto assigned be named by the Court, and not by the Party. And the King will, that all general Inquiries before this Time granted within any Seigniories, for the Mischiefs and Oppressions which have been done to the People by such Inquiries, shall cease utterly and be repealed : and that Fines, which are to be made before Justices for a Trespass done by any Person, be reasonable and just, having Regard to the Quantity of the Trespass, and the Causes for which they may be made.

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

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

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

ITEM, It is accorded, That they which shall be assigned to keep the Peace shall have Power to inquire of Measures, and also of Weights, according to the Statute thereof made the five-and-twentieth Year of the Statute thereof made the five-and-twentieth Year of the Reign of our Lord the King, wherein is contained the Form that followeth; "Whereas great Damage and De-ceit is done to the People, for that divers Merchants use to buy and weigh Wools and other Merchandises, by a Weight which is called Anneel; 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 weighted by right Weight, so that the Sack of Wool weigh no more but xxvi. Stones, and every Stone to weigh wir, I, and that the Beam of the Balance do to weigh win-1 and that the Beam of the Balance do not bow more to the one Part than to the other; and that the Weight be according to the Standard of the Exchequer; and if any Buyer do the contrary, he shall be grievously punished, as well at the Suit of the Party, as at the Suit of our Lord the King."

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

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

and may hear and determine Felonies and Trespasses.

Commissions of general Inquiries shall cease.

Fines for Trespasses shall be reasonable.

11 No Purvey-ance except for the King, the Queen, and the King's cldes

e III. 1 When Purveyance: for the Que &c. et

IV.

Pauels of Failers of Inquests shall be of the Neighbour-hood.

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

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

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7° RIC. II. C. 9-12.

A.D.1383.

Application of the Forfeitures.

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

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

repealed.

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

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

and extended to Aliens holding Benefices in England ;

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

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

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

Licence of our said Lord the King, upon a certain Pain contained in the said Statute; It is assented and agreed by the same Lords, That the same Statute shall keep his Wines, and the

soient psentz ou des l's des feires & marchees, & aufs lieux ou tielx draps defectives front trovez, ou de lo's Seneschalx & Baillifs ou des Conestables des villes & lieux avantditz p endentures ent entre eux duement affaires; les queles endentures soient chescun an a le feste de Seint Michel livez en lescheqir p ceux gensi ferront la dite livee, al effect de charger illoeqs les Alneours & collours 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 bront trovez p' peine encontre lo's ditz mal fait & concelement, facent gree de lo's ppres deniers a nre dit d' le Roi en son Escheqir de la value de celle tierce ptie, issint q sibn de mesme la tierce ptie come del remenant du dit drap nre 🥙 le Roi soit entierement responduz a son Eschegir avantdit.

Item est ordeignez & assentuz qassise de Novele 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 mahe 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 ungore 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.

Item comon 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 & dauts 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' cteins enchesons a la requeste des Cões Dengle?re 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 & vtue ; Sauvez nientmeins a nre f' le Roi toutz les forfaitures des vins a lui apptenantes p Viue de mesmes les ordinances & estatutz gantal temps passez. Purveuz toutz foitz q toutz les [vins'] & vitaillers sibn Pessoners come aufs ove leur vitailles venantz a la dce 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 f' 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 qil fuist, Pndroit ne resceivoit delors enavant deinz le Roialme Denglerre peuracie, tre datto'ne, ne ferme, nautre administracion p endenture nen autre mane quelcono, de nulle psone dascun benefice de Seinte Esglise deinz le dit Roialme fors tantsoulement des lieges nre l' le Roi de mesme le Roialme sanz especiale g'ce & expsse congie de nie l' le Roi sur éteine peine comprise en lestatut avantdit, assentuz est ore & accordez p mesmes les f's q mesme lestatut tiegne ses

1 Vinters Old Printed Copies.

* Interlined on the Roll

xij.

M. 18.

x.

xj.

A.D.1383.

7° Ric. II. c. 12-16.

force & Vtue 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 qore 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 gils 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 especiale psone a qi le Roi soit p especiale cause tenuz.

Item est ordeignez & assentuz & le Roi defende q

desoremes nult home chivache deinz le Roialme armez,

encontre la forme de lestatut de Norhampton 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 l' le Roi, sur peine de forfaiture dicelx lancegaies armures & auts herneys quelconqes es mayns & possession de celluy qi les porta desore deinz mesme le Roialme contre cestz estatut

xiii.

xiiij,

& ordinances sanz especiale congie de Roi nre 4'. Item es briefs de pmunire fac est assentuz & accordez q ceux de queux tielx briefs sont portez, & qi sont de psent hors de Roialme & sont de bone fame & aient faitz lo' gehalx 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 🥙 le Roi & soient auxint de bone fame, q a lo' requeste le dit Chaunceller p ladvis des Justices lour purra g'ntier defaire lo' gestalx atto'nes en la Chancellerie p patent du Roi devant lo' passer, [a respondre'] sibn es ditz briefs de Pmunire fač, come en auls quereles en quel cas toutes voies soit expese 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 & aufs atto'nes desouz eux, devant quelconq, juge du Roialme & faire & resceivre el dit cas, siavant come en null 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 & 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 q decy enavant nulle prone 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 pties Descoce en prive ne en appt ascune mable darmure de blee de brees ne dautre vitaille ou dautre refressichement 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 1 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 henceforth shall purchase any Benefice of Holy Church, of as Ed. III. ausented, That if any Alien have purchased, or from be liable to henceforth shall purchase any Benefice of Holy Church, of s Ed. II Dignity, or other Thing, and in his proper Person take staff. c. 33. Dignity, or other Ihung, and in his proper Person take Possession of the same, or occupy it himself within the Realm, whether it be to his own proper Use, or to the Use of another, without especial Licence of the King, he shall be comprised within the same Statute; and moreover shall incur all Pains and Forfeitures in all Points as is before ordained by another Statute made the Five and twentieth Year of the noble King Edward the Third Grandfuber to our Lot the King they nor the Third, Grandfather to our Lord the King Luwlu 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 abtring them from henceforth to even the for any shall abstain them from henceforth to pray him for any such Licence to be given ; and also the King himself will refrain to give any such Licence during the Wars, except to the Cardinal of Naples, or to some other special Person to whom the King is beholden for a special Cause.

ITEM, It is ordained and assented, and also the King doth prohibit, That from henceforth no Man shall ride in Harness within the Realm, contrary to the Form of 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 smecial Licence special Licence.

ITEM, In Writs of Præmunire facias, It is assented and agreed, That they against whom such Writs be sued, and who at this Time be out of the Realm, and be of and who at this lime be out of the Kealm, and be of good Fame, and have 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 Recuest the Chancellor. by hencetorth shall pass by the King's Licence, and be of good Fame, that at their Request the Chancellor, by the Advice of the Juscices, 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 Przemunire facias, as in other Writs and Plaints; in which Case express Mention shall be made at all Times of the Writs and Plaints of Przemunire forms the theory of the Writs and Plaints of Przemunire at all finites of the Writs and Flants of Framunire facias; and this Patent so made, the said Atturnies from henceforth, in Absence of their Masters, may an-swer [for them, and make'] other Atturnies under them, before any Judge of the Realm, [to'] do and receive in the said Case as much as in any other Case or Motter and the same from the same of the same set o 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-dained and assented, That the Statutes thereof made in the First and Fourth Years of King Edward, Grandfather to our Lord the King that now is, and also in the First Year of our Lord the King that now is, shall be holden and kept, and duly executed in all Points.

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

1 and

• by themselves and

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

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

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

xν XV. Statutes 1 Edw. III. ttat. z. c. 14; 4 E. III. c. 14; 1 Ric. II. c. 4; againft Main-tenance, &c. confirmed.

into Scotland

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7° R1C. II. c. 16, 17.

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

XVII. When Mainpernors shall be liable in Damages by Delay. ITEM, It is assented and accorded, That in Writs of Debt, Trerpass, 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 '] come not before the Judges at a Day comprised '] come not before 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.

[³ And therefore We command you that as well the said Statute 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 it shall seem to you most expedient, within Franchise and without, you do cause to be proclaimed on our behalf, and to be published and duly kept and observed according to the Form and Effect of the same. Given under the Witness of our Great Scal at our Palace of Westminster the Twentysixth Day of November, in the Seventh Yaar of our Reign-3

Like Commands of the King are directed to the several Sheriffs throughout England, under the same Date. ' for bis labour ' mainprised

 for bis labour 'mainprised
 Former Translations read only thus : And therefore We command you, &c. Dated, &c. Roi në f nent donne sa licence especiale a contrie. Et au fyn q ceste ordinance soit duement gardez & mys en bone execucion 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 ptie des dites forfaitures entrement 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 Supeedeas 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 êteine 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 mahe q dessus est ordeignez, come les autres Estatutz & ordinances dessusescritz en toutz les Citees Burghs villes marchees & autres lieux notables deinz vre baillie ou vous verrez q mieuz soit affaire deinz franchise & dehors, facez pelamer dep nous & publier & duement garder & tenir selonc la forme & effect dicelles. Doñ p tesmoignance de nre g'nt Seal a nre Paleys de Westiñ avantdit le xxvj^m jour de Novembre lan de nre regne septisme.

Consimilia mandata & dirigunt' singulis Vicecomitib3 p Angt sub eadem dai.

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

Liberties of the Church, and Statutes confirmed.

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

1 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 Sči Martini anno regni sui octavo, idem dñs Rex de assensu Prelatoș Magnatū & Cõitatis Pdče quoddam statutū in eodem pliamento p cõi utilitate dĉi regni & Psertim p bona & justa gubnaĉõe ac debita execuçõe cõis legis fieri fecit in forma subsequenti :

In primis concordată est & statută qd sca ecclia heat ories libitates suas, & qd Magna Carta & Carta de Foresta, Statuta de pvisorib3 & laboratorib3 & oriia alia statuta & ordinacoes ante hec tepora edita & minime revocata teneant' observent' & execucoi debite demandent' juxta formam & effem eoşdem.

Item concordatu est & statutu qd nullus honio de lege sit deceio Justič assisaa vel cõis delibaĉõis gaolaa in ppria pria sua et qd capitalis Justič de cõi Banco assignet int alios ad h⁹i assisas capiend & ad gaolas deliband set quoad capitalem Justič de Banco Regis hat sicut p majori pte Centu annoa pã pritos fieri consuevit.

A.D.1383.

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

For the proclaiming the Statute.

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

By the King Himself and Council.

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

garde de Farndoñ dedeins puissent eslire un Alderman sage sufficeant & able p' govner mesme la garde desieins, & 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 dehors. Et q les ditz deux Aldermans issint esluz puissent estre establiz & nemye remoez si noun p cause resonable, come ordeinez est & g'ntez p nre dit d' le Roi en cest plement des aufs Aldermans du dite Citee.

Pr Vič Kanč, saltm. Quoddam statutum in ultimo D pclamacoe stapliamento não apud Westrii tento p nos de assensu sutos pelamand. Magnatum & Cõitatis regni nri Angt nobiscum ibidem tunc assistenciù editù tibi mittim9 in forma patenti; Mandantes qd Statutum illud & omes & singulos articulos in codem contentos, in Civitatibus Burgis Villis rficatoriis & aliis locis infra ballivă tuam ubi melius expediri videris, publice polamari & quantum ad te prinet firmi? & inviolabili? observari fač. T. B. apud Westin primo die Junii.

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

Anno 20° RICARDI, II. A.D. 1396-7.

Statutu de Anno vicesimo.

In Margine Rotuli

STATUTE OF THE TWENTIETH YEAR.

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

Recital of St.

FIRST, Whereas in a Statute made the Seventh Year 7 R. II. c. 131 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. A.

E ROY en son parlement tenuz a Westin en la feste de Seint Vincent lan de son roialme vintiame, del assent des Prelatz d's & Cômunes de son roialme en mesme le parlement, pur quiete & t'nquillite de son poeple ad fait cleins 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 ovesq, lancegaye deins mesme le roialme, et q les ditz lancegayes soient de tout oustez deins le dit Roialme, come chose defendue par le Roy sur peyne de forfaiture dicelles lancegayes armures & auts hernoys quelconques, es mayns & possession dycelx qui les porta delors deinz mesme le Roialme encontre ycelles estatutz & ordenances sanz espale congie du Roy:

App. 13

A.D.1396-7.

20° Ric. II. c. 1-5.

Nre Seignur le Roy considerant le g'nt clamour a luy fuit en cest psent 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 nutt ?, 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 $\tilde{\mathbf{q}}$ Vadletz appellez Yomen ne nutt au? de meindre estat qesquier ne use ne porte null signe ne livee appelle livee de compaignie dascun & deins le roialme, sil ne soit menial & familier ou officer continuel de son dit 🥙 et q̃ les Justices de la paix' aient poair denquer de ceux qi font a lencontre & de les punir selonc leur discrecion.

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

Item q come il soit contenuz en un estatut de f' Edward nadgairs Roy Denglerre Aiel a nre f' 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 Denglerre ne y dem'er contre le gree des Mestres & Marines dicelle, ou des Marchantz as queux les biens sont, et si tielx niefs veignent de gree ou soient chacez p tempeste ou aul infortune ou meschief a ascun port Denglerre & les Meistres & marifis ou Marchantz de mesmes les niefs voillent vendre & deliver ptie de leur michandises p loure bone voluntee, bien lise a chescuny tieles mchandises achatre franchement sanz empeschement en le port ou tieles niefs viendront, tout ne soient les mchandises mises a la fre pur vendre; Et q̃ les Meistres Mariñs & Marchantz, aps ce qils avont issint venduz ce q lour plerra de leur ditz biens & paie ent la custume, puissent f'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 cont'rie. 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 Dignont & font Ondre roialment chivalx & aut's choses & bestes hors de leur charues charettes & mesons, disantz & imaginantz gils 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 thereof, 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 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 Autor. 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 Ships, will sell or deliver Part of their Merchandizes with their Good-will, it shall be lawful to every Person to buy such Merchandizes freely without Impeachment in the Port where such Ships shall come, albeit the Merchandizes be not [put to Sale to the Land ; *] And the Masters, Mariners, and Merchants, after that they have so sold so much as pleaseth them of their said Goods, and the Custom thereof paid, may freely depart and go with their Ships, and all the Remnant of their Goods, where it shall please them, without paying thereof Custom : Our said Lord the King, for the Quietness and Ease of his People, willeth, That the said Statute shall be holden and kept in all Points, and duly executed, notwithstanding any Ordinance or Usage to the contrary.

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

* or other Misfortune or Mischief, * put to land, to sell,

No Man shall ride or gu armed.

touch giving of Liveries

п. Liveries of Companies restrained.

Ш. None shall sit upon th Bench with Instice

IV. Recital of S 28 Edw. III. chapter 13, Merchant Strangers.

Confirmation thereof.

Penalty for taking Horses, &c. for the King's Service, with-out Warrant,

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1409.

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.

Membrane 24d-cont.

Jan. 26.

John Bolyngbroke esquire to Master John Kyngton clerk, Westminster. William Wilyngham parson of Ketilthorp and Simon Fouler. Recognisance for 401., 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.
77	

Surrey and Sussex.

Also to the chancellor of the county palatine of Lancastre.

MEMBRANE 23d.

To the sheriffs of Norwich. Writ of supersedens, and order by Jan. 25. 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.

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

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

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1409.

Membrane 23d-cont.

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

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

Memorandum of acknowledgment, 6 February.

Henry ate Grene, otherwise 'Leycestre heraude,' to Thomas Fereby clerk and John de Pokelynton, their heirs and assigns. Charter indented with warranty of the three messuages, lands, wood etc. in the town and county of Hertforde which he had by feoffment of Maud Blakwelle his mother, sometime wife of Robert 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, 101. at Michaelmas following and 101. 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. 9. To the treasurer and the barons of the exchequer. Writ of Westminster. supersedeas omnino in respect of any process against William Banastre, appointed with others, upon an information that John Kyghlay and John Kent banished Englishmen, Wybert 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

Anno Regni Quarto Gulielmi & Mariz.

One Half of the Fines and to the Informer.

Measurer of Salt, and Cid-ler of Fifh.

AND further it is Enaced by the Authority aforefaid, That all Fines, Penalbe unto Their Half to Their Majesties, towards the Support of the Government of this Pro-Majesties, and the other Half to him or them that the line ties, and Forfeitures arifing by force and virtue of this Act, thall be, the one in 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 fwom for the faithful Difcharge of that Office, shall cull all merchantable Fish, and measure all Salt that shall be imported and fold out of any Ship or other Veffel, and shall have Threehalf Pence for every Hogshead of Salt by him to measured, to be paid, the one Half by the Buyer, the other Half by the Seller; and One Peny per Quintal for every Quintal of merchantable Fish by him culled to be paid, one Half by the Buyer, and the other Half by the Seller.

£º 6. Confirmed. 22 Aug. 1645.

Curfigg and Sheating.

I tiumption.

An AEt for the Punishing of Criminal Offenders.

TE 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 shall be thereof convicted by the Oaths of Two Witnelfes, or Confession of the Party, before any Justice or Justices of the Peace, every fuch Offender shall forfeit and pay unto the Ufe of the Poor of the Town where the Offence shall be committed, the Sum of Five Shillings; and if the Offender be not able to pay the faid Sum, then to be fer in the Stocks, not exceeding Two Hours: And if any Perfon shall utter more prophane Oaths or Curfes at the fame time, and in hearing of the fame Perfon or Perfons, he shall forfeit and pay to the Use aforefaid, the Sum of Twelve Pence for every Oath or Curle 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.

FURTHER it is Enacted by the Authority aforefaid, That every Perfon con-Drailenness victed of Drunkenness by View of any Justice of Peace, Confession of the Party, or Oaths of Two Witneffes, fuch Perfon fo convicted, fhall forfeit and pay unto the Use of the Poor of the Town where such 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 fet in the Stocks, not exceeding Three Hours, at the Differention of the Justice or Justices before whom the Conviction shall be : And upon a fecond Conviction of Drunkennefs, every fuch Offender, over and above the Penalty aforefaid, shall be bound with Two Surecies in the Sum of Ten Pounds, with Condition for the good Behaviour; and for want of fuch Sureues, shall be sent to the Common Goal until he find the same.

PROVIDED, That no Perfon shall be impeached or molested for any Offence against this Act, unless he shall be thereof Preferred, Indicted, or Convicted, within Six Months after the Offence committed; and the luftice or Juffices before whom Conviction of any of the aforefaid Offences shall be, are hereby impowered and authorized to refirain or commit the Offender, 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

App. 17

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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 Ule of the Poor, as aforefaid.

It is further Enacted and Ordained by the Authority aforefaid, That who- Then, foever shall steal or purloin any Money, Goods, or Chattels, being thereof convicted by Contession, or fufficient Witness 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 Juffices 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 thall commit Burglary Burglary and by breaking up any Dwelling-houle, Ware-houfe, Shop, Mill, Malt-houfe, Barn, Out-houle, 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 futter the Pains of Death, as being Incorrigibles and shall likewife, upon the first and second Convictions, pay treble Damages to the Party injured, as is provided in case of Theft.

AND it is further Enacted by the Authority aforefaid, That if any Man Fornication. commit Fornication with any lingle Woman, upon due Conviction thereof, they shall be fined unto Their Majeflies, not exceeding the Sum of Five Pounds; or be corporally punished by Whipping, not exceeding Ten Stripes apiece, at the Difcretion of the Selfsons of the Peace, who shall have Cognizance of the Offence. And he that is accufed by any Woman to be the Father of a Baftard Reput i Father Child, begotten of her Body, the continuing constant in fuch Accufation, being that a 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, notwithflanding his Denial, and fland 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 such 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 accufed, and other Circumflances, be fuch as the Juffices shall fee reafon to judge him innocent, and acquit him thereof, and otherwife dispose of the Child: And every Justice of the Peace, upon his Difcretion, may bind to the next Quarter-Sellions him that is charged or fuspected 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

FURTHER it is Enacted by the Authority aforefaid, That every Justice of Power of the the Peace in the County where the Offence is committed, may caule to be fuffice 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 Majefties Justices, or other Their Officers or Ministers doing their Office, or elfewhere, by

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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 cause them to be apprized and answered to the 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 Forgible Forty Circumflance of the Offence may be; and may make Enquiry 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 Difcretion (which is accounted Fourteen Years, or upwards) shall withingly and willingly make or publish any Lye or Libel, tending to the Defamation or Damage of any particular Perlon, make or Ipread 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 fet in the Stocks, not exceeding Three Hours, or be corporally punified by Whipping, at the Difcretion of the Juffice or Juffices before 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, thall wittingly, fubtilly, and fallely 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 Perfon or Perfons, of, in, or to any Lands, Tenements, or Hereditaments, shall or may be molested, troubled, defeated, recovered, or charged, or thall, as is aforelaid, torge, make, or caule or affent to be made or forged, any Obligation, or Bill Obligatory, Letter of Attorney, or any Acquittance, Releafe, or other Difcharge 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 such falle and forged Deed, Conveyance, Writing, Obligation, Bill Obligatory, Letter of Attorney, Acquittance, Releafe, or Difcharge, as true, knowing the fame to be falle 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

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Breach of the Prace

and Decine 6

I vint and Libelling.

Forgery.

1786.

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

II. BE it enabled by the General Affembly, That no man shall be compelled to frequent pelled to frequent or support any religious worthip, place, or Ministry whatsoever, nor shall be enforced, ucm or support any religious worthing or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by count of his religious opinions or belief; but that all men man be free to protes, and by argument to maintain, their opinions in matters of religion, and that the fame fhall in no wife diminifh, enlarge, or affect their civil capacities. wife diminish, enlarge, or affect their civil capacities.

gious worthip. All men free opinions.

Declaration

III. AND though we well know that this Affembly elected by the people for the ordiblies, 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 the rights hereby afferted, are of the natural rights of mankind, and that if our AR and that if instruction only. 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. H A P. C

An Ast forbidding and punishing Affrays.

[Paffed the 27th of November, 1786.]

E it enacted by the General Affembly, That no man, great nor fmall, of what condition Punithment of foever he be, except the Ministers of Justice in executing the precepts of the Courts armed before and fuch as he in their company affiliant them. of Justice, or in executing of their office, and fuch as be in their company affisting them, Courts of Just be to hardy to come before the Justices of any Court, or other of their Ministers of Justice, doing their office, with force and arms, on pain, to forfeit their armour to the Com-monwealth, and their bodies to prifon, at the pleafure of a Court; nor go nor ride armed by night nor by day, in fairs or markets, or in other places, in terror of the Country, upon pain of the Country of being arrested 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.

tice, or the Ministers of

C H A P. XXII'

An AEt against Confpirators.

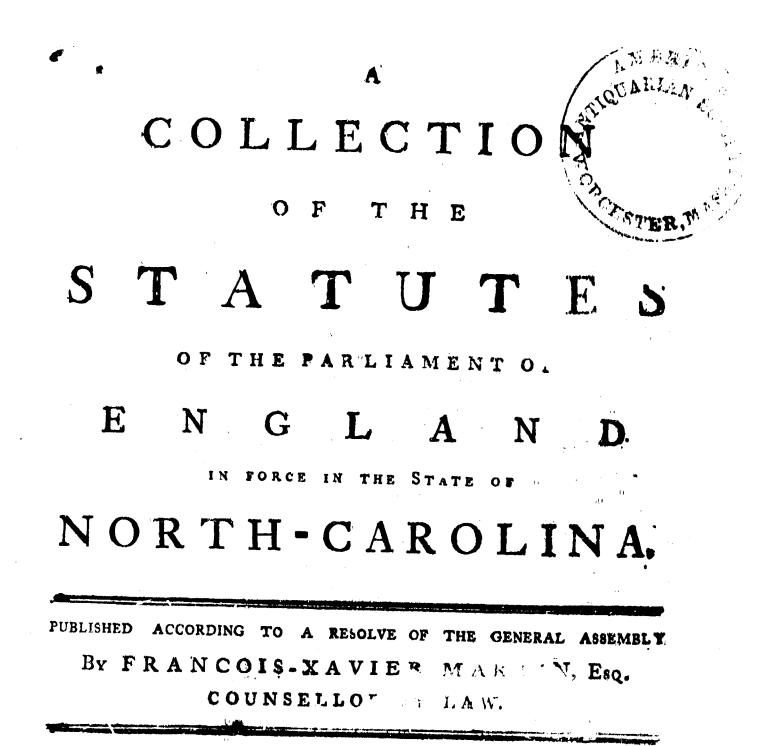
[Paffed the 27th of November, 1786.]

DE it declared and enacted by the General Affembly, That Confpirators be they that do con-federate and bind themfelves by oath, covenant, or other alliance, that every of them firators. inall aid and bear the other falfely and malicioufly, to move or caufe 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.

App. 20

24627
North Carolina. Laws, Statutes, etc., 1792.
A Collection of the Statutes of the Parliament of England in Force in ... North Carolina.
Newbern, 1792. xxvi, 424, [3] pp.
AAS copy.

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NEWBERN:

FROM THE LDITOR'S PRESS.

1792.

App. 22

(60)

C H A P. VIII.

Nothing Shuli be taken for Beaupleader.

I'TEM, 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 Mariebridge that be observed and kept in this point.

C H A P. XIV.

None shall commit Maintenance.

ITEM, Because the King defireth that common right be administered to all performs, 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 otherwise, nor none other in this land, great nor small, shall take upon them to maintain quarrels nor parties in the country, to the let and diffurbance of the common law.

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

CHAP. I.

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

[Unneceffory to be inferted.]

C H A P. III,

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

TEM, It is enacted, that no man great nor fmall, of what condition forver 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 allifting 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 Jufflers, or other of the King's

(61)

Ministers doing their office with force and arms, nor bring no force in an affray of peace, nor to go nor ride armed by night nor by day, in fairs, markets, nor in the prefence of the King's Justices, or other ministers, nor in no part elfewhere, upon pain to forfeit their ar one r to the King, and their bodies to prifon 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 boroughs, within the fame entires and boroughs, and borough-holders, constables and wardens of the peace within their wards shall have power to execute this act. And that the Justices affigned, at their coming down into the country, shall have power to enquire how such officets and lords have exercised their offices in this cafe, and to punish them whom they find that have not done that which pertain to their office.

C Ha A P. V.

St. St. State

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

I TEM where it was ordained by the statute of Westminster the second, that they which will deliver their writs to the Sheriff shall deliver them in the full county, or in the rere county, and that the Sheriff or Under-Sheriff shall thereupon snake a bill : it is accorded and established, that at what time or place in the county a man doth deliver any writ to the Sheriff or to the Under-Sheriff, that they shall receive the same writs, and make a bill after the form contained in the same statute, without taking any thing therefore. And if they refuse to make a bill, others that be present shall set to their seas, and if the Sheriff or Under-Sheriff do not return the faid writs, 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 loss and peril that might happen.

C H A P. VI.

Juffices shall have Power to punif Breakers of the Peace.

ITEM, as to the keeping of the peace in time to come, it is ordained and enacted that the flatutes made in time paft, with the flatute of Winchefter, fhall be observed and kept in every point : and where it is contained in the end of faid flatute of Winchefter, 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 seen, the fameJuffices shall have power to punish the offenders and disobeyers.

Q_

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In the Year of our LORD, 1795.

Criminal Offenders.

on faid fence, till it comes to the land improved by George Summer ; then through faid land nearly the fame course, till it comes to the fouth-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 Sharon; thence on faid line till it comes to Neponfet river; thence wefterly 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 fucceffors 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 paffed in the year of our Lord, one Thoufand fix Hundred and Ninety-two, entitled, "An Act for punifhing Criminal Offenders," and for re-enacting certain Provisions therein.

AA repeated.

Juffices of the Peace empowcred. E it enacted by the Senate and Houfe of Reprefentatives, in General Court affembled, and by the authority of the fame, That the faid Add be, and hereby is repealed, and made wholly null and void.

And be it further enacted by the authority aforefaid, That every Juftice of the Peace, within the county for which he may be commiffioned, may caufe to be flaid 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, confession of the delinquent, or other legal conviction of any fuch offence, shall 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 shall comply with such requisition : And may further punish the breach of the Peace in any perfon that shall asfault or strike another, by fine to the Commonwealth, not exceeding twenty fhillings, and require fureties, as aforefaid, or bind the offender, to appear and answer for his offence, at the next Court of General Scifions of the Peace, as the nature or circumstances of the cafe may require.

[This Act paffed January 29, 1795.]

C II A P.

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

Keepers of ing tables

Penalty for

Duty of the

112, s. 1, 2.

Penalty for

failing.

4.

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 grants. 1811, gaming cloth table, or bank of the same, or like kind, under e. 112, s. 1, 2' 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 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 here- of 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 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.

Proceedings against permed contrary to this act.

Felony to s. 13.

POWER OF JUSTICES.

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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. sect 1. DE it enacted by the Senate, and House of Repre- General juris-sentatives, in Legislature assembled, That it shall be within diction of Jus-the power, and be the duty of every Justice of the Peace Prace, and their within his county, to punish by fine not exceeding five dol-al cave, in ar-lars, all assaults and batteries that are not of a high and ag- recognizing and gravated nature, and to examine into all homicides, mur- ienders. 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 bye-laws of 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 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 Persons aggrieved many at the sentence given against him, by any justice of the Peace, appeal to the C. Court of 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 sureties, 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 Pless.

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ecute his apoeal, his default to be entered.

Court may order such case to be laid be-&c.

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

Justices may, on their own view, (in ab-sence of sheriff, stables,) require any pear son to appre-hend offenders.

Penalty for re-fenders. fusing to obey such Justice.

If the Justice admissible.

Justices may

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

Justices to account annually ty and Town 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 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 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 theredeputies or conv of, 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-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-plea Justice, to whom he shall be known, or declare himself to be bis office not a Justice of the Peace shall be admitted 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 grant subpe-nas 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, count Peace shall account annually with the Treasurer of the State, Freasurers 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.

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SEC. 8. Be it further enacted, That all civil actions, where- Justice's jurisin the debt or damage does not exceed twenty dollars, (and actions, (where wherein the title of real estate is not in question, and special- 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 mey 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 beduly 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 prothe plaintiff to have sustained, with costs; and if the person sued shall appear to defend the suit or oppose the same, the Justice shall award such damages as he shall find the plaintiff to have sustained : Provided, That no more damages than the exceed 20 dolsum of twenty dollars shall be awarded in any action origin- lara. 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 Execution judgments 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-^{jurisdiction} manded by the plaintiff in his declaration, shall not be con-^{damnum} doer not exceed 20 sidered as any objection against the Justice's jurisdiction, pro-^{dollars.} 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 aggrieved at 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 mento bring for-

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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, to his recog- do it, upon complaint thereof made in analysis, as the plaintiff nizance.-Plain shall give judgment for such sum in damages, as the plaintiff tiff to have his shall give judgment for together with all reasonable costs which achath declared for, together with all reasonable costs which ac-

ing to prosecute, on complaint 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 thereto shall fail to prosecute his appeal, or if he shall neglect to produce a copy of the case, affirm the former judgment upon the appellee's complaint, and award such additional damages as shall have arisen in consequence of the said appeal, and cost.

> SEC. 11. Be it further enacted, That when an action of 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 he had refused to make answer to the same suit. And either party in such cause, shall be allowed to appeal from the judgment of the Circuit Court of Common Pleas, in the same manner as if the suit had been originally commenced there.

SEC. 12. Be it further enacted, That in all civil actions triable before a Justice of the Peace, except such actions of trespass wherein the defendant means to avail himself, by pleadand special matter 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 subporter 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.

pleads title to real estatemode of proceeding before Justice.

In action of trespass when

detendant

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

General issue may be plead in all actions before Justices where title to real estate is relied on by defendant.

Justices may grant subple-nas in all civil actions.

May adjourn their Courts by

No Justice to be of counsel in any suit be-fore himself.

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POWER OF JUSTICES.

SEC. 14. Be it further enacted, That when an executor or In case of administrator shall be guilty of committing waste, whereby utor or admin-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 C. C. C. C. Pleas deceased in his hands, out of the same, the Justice may proceed as deceased 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 is made in such tice of the same county then deceased, remains unsatisfied, cases may sumshall 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 refusal so to do. 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 transcribe it 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- 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, seasonably ob-Justices of the Peace who shall hereafter have their said teined, to rencommissions 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-

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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.

nizance.

SEC. 1. **BE** it enacted by the Senate and House of Representa-Justices may take recogniz- tives, in Legislature assembled, That every Justice of the Peace ances for debts. 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

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

Before E. F. Justice of the Peace.

SEC. 2. Be it further enacted, That every Justice of the 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 issue thereon 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.

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

Form of execution.

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

To be recorded by the Justice.

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LE

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.

- 2. Power to issue process.
 - 3. To keep records. Adjournments.
 - To issue subpoenas. 4.
 - 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.
- 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.
- 17. After arrest.
- 18. The examination.
- 19. The commitment or binding to appear. Binding witnesses.
- 20. To deliver recognizances to clerk of the peace. Fee.

- SEC. 21. To indorse the names of witnesses.
 22. To arrest persons complained against.
 23. Warrant may be executed in any county.
 - 24. Bail for appearance; how taken; by
 - whom.
 - Commitment in default of bail.
 - 25. How discharged from prison on bail.
 - 26. Capital cases ; when bail may be taken 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.
 - 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.

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 con-App. 33

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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 judicial proceedings in criminal as well as civil cases.

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

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

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

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

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 :---

2011 Commitment.

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

 $\left\{ \underbrace{\widetilde{L}, \widetilde{S}}_{A, \ldots} \right\} \begin{array}{c} \text{Given under my hand and seal this} & ---- & \text{day of} \\ \hline J. P. \end{array}$

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

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 App. 34

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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:-

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

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 his docket, App. 35

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

SEC. 11. Every justice of the peace shall transmit to the auditor 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, before 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 To cause arand bind to surety of the peace all affrayers, rioters, breakers and rests. disturbers of the peace, and all who go armed offensively to the terror of the people, or are otherwise disorderly and dangerous.

SEC. 14. He may also cause to be arrested any drunken person, 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:

2024 Warrant of arrest.

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

Whereas G. H. of _____ hath upon oath (or affirmation) before me, a justice of the peace of said county declared that on the ---- day of - at — (state the offence charged) and that he hath just cause to suspect and doth suspect C. D. of ----- hundred, of committing the said offence: You are therefore hereby commanded to take the said App. 36 43

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

 $\{\widetilde{\underline{L}, S}, Mitness the hand and seal of the said justice, the -$ day of <math>A. D. 18—.

2025 How directed. 2026 Proceeding on arrest.

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

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

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 witnesses to material witnesses, and the clerk shall issue subpœnas for their ap-

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, &c.

Fee.

2034 Names of

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

SEC. 22. Every justice shall cause to be arrested, on proper com- Duty to arplaint, all persons found within his county charged with any offence; rest persons 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, 2036 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 Bail for apsed, except when taken by the sheriff, or officer to whom process is pearance, directed, and security for the appearance of a witness, shall be given 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 2038 sufficient bail, or security; and any judge, or justice, may require charged. such person to be brought before him for that purpose.

SEC. 26. A capital offence shall not be bailable; but the Court Capital of General Sessions of the Peace and Jail Delivery, when in session, cases. or any judge thereof in vacation, may admit to bail a person accused of such offence before indictment found, if, upon full inquiry, it when bail appears that there is good ground to doubt the truth of the accusa- may be 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 2040 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 determined sum in which bail shall be taken, and set it down on the process; or if no sum be so determined, the officer issuing the process shall set down what sum he deems reasonable for bail.

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

how taken.

How taken

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2042 Search warrants, when and how to be issued.

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

2043 Complaint in writing.

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

2044 How directed.

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 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 3 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.

2045 When it may be executed at 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.]

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

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

SEC. 32. Justices of the peace shall severally have jurisdiction of 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 Duty of exoffice, and the appointment of another, it shall be the duty of such ecutors of a justice in justice of 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, 2056 Originals require the production of the original record.

SEC. 35. Every justice of the peace shall attend, at the place of quired. 2057 election in his hundred, on the day of every general election, or Duty to atspecial 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 2058 duty, or to obey the lawful commands of the inspector of such elec- Penalty. tion, he shall be deemed guilty of a misdemeanor and shall be fined one hundred dollars.

may be re-

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Challenges.

Panel how completed.

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 otherwisc.

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.

First conviction fine.

Carrying weapons prohibited.

Second conviction. imprisonment. 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.

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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 provisiones 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 algua- completa. cil 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^a. 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, 6 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 6 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

prohibido.

viccion, multa.

LAWS OF NEW MEXICO.

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 ex-

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 viccion, encarmeses 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 públiclase 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 hiriere á alguna persona con cualesquiera descripcion de armas mortiferas mencionadas en la primera seccion de este acto, en algun baile ó fandango, ú otra concurrencia pública, y resultare alguna muerte de la tal herida ó cortada así dada, la persona que así hiriere ó cortare, sobre 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 alguaciles mayores, sus diputados, ó condestables, de arrestar y tomar toda persona que sca 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 Visjeros, &a., este acto serán aplicables al alguacil mayor, sus diputados, ó

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esceptuados.

Segunda concelarmiento.

armas, pena de.

mer grado.

Deberes de los alguaciles, y ofensores de

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

Judges to give this act in charge.

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

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.

Repealing clause.

> 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:

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

ners respectively, as well in the losses as in the profits that

placing punctually in the concern the capital or services as stipulated, under the penalty of indemnifying the others for

SEC. 2. The copartners or associates shall act in good faith,

Who may enter into.

may arise from said copartnership. Good faith to be observed.

Articles what to contain and before whom made.

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-

and follow at the same time various negotiations on their own common account and risk, or at that of each one of the part-

Laws passed in 1686.

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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

290 Laws passed in 1686.

or message, to any person to fight, upon pain of being imprisoned during the space of six months, without bail or mainprize, and forfeit ten pounds; and whosoever shall except of such challenge, and not discover the same to the Governor, or some publick officer of the peace, shall forfeit the sum of ten pounds : the one moiety of the said forfeiture to be paid unto the Treasurer for the time being, for the public use of the Province, and the other moiety to such person or persons as shall discover the same, and make proof thereof in any court of record within this Province, to be recovered by the usual action of debt, in any of the said courts. And he if 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 peaces to the common gaol, there to remain till the next sessions, and upon conviction thereof by verdict of twelve men, shall receive judgment to be in prison six month, and pay ten pounds for the use aforesaid. And be it further enacted by the authority aforesaid, that no planter shall ride or go armed with sword, pistol, or dagger, upon the penalty of five pounds, to be levied as aforesaid, excepting all officers, civil and military, and soldiers while in actual service, as also all strangers, travelling upon their lawful occasions thro' this Province, behaving themselves peaceably.

In the Year of our LORD, 1784.

Powers of Juffices in criminal Cafes.

XXVII. С Η А P.

An Act vesting certain Powers in Justices of the Peace 'ın criminal Cafes.

BE it enacted by the Senate and Houfe of Representatives, in General Court affembled, and by the authority of the fame, That it shall be within the power, and be the duty of every Justice of the Peace within his county, to punish by such fine as is by the flattite law of of the Peace. the Commonwealth provided, all affaults and batteries that are not of a high and aggravated nature, and to caufe to be flayed, and arrefted all affrayers, rioters, diffurbers and breakers of the peace, and to bind them by recognizance to appear at the next Supreme Judicial Court, or Court of General Schions of the Peace, to be held within or for the fame county, at the difference of the Juffice; and also to require fuch perfons to find furcties for their keeping the peace, and being of good behaviour until the fitting of the Court they are to appear before, and to commit such perfons as shall refuse to recognize and find fuch furcty or furctics. And the Junices of the Peace shall examine into all homocides, murders, treafons, and felonies done and committed in their counties, and commit to priton all perfons guilty er fuspected to be guilty of manflaughter, murder, treafon or other capital offence. And to hold to bail all perfons guilty or fufpected to be guilty of leffer offences which are not cognizable by a Juffice of the Peace, and require furcties for the good behaviour of dangerous and diforderly perfons; and shall take cognizance of, or examine into all other climes, matters and offences, which by particular laws are put within their jurifdiction.

And it is also enacled by the authority aforefaid, That Juffices of the Peace within their refpective counties, be, and they are hereby authorized and impowered, to grant fub panas for witneffes in all criminal caules rending before the Supreme Judicial Court, and Court of General Seflions of the Peace, and before themfelves or any other Juffice. And all theriffs, conttables and other officers, are directed and impowered to ferve any warrant illuing from a Juffice of the Peace ; and each Juffice fluil have authority to command the affiftance of every fheriff, deputy iberiff, conftable, and all other perions prefent at any affray, riot, affautt or battery, and may fine any perfon refufing fuch affiftance, in a lum aot exceeding forty fhilings, to be difpoled of for the use of the town where the offence shall be committed, and levied by warrant of diffrets on the offender's goods and chattels, and for want thereof, on his body.

And be it further enacted by the authority aforefaid, That any perfon aggreeved at the fencence given against him by any Justice of the Aggreeved at the fentence given against him by any Justice of the dallowed an Peace, may appeal therefrom to the next Court of General Seilions of the Peace, to be held within the fame county, and shall, before his ap-peal is granted, recognize to the Commonwealth in such reasonable peal is granted, recognize to the Commonwealth in fuch reafonable tons, fum, not less than five pounds, as the Juffice shall order, with fufficient furety or fureties for his profecuting his appeal, and shall be held to produce the copy of the whole process, and of all writings filed before the Juffice at the Court appealed to. And if he shall not there profecute his appeal, and produce the copies as aforefaid, the Court. D d

Perforsaggriev .

fhall

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Juffices to graph fub-panas for witheffes,

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In the Year of our LORD, 1784.

Coparceners, joint Tenants, &c.

Perfons failing to profecute their appeal, how to be pro-coeded against.

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fhall order his default to be noted upon their record, and fhall certify the fame recognizance with the record of the default in the performance of the condition thereof, to the Court of Common Pleas, to the intent that a feire facias may be thereupon iffued for the recovery of the penalty. And the faid Court of General Seflions of the Peace, may order the fame cafe to be laid before the Grand Jury, or may illue an attachment against the body of such appellant, and cause him thereby to be brought before them, and when he is fo in Court, fhall affirm the featence of the Juffice against him with all additional coffs.

Judices of the Princes of the Pracetoaccount aroundly for all And a received.

And be it further enacted, That the Juffices of the Peace shall account annually with the Treafurer of the Commonwealth, the Treafurer of their respective counties, and the town Treasurer, as the cafe may be, for all fines by them received or imposed, upon pain of forfeiting the furn of ten pounds, to be fued for and recovered by the Treaturer of the Commonwealth, the county or town Treaturer for the time being, to which the faid fines may refpectively belong.

[This act paffed March 16, 1784.]

С XXVIII. H Α P,

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

BE it enacted by the Senate and House of Representatives, in General Court affembled, and by the authority of the fame, That if any perfon being a tenant in common of any lands, shall cut down, deltroy, or Tenantsic com-mon not recom-mit frip or water away any trees, wood or underwood what foever, ft and ing or mit frip arwate laying on fuch lands, or make any other firip or wafte thereon, with-an forteture. Out first giving notice in writing under his or their bands, wate all the out first giving notice in writing under his or their hands, unto all the perfons interested therein, or to their agents, factors or attornies, forty days before hand, fetting forth, that he or they have occasion for, and shall enter upon and improve fuch lot or lots of land lying in common as aforefaid, thall forfeit and pay the fum of forty shillings for every tree meaturing one foot diameter at the diftance of two feet from the ground, and for all trees of greater dimensions three times the value thereof, befides forty shillings as aforefaid, and twenty shillings for every tree or pole under the dimensions of one foot diameter, and for other wood or underwood treble the value thereof; and Postellures how ter, and for other wood of under wood the late of the faid forfeiture to be recovered by any one or more of the perfons interefted, who shall profecute and fue for the fame in an action of trefpafs in his or their own names, as well on the behalf of the other tenants in common, as of him or themfelves, (who are hereby authorized and impowered fo to do) one moiety of the aforefaid penalty to be for the use of such perfor

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CHAP. 134. SECT. 1. [PART IV.

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

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

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

TITLE II.

Of proceedings in criminal cases.

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

CHAPTER 134.

OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

SECTION

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

SECTION

- Persons committed for not recognizing, how discharged.
- 14. Recognizances to be transmitted to the court.
- 15. " when to be required, on view of the court or magistrate.
- 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.

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

SECT. 2. Whenever complaint shall be made to any such magis- Complaint, how trate, that any person has threatened to commit an offence against the 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.

If, upon examination, it shall appear that there is just Arrest. SECT. 3. 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 to keep the peace towards all the people 4 Mass 497. of this Commonwealth, and especially towards the person requiring ${}^{8}_{2}$ Mass. 78. such security, for such term as the magistrate may order, not exceed- 1833, 63, §§ 1, ing six months, but shall not be bound over to the next court, unless & 2. he is also charged with some other offence, for which he ought to be held to answer at such court.

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

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

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

When no order respecting the costs is made by the Payment of SECT. S. 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, $\S 2$. son is required to give security for the peace, or for his good be- 1834, 151, $\S 4$. havior, the court or magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed, until such costs are paid, or he is otherwise legally discharged.

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

1794, 26, § 2.

be discharged.

cognize, to be

when to pav

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Снар. 134. SECT. 10-18. PART IV.

On appeal, witnesses to recognize.

Proceedings on appeal.

Recognizance, when to remain in force.

Persons committed for not recognizing,

Recognizances to be transmitted to the court.

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

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

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

Surety may surrender his 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.

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

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

> 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.

> 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.

> Whenever, upon a suit brought on any such recog-SECT. 17. nizance, 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

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

CHAPTER 135.

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

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, &cc.
- 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.
- " when to be bailed, or com-17. mitted.
- 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 warrants, and 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-

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

§ 13. Any person committed for not finding sureties, or refusing Not recogto recognize as required by the court or magistrate, may be discharg-discharged. ed by any judge or justice of the peace on giving such security as was 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 quired on record, make an affray, or threaten to kill or beat another, or to com- court, sec. 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-ing armed to 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 pethe penalty thereof shall be adjudged forfeited, the court may remit ted. such portion of the penalty on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

§ 18. Any surety in a recognizance to keep the peace or for good Surety may surrender 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-App. 54 pal felon.

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TITLE XII.]

JUSTICES OF THE PEACE.

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

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- al complaint, 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, 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 as in case of for any act of the principal after such surrender, which would be a bail in civil actions. breach of the recognizance; and, upon such surrender, the principal may recognize anew with sufficient surety or sureties for the residue of the term, before any justice of the peace, and shall

thereupon be discharged.

CHAPTER 170.

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

SECT. 1. Justices may require aid, on view, |SECT. 6. Duty of justices, as to arrests, and examinations into treasons, felonwithout 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,
- ies, &c.
 - 7. Trial and sentence within their jurisdiction.
 - 8. Respondent may appeal; but required to recognize.
 - 9. To carry up copies of the case.

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after commit-

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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.

this state, and especially towards the person requiring such security, TITLE XXXI. For such term on the manifestate and person requiring such security, CHAPTER 169. for such term as the magistrate may order, not exceeding one year, but shall not be bound over to the next court, unless he is also charged with some other offence, for which he ought by law to be held to answer at such court.

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

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

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

SEC. S. When no order respecting the costs is made by the magis- Payment of cost trate, they shall be allowed and paid in the same manner as costs be- in other cases. fore justices in criminal prosecutions; but in all cases where a person is required to give security to keep the peace, the court or magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed, 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 affirm the order of the justice, affirm the order of the justice or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient pellant, &c. sureties, in such sum, and for such time, not exceeding one year, as the court shall think proper, and may also make such order in relation to the costs of prosecution, as may be deemed just.

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

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

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

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be transmitted to

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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

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Prevention of Crimes.

TITLE III.

OF PROCEEDINGS IN CRIMINAL CASES.

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

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

CIIAP. XIV.

OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

SECTION

- 1. Officers authorized to keep the 12. Recognizance, when to remain in peace. force. 2. Complaint, how made. 13. Persons committed for not recog-3. Arrest. nizing, how discharged. 4. Trial. Recognizance to keep the 14. Recognizances to be transmitted peace. to court. 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. 7. Complainant when to pay costs.
- 8. Payment of costs in other cases.

9. Appeal allowed.

SECTION

10. On appeal, witnesses to recognize.

11. Proceedings on appeal.

- 16. Persons who go armed may be required to find surctics of the peace, &c.
- 17. Persons not of good fame to give surcty for good behaviour.

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

2. Whenever complaint shall be made to any such magistrate that Complaint how there is good cause for fear that any person intends to commit an of made. 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 issuc a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate having jurisdiction of the cause.

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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.

Appeal against

On appeal, witnesses to recognize.

Proceedings on appeal.

Costs.

Recognizance to be valid unless appeal prosecu-

Persons commitnizing, how dis-charged.

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 surctics, 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 held to answer at such court.

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

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.

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

> 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 surctics, 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 ofcord, 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 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, surveites, or violence to his person, or to his family or property, he may be required to find surcties for keeping the peace for a term not exceeding twelve months, with the right of appealing as before provided. Appeal allowed.

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

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OF ARREST AND COMMITMENT.

SECTION

1. Officers empowered to act.

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

SECTION

- 17. When prisoner to be discharged.
- 18. When to be bailed or committed.
- 19. If party entitled to examination, &c.
- 20. If not so entitled, and triable on indictment, &c.
- 21. If party charged be free negro, &c.
- 22. Duty of magistrate, &c.
- 23. Witnesses to recognize.
- 24. Witnesses, when to recognize with 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.
- 33. (Proceedings on forfeited recogni-34. (zances.
- 35.]
 36. Right of surcty to surronder 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-

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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.

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OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

SECTION	SECTION .
1. What officers to cause public peace to be	3. Magistrate when to issue warrant.
kept.	4. Proceedings upon examination, before mag
2. Proceedings when complaint is made to	istrate.
magistrate.	5. Defendant may have counsel.

magistrate.

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When person charged to give re-

cognizance.

When to be committed.

Forfeiture of recognizance.

When discharged.

May be delivered on warrant of executive, &c.

Complainant liable for costs, &c.

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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 pald.
- 11. Appeal when allowed.
- 12. When magistrate may require witnesses to recognize.
- 13. District court how to proceed upon such appeal.
- 14. When appellant fails to prosecute appeal, recognizance to be in force.

- SECTION
- 15. After commitment, how defendant may be discharged.

16. Recognizance to be transmitted to district court.

17. When person may be ordered to recognize without warrant.

18. Persons carrying offensive weapons, how punished.

19. Suit brought on recognizance.

20. Surely may take and surrender principal in recognizance.

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

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.

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

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

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

SEC. 6. If upon examination it shall appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be required to enter into a recognizance and with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of this territory, and especially towards the persons requiring such security, for such term as the magistrate shall order, not exceeding six months; but he shall not be ordered to 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 Defendant when to cause to fear that any such offence will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall

What officers to cause public peace to be kept.

Proceedings when complaint is made to magistrate.

Magistrate when to issue warrant.

Proceedings upon examination before magistrate.

Defendant may have counsel.

Defendant when to enter into recognizance.

Defendant when to be discharged.

Defendant when to be committed.

be discharged,

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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. 10. When no order respecting the costs is made by the mag-

Costs by whom paid

istrate, 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.

The court before which such appeal is prosecuted, may SEC. 13. 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.

If any party appealing, shall fail to prosecute his appeal, SEC. 14. 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 falls 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.

Sult brought on recognizarice.

OF ARRESTS.

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

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

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OF ARRESTS.

SECTION

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1. Arrest defined.

under authority.

rest.

rest.

warrant.

2. Arrest how and by whom made.

6. Defendant how to be restrained.

8. Officer may use necessary force.

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.

7. Officer must inform dafendant that he acts

9. Officer may break outer door to make ar-

10. Officer may break outer door to make ar-

11. When officer may arrest person without

14. Officer must inform person of the cause of arrest.

12. Officer may break open door.

15. Person breaking peace to be taken before justice.

13. Arrest may be made at night.

16. Offettces 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 war- Every person must 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.

Arrest how and by whom made.

ald officer in making arrest.

misdemeanor how made.

Arrest for felony or misdemeanor how made.

Defendant how to be restrained.

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CHAPTER XVI.

PROCEEDINGS TO PREVENT COMMISSION OF CRIMES.

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

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

Keeping the peace.

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

When sure-

SEC. 2. Whenever complaint shall be made to any such magisthes may be trate, that any person has threatened to commit an offence against $\frac{Wen}{R}$ do $\frac{89}{R}$ to $\frac{89$ complainant, and any witness who may be produced on oath, and reduce such complaint to writing, and cause the same to be subscribed by the complainant.

Warrant to issue.

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

Examination

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

SEC. 5. After the testimony to support the prosecution, the wit-Privilege of defendant. 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.

Recognizwhen апсе required.

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

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

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

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

SEC. 9. When no order respecting the costs is made by the 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 taken, shall require such witnesses as he may deem necessary to cognize. support the complaint, to recognize for their appearance at the court to which appeal is made.

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

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- matted.

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

Recognizan-SEC. 15. Every recognizance taken in pursuance of the forebe trans- going provisions, shall be transmitted by the magistrate to the dis-mitted. trict court for the county, on or before the first day of the next term, and shall be there filed of record by the clerk.

Order to re-Cognize 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 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 misdemeanor, when may be made.
- 5. As to what constitutes arrest.

6. Officer may pursue fugitive into other counties.

7. When an officer or private person may arrest without warrant.

8. Arrest, how made in such case.

9. Escape and capture of prisoner.

Arrest.

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

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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.
- 14. 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.
- 17. 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.

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SECTION

CORONERS' INQUESTS.

- 24. Coroners' inquests; when to be held.
- 25. Coroner to issue a warrant to constable to summon jury. Form of warrant.
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- 27. Jurors; how empanneled and sworn.
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- 29. Oath of witnesses.
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SECTION

- Coroner; duty in case of felonious killing, &c.
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- 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

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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

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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

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

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

SEARCH WARRANTS.

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

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

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

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

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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. Subponas. Expenses.
 Escapes into another county.
 Backing warrants. Bail. Removal.

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

B. INDICTMENTS AND PLEADINGS.

10. Grand jurors authorized to administer oaths.

11. Form of indictments. Formal objections to indictment to be made before the jury is sworn. Amendments on demurrer, &c.

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

13. Immaterial variances between indictment and proof amendable.

- 14. Manner of laying the ownership of property in cases of partners and joint owners.
- 15. Manner of charging frauds against partners and joint owners.

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

Forms of indictment in cases of forging, stealing and embezzling, or cheating by false pretences.
 Forms in other cases.

- 19. Intent to defraud particular persons need not be alleged or proven in cases of forging, uttering or false pretences. 20. In indictments for murder and manslaughter, means by

- which the injury was inflicted need not be specified. 21. Requisites of an indictment for perjury. 22. Requisites of an indictment for subornation of perjury. 23. Indictment for duelling.
- Counts for receiving and stealing may be joined.
 Issue and trial in criminal cases.

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 Prosecutor's name to be indorsed on the indictment.
 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.

34. Persons under bail not to be placed in the criminal bar.

35. Persons indicted for treason to have a copy of the indictment

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

40. Of the trial of persons jointly indicted, and joint cnallenges.

- 41. How tales may be awarded and juries summoned.

- 42. Of juries de medietate linguæ.
 43. Of the place of trial of treason.
 44. Of the place of trial of accessories before the fact.
- Of the place of trial of accessories after the fact.
 Of felonious striking or poisoning in one couoty, and death in another
- 47. Of felonious striking or poisoning in the state, and death out 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

offeree 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.
- 58. Written opinions to be filed.
- 59. 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 offenders.

F. GENERAL PROVISIONS.

- 66. Insane prisoners. Jury to find the fact of insanity. De-feudant to be detained in custody.
- 67. Where defendant is found insane upon arraignment. 68. Where prisoner 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.
- 74. Sentences of separate or solitary confinement.
- 75. Sentences of separate or solitary confinement of less than one year, and simple imprisonment.
 76. Executions in capital cases.
- 77. 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 arrest, &c. delivery, of the courts of quarter sessions, or any of them, shall and may direct their writs and precepts to the sheriffs and coroners of the several counties within this commonwealth, when need shall be, to take persons indicted for felonies, or other offences, before them, who may dwell, remove or be received into another county; and it shall Subpœnas. 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.

system by the 13th section of the act of 22d April 1794, 3 Sm. 76 S. & R. 289. 11 S. & R. 345. Bright R. 69. 13 S. & R. 426. 190; it will also be found in the punishments proved Q y the act of 23d April 1829, 10 Sm. 430. Report on the Penal Code 38. (a) Discrete the section of the section of the section explains the meanings of general terms which have been used for the sake of brevity. Report on the Penal Code 39.

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

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

Penal Code 39.

36. Peremptory challenges.

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penalties as other writs or subpoenas are or ought by law to be granted and awarded; and that it shall be lawful for said judges, or any of them, if they see fit to direct such writ, precept, summons, 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. 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 war alderman of any city, or justice of the peace of any county in this commonwealth, 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 warrants to 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
	2. Act 31	March	1860. 6 2. P.	L. 429.		3. Ibid	1. 5 3.		4. Ibid. § 4.		5. 11	bid. § 5.	or property

(a) This section is composed of the 8th section of the act of 22d May 1722. 1 Sm. 138; of the 14th section of the act of 23d September 1791, 3 Sm. 43; and of the 2d section of the act of 25th April 1846, P. L. 406. It is not proposed to repeal all the 8th section of the act of 1722, because part of it equally applies to civil as well as criminal proceedings. Report on the Penal Code 39. The county is not liable for the expenses incurred in an unsuccessful attempt to arrest a fugitive from justice, who has taken refuge in another state. 8 C. 540.
(b) This does not extend to misdemeanor; a fugitive charged with having committed a misdemeanor in another county can 22d May 1722. 1 Sm. 138; of the 14th section of the act of 23d
September 1791, 3 Sm. 43; and of the 2d section of the act of 25th April 1846, P. L. 406. It is not proposed to repeal all the 3th section of the act of 1722, because part of it equally applies to civil as well as criminal proceedings. Report on the Penal Code 39. The county is not liable for the expenses incurred in an unsuccessful attempt to arrest a fugitive from justice, who has taken refuge in another state. 8 C. 540.
(b) This does not extend to misdemennors; a fugitive charged with having committed a misdemeanor in another county can
Grant 218.
(c) This section is taken from the 3d section of the act of 4th of April 1807, 4 Sm. 393. Report on the Penal Code 39.
(d) A warrant issued by a justice of the peace in one county, charging a misdemeanor to have been committed in the county whence the warrant issued, will not justify the detention of the offender in the jail of the county where the warrant was indorsed. Grant 218.
(e) This does not extend to misdemeanors; a fugitive charged with having committed a misdemeanor in another county can

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

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cause, supported by oath or affirmation, to suspect that other goods, which may be discovered on such search, are stolen, it shall and may be lawful for the said magistrate to direct the said goods to be seized, and to secure the same in his own custody, unless the person in whose possession the same were found shall give sufficient surety to produce the same at the time of his or her trial. And the said magistrate shall forthwith cause

an inventory to be taken of the said goods, and shall file the same with the clerk of that court in which the accused person is intended to be prosecuted, and shall give public notice in the newspapers, or otherwise by advertising the same in three or more public

places in the city or county where the offence is charged to have been committed, before

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

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

Inventory.

Notice.

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

When to be delivered to county commissioners.

Disposition of proceeds.

Surety of the peace.

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 the original inventory. But if, upon an attainder of burglary or robbery, the court shall, after due inquiry, be of opinion that the said goods were not the property of such burglar or robber, they shall be delivered, together with a certified copy of the said inventory, to the commissioners of the county, who shall indorse a receipt therefor on the original inventory, register the said inventory in a book, and also cause the same to be publicly advertised, giving notice to all persons claiming the said goods to prove their property therein to the said commissioners; and unless such proof shall be made within three months from the date of such advertisement, the said goods shall be publicly sold, and the net moneys arising from such sale shall be paid into the county treasury for the use of the commonwealth: Provided always, That if any claimant shall appear within one year, and prove his or her property in the said goods to the satisfaction of the commissioners, or in the case of dispute, shall obtain the verdict of a jury in favor of such claim, the said claimant shall be entitled to recover, and receive from the said commissioners, or treasurer, the net amount of the moneys paid as aforesaid into the hands of the said commissioners, or by them paid into the treasury of this commonwealth (a)6. If any person shall threaten the person of another to wound, kill or destroy him, or to do him any harm in person or estate, (b) and the person threatened shall 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

Bail.

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

family, person or property, he may, on complaint of any person having reasonable cause to fear a breach of the peace therefrom, be required to find surety of the peace as afore-

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

the next term of the court. 2 P. 458 (d) Surety for good behavior may be ordered by the court, A recognise after the acquittal of a prisoner, in such sum, and for such is coram re-length of time, as the public safety requires. 2 Y. 437, Appr. 763. 316.

7. Ibid. § 7.

839. 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 observation. Report on the Penal Code 39.
(g) A justice may take bail after commitment for trial. 6 W & S. 314. 2 P. 458. And see 7 W. 454. 5 B. 512. 1 Sm. 57. n A recognisance taken by a justice to answer the charge f areat is coram non judice, and void. Com. v. Philips, 2 U S. Law Takag. 316.

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

8. All sureties, mainpernors, and bail in criminal cases, whether bound in recogni- surrences of sances for a particular matter or for all charges whatsoever, shall be entitled to have a built. 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. Thid. § 10.

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

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11. Ibid. § 11.

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Variances between written instruments and laid in indictment

Immaterial variances hetween indictment and proof amendable.

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 as produced 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 amendable. 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 aying the the case of partners and joint owners, in any indictment for any felony or misdemeanor committed on or with respect to any money, chattels, bond, bill, note or other valuable secases 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 such offence shall have been committed, to be the property of some one or more of the partners or joint owners named in the indictment, and of other persons being partners or joint owners with him or them, without stating any of the names of such other persons; and in any indictment for any felony or misdemeanor, committed on or with respect to any house or building whatsoever, belonging to or in the possession of any partners or joint owners, or for any felony or misdemeanor committed on or with

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

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 hercafter 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 neared described end there for the sections. instrument and names described, and those offered in proof. These sections strike at the root of the evil sought to be eradicated, by giving the pleader the option to prepare his indictment In such a way as to avoid, altogether, such difficulties; which can be done with ordinary care and caution. The 19th section can be done with ordinary care and caution. The 19th section contemplates avoiding the necessity of specifically describing the parties intended to be defrauded, and the embarrassing the proofs, in any case, with a question not really material to the issue. In forgeries, uttering and passing forged money, and in cheating by false pretences (the crimes contemplated by the section), the gist of the offence is, that the act charged was committed with an intent to defraud; an indictment 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 accussd.

13. Ibid. § 13.

14. Tbid. 5 14.

death had not been truly stated, and the prisoner was dis-charged. So in Rex v. Martin, 5 C. & P. 128. where the indict-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 occasioned by a fall against the lock or key of a door, produced by the act of the defendant, the indictment was not sufficient. In Rex v. Hughes, 5 C. & P. 126, decided in 1832, the prisover In Rex v. Hugnes, 5 C. & P. 120, decided in 1852, 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 rankned tight might have produced the effect without any if raimed tight, might have produced the effect without any ball; in this state of the evidence, the court ruled, that the indictment was not sufficiently proved, and the defendant was acquitted. It is true, that the courts have drawn a distinction, which rendered their rulings in indictments for homicide, as to the manner and cause of the death, more reconcilable with reason, to wit: that where the instrument laid in the indict-ment, and the instrument proved, are of the same nature and abarnets there there is no result of the wound is observed to to be defrauded; a mistake in whom would acquit the accused, although the jury should be convinced that he had forged or uttered false money, or had been guilty of cheating by false pretences, with intent to defraud. The 20th section, providing for indictments for murder and manslaughter, from the nature and consequences of these offences, require that a somewhat detailed explanation of the reasons which have led to their infroduction should be given. By the common law, in an indictment for murder, it is essentially necessary to set forth particularly, the manner of the killing, and the means by which it was effected; if a person be indicted for one species of a different species of death, as by shooting, starving or strangling. A few cases will serve to illustrate how far this 113, decided in 1825, the indictment charged that the prisoner strack the decensed with a piece of briek, and it appeared pro-bable that the prisoner had not struck with the fall on the brick was the sause of the death; it was unanimously held by the twelve judges of England, on a case reserved, that the cause of App. 78

Manuer of property in ners and joint owners.

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

15. With regard to frauds committed against partners and joint owners, it shall be Manner of sufficient in any indictment for any felony or misdemeanor committed with intent to charging defraud any partners or joint owners, to allege that the act was committed with intent frauds 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.

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, ctrials or things whatsoever, which have been or at any time shall be provided for or at ties, townthe 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 partiany 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 pronecessary to prove any intent on the part of the defendant to defraud any particular tain cases. person, but it shall be sufficient to prove that the defendant did the act charged with an intent to defraud.

20. In any indictment for murder or manslaughter, it shall not be necessary to set Indictments forth the manner in which, or the means by which the death of the deceased was caused, for murder 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 and it shall be sufficient in every indictment for manslaughter, to charge that the defendant and it shall be sufficient in every indictment for manslaughter, to charge that the defendant and it 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, it on 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 duellingeither of the principals for challenging another to fight at deadly weapons, and notwithstanding it may appear on the trial that the defendant only accepted the challenge, it shall be sufficient to convict and render him liable to the penalties of the law; and in like manner an indictment against the seconds may be framed generally, for carrying and delivering a challenge, and proof of the mere act of fighting, and the defendant being present thereat, shall be sufficient to convict the defendant apon 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 "in all criminal prosecutions, the accused shall have a right to be informed of the nature and cause of the accusation of the accusat

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may be joined.

Issue and trial in criminal cases.

Prisoners standing mute.

Prosecutor's name to be indorsed on Indictment.

Distinct acts of embezzle the employ of another, to charge in the indictment, and proceed against an offender for ment may be any distinct acts of embezzlement, not exceeding three, which may have beeu committed charged in enme indict by him against the same master or employer, within the space of six calendar months, ment. from the first to the last of such acts, and in every such indictment, except where the

Nolle prosequi.

party delivering the same, and such part shall have been returned accordingly.(g) 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)

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

24. Act 31 March 1860, § 24. P. L. 436. 26. Ibid. 5 25. Ibid. § 25. 27 Ibid. 5		Ibid. § 28. 30. Ibid. § 29.	. Ibid. § 30.
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(a) This section is new, and is intended to remedy difficulthes arising from the common haw doctrines in relation to the joinder of offences and joint offenders. At common law, a felony and a misdemeanor, such as burglary and receiving stolen goods, could not be regularly joined; in larceny, counts for receiving were sometimes added, but the practice was 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 erroneous. In Pennsylvania, the uniform practice has been to unite counts for larceny and receiving but in po other kind of following taking becomes The uniform practice has been to unife counts for largeny and receiving, but in no other kind of felonious taking has such joinder been permitted. So, at common law, if two persons are charged with jointly receiving stolen goods, a joint act of 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-ous taking, and authorizes the conviction of one or more of several persons, jointly indiced, for felonious taking or receivbus 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.

port 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 Sin. 40. Report on the Penal Code 44. (e) This section is taken from one of the clauses of the act of 1705. 1 Sm. 56. The old law has been so amended as to enable the court to determine the question, in any case, whether there is such a prosecutor, and who he is, and if any. to order his name to be indorsed on the indictment. Report on the Penal Code 44. If there be no proof of a prosecutor, the 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 (it. "Crimes" 107), against such embezzlement by clerks, servants and other persons in the employ of others by clerks, servants and other persons in the employ of others Report on the Penal Code 44. (*i*) This section is taken from the proviso to the 1st section

of the act of 3d May 1800, P. L. 664. Report on the Penal Code 44. See tit. "District Attorneys," 10, note α. (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

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 receiving, any indictment for feloniously receiving 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) 25. In all cases of felony the prisoner shall be arraigned, and where any person on

> 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

> 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

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 whatsoever, unless the prosecutor's name, if any there be, is indorsed thereon ; and if no person shall avow himself the prosecutor, the court may hear witnesses, and determine whether there is such a private prosecutor, and if they shall be of opinion that there is such a prosecutor, then direct his name to be indorsed on such indictment. (e)

28. It shall be lawful in cases of embezzlement by clerks, servants or other persons in

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

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C. COURTS OF CRIMINAL JURISDICTION.

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

I. To inquire by the oaths and affirmations of good and lawful men of the county, of all over and tar crimes committed, or triable in such county.

II. To hear, determine and punish the same, and to deliver the jails of such county of all prisoners therein, according to law.

III. To try indictments found in the quarter sessions, and certified by the said court according to law; and the said courts shall have exclusive jurisdiction and power to try and punish all persons charged with any of the crimes herein enumerated, which shall be committed within the respective county, to wit:

(1.) All persons charged with any murder or manslaughter, or other homicide, and all persons charged with being accessory to any such crime. (2.) All persons charged with treason against the commonwealth.

(3.) All persons charged with sodomy, buggery, rape or robbery, their counsellors, aiders and abettors.

(4.) All persons charged with the crime of voluntarily and maliciously burning any building, or other thing, made punishable in the same manner as arson. (b

(5.) All persons charged with 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 cr 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 causes or offence not triable therein, it shall be the duty of said court to certify the same into to be certified or offence not triable therein, it shall be the duty of said court to certify the same into the over 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. ner.

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.

left unrepealed, to introduce them here, in order to render these bills a complete consolidation of our statute laws relating to crimes, punishments and criminal procedure. As questions of jurisdiction frequently present themselves in criminal courts,

(7) 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 rimes purplets and extended to the Penal Code 41 Code 44.

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

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discretion they shall judge necessary or proper: Provided, That such rules shall not be inconsistent with the constitution and laws of this commonwealth; each of the said courts is empowered to issue writs of subpoena, under their official seal, into any county of this commonwealth, to summon and bring before the respective court any person to give testimony in any cause or matter depending before them, under the penalties hitherto appointed and allowed, in any such case, by the laws of this commonwealth.

Writs of error and certiorari.

33. Every person indicted in any court of quarter sessions, or in any county court of oyer and terminer and general jail delivery, may remove the indictment, and all proceedings thereon, or a transcript thereof, into the supreme court by a writ of certiorari, or a writ of error, as the case may require: Provided, That no such writ of certiorari, or writ of error shall issue, or be available, to remove the said indictment and proceeding thereupon, or a transcript thereof, or to stay execution of the judgment thereupon rendered, unless the same shall be specially allowed(a) by the supreme court, or one of the justices thereof, upon sufficient cause to it or him shown, (b) or shall have been sued out, with the consent of the attorney-general; which special allowance or consent shall be in writing, and certified on the said writ.(c)

34. No person who may hereafter be arraigned on any indictment, and who shall be

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

36. On the trial of any indictment for treason or misprision of treason, murder, man-

malicious maining and arson, the accused shall be at liberty to challenge, peremptorily, twenty of the jurors, and on the trial of all other indictments the accused shall be at

D. OF THE TRIAL.

Persons under bail not bound by recognisance to appear and abide by the judgment of the court, shall be placed 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)

Persons inlist of the jury and the witnesses to be produced on the trial for proving such indictment, dicted for treason to have copy of mentioning the names and places of abode of such jurors and witnesses, delivered to

challenges. slaughter, concealing the death of a bastard child, rape, robbery, burglary, sodomy,

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 Challenges by the commonwealth. of the said cases, shall be entirely void, and the trial of such person shall proceed as if

How challenges are to commonwealth shall challenge one person, and then the defendant shall challenge one be conducted.

How to be determined.

Trial of perjoint challenges.

39. When a challenge for a cause assigned shall be made in any criminal proceeding, the truth of such cause shall be inquired of and determined by the court. (k)40. In all cases in which two or more persons are jointly indicted for any offence, it sous 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 trials; (l) and in all cases of joint trials, the accused shall have the right to the same

38. All challenges in criminal proceedings shall be conducted as follows, to wit: the

person, and so alternately, until all the challenges shall be made; but if the common-

wealth shall refuse to make any challenge, the defendant shall, nevertheless, have the

33. Act 51 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. § 40.

no such challenge had been made.

(a) A writ of error issued without a special allocatur will be quashed. 2 S. & R. 453. 2 Wh. 113. So. also, if the allocatur be obtained before sentence. 16 S. & R. 319.
(b) It is never granted on mere technical matters, not going to the merits. 2 Barr 244. 3 S. & R. 199. 3 Y. 39. 6 B. 403. 4 B. 424. 1 Wh. 525. There must be strong ground to believe that if the case be not removed, some important principle of the aver will be aviolated. 4 Bits law, or the plain justice of the case, will be violated. 4 Pitts-burgh Leg. J. 668.

Iaw, or the plain justice of the case, will be violated. 4 Fitts-burgh Leg. J. 668.
(c) This section is taken from the 7th section of the act of 13th April 1791, 3 Sm. 30; and the 9th section of the act of 16th June 1836, P. L. 787. Report on the Penal Code 44.
(d) This section is taken from the act of 28th March 1808, 4 Sm. 529. Report on the Penal Code 45.
(e) The caption is a portion of the indictment, and a copy of it must be furnished to the prisoner. 2 D. 342.
(g) The word "trial" here means the trying of the cause by the jury, and not the arraignment and pleading preparatory to such trial by the jury. 4 Mas. 232. This section is taken from the 29th section of the act of congress of 30th April 1790.
Brightly's U. S. Dig. 221.
(h) The 36th, 37th, 38th and 39th sections of the act to 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 1831, the commonwealth is interdicted from challenging, with-1834, the commonwealth is interdicted from challenging, without 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, murder, man-slaughter, concealing the death of a ba-tard child, rape, App 782 Paine man, and would as lief swear on a spelling book as bery, burglary, sodony, malicious maining and arson; arther of 822 Elibe." 11 II. 12. slaughter, concealing the death of a bastard child, rape. a'l other felonies and misdemeanors, is allowed the same num-

ber of challenges as the defendant, to wit: four. The object of thus extending to the commonwealth the right of challeng-ing, in the minor felonies, the same number of jurors as the defendant, arises from the fact, that by the present code a large number of offences, which were misdemeanors at common law, are now made felonies; hence, the excluding of the common-wealth from the right of challenge in any felony, is almost totally to deprive her of the right of challenge. In the prac-tical administration of criminal justice, the right of the com-monwealth to challenge four jurors peremptorly, is of the deepest importance; it is not an uncommon thing to find in a panel of jurors, one or more persons pledged to the defendant by personal or social sympathies, or influenced in his favor by worse motives; the right to peremptorly challenge four jurors, is the security of the public against such contingencies. The 39th section of the present act assigns to the court the authority of determining upon the truth and sufficiency of challenges for cause. Report on the Penal Code 45. ber of challenges as the defendant, to wit: four. The object

cause. Report on the Penal Code 45. (i) This provision is not in conflict with the clause in the constitution, which provides "that trial by jury shall be as heretofore, and the right thereof shall remain inviolate." 1 Wr. 45

(k) The power to challenge for cause may be exercised at any time before the oath is tendered to the jury. 11 H. 12. It is good cause of challenge that the juror has conscientious scruples 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. I Crauch C. C. 452. Or that the juror has been supponed as a witness by the prisoner. 7 W. 585. Or that he is a tenaut of one of the parties. 8 W. 304. Or that he had grossly misbehaved bimself on a former occasion, declating that he had tried to acquit any one the judge desired to have consisted; and that he was "a

(1) See 1? C. 305

indictment. him three whole days before the trial.(g)Peremptory

liberty to challenge, peremptorily, four of the jurors.(h)

right to challenge the full number allowed him by law.

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 awarded 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 of juries de

linguæ, or partly of strangers.(e) nedietate

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

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 accesso same be a felony at common law, or by virtue of any act of assembly now in force, or ries after the that may be hereafter in force, he may be indicted and convicted as an accessory after the fact, to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether

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

43. 1bid. 9 43. 44. Ibid. § 44.

45. Ibid. § 45.

(a) This section is new, and is introduced to settle a question (d) 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 embarrassments from defect of jurors, resulting from the exercise of this right by numerous defordances in indiced led the courts at a very early period. tory chillenge to the aggregate of the numbers to which they are respectively entitled. The embarransments 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, acainst 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 insisting that they possess such a right; others contending that such severance is a matter of sound discretion, to be exercised by the court, with that due regard and 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 trials, 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. (b) The court may direct a special venire to issue to two dif-zens, instead of the sheriff or coroner, whenever in their opi-nion, the nature of the case requires it. 15 Leg. Int. 325. (c) It is an irregularity to call talesmen, unless it appear of raced hy the verdict, under the 53d section. 10 H. 94. (d) This section is a summary of the 144th, 145th, 146th, 147th and 145th sections o

Code 46.

(c) This section is taken from the 149th section of the act of 14th April 1834. P. L. 368; which has also been left unrepealed for the same reason. Report on the Penal Code 46.
(c) This section is new, and necessary in the event of trials of treason against the state hereafter taking place. Report on the Penal Code 46.
(d) The prioricit of this section which presentes the same reason.

the Panal Code 46. (h) The principle of this section, which prescribes the same punishment against ar essories before the fact in felony, under the various synonymes of aiders, abettors, counsellors, com-farters, &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, and 5th sections 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 pull 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 the 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 culled 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 harbor-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 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, 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 1791, 3 Sm. 41, it was provided "in all cases of felonies of death, robbery and burglary, it shall be lawful to punish receivers of such felons, robbers and burglars, by a fine and imprisonment, although the principal felons, robbers and burglars cannot be taken, so as to be prosecuted and tried for said offences; which conviction and sentence of said receivers shall exempt them from builty proceeded as after the fact in case the

taken, so as to be prosecuted and their for said offences; which conviction and sentence of said receivers shall exempt them from being prosecuted as accessories after the fact in cuse 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 net 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, 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 feloniously stolen, may be pro-secuted, although the principal be not before convicted, nud whother he is amenable to justice or not. It will thus be seen, that all our legislation with regard to the toil of convergence to falouis by four the conviction of their

Noticed attributed to principal the born of the conviction of their whother he is a menable to justice or not. It will thus be seen, that all our legislation with regard to the trial of accessories to felonies, before the conviction of their principals, applies only to accessories after the fact, a class of offenders who have had no primary connection with the original crime, and whose guilt only consists in having given comfort and succor to the actual offender after its perpetration; except in cases of receivers of stolen goods, this offence is often almost venial, consisting frequently in parents and friends, influenced by the ties of blood, or the impulses of affertion, giving aid and comfort 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 nuch greater, than that of the principal. The 45th section proposes putting our statate laws on the subject of accessories to felonies in harmony with justice and reason. Report on the Penal Code 46-8.

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

Felonious striking or poisoning in one county. another.

46. If any person hereafter shall be feloniously stricken, poisoned or receive other cause of death in one county, and die of the same stroke, poisoning or other cause of death in another county, then an indictment found therefor by jurors of the county 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 poisoning in death which the jurisdiction of this state, and sharf die of such stroke, poisoning of other 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 the boundaries of counties, in any indictment for felony or misdemeanor committed on county lines, the boundary or boundaries of two or more counties, or within the distance of five hundred yards of any such boundary or boundaries, it shall be sufficient to allege that such felony or misdemeanor was committed in any of the said counties; and every such felony or misdemeanor shall and may be inquired of, tried, determined and punished in the county within which the same shall be so alleged to have been committed, in the same manner as if it had been actually committed therein.(d)

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

46. Act 31 March 1860, § 46. P. L. 441.

47. Ibid. § 47. 48. Ibid. § 48.

(a) This section is only an extension of the existing laws, which, as will be seen from the preceding remarks, subjected accessories after the fact, and receivers, to punishment before the conviction or attainder of their principals. It embraces such accessories not only in common law felonies, but those created, or which hereafter may be created, by statute; it authorizes the conviction of such offenders either with or after the conviction of the principals or for a substantive offence. atthorizes 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 previ-ously convicted, or shall or shall not be amenable to justice. It also provides for the case of a party becoming an accessory after the fact in one county to a felony committed in another; giving jurisdiction over the crime of such accessory to the courts of the county having jurisdiction over the crime of the principal offender. This provision supplies the 22d and 23d sections of the act of 1718, 1 Sm. 119, made, probably, to meet a doubt at common law, whether an accessory in one county to a felony in another, was indictable in either. Report on the Penal Code 48.

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

that in such cases the trial should take place in the county where the death happened. This statute is among those reported by the judges of the Supreme Court, as being in force in Penu-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 item in this section and the next receiving the same dying in

49. Ibid. \$ 49.

(c) In the case of a wound, or other cause of death, being given in this state, and the party receiving the same dying in another state (a thing which might very readily occur, as in the case of duels), by the existing law it is at least doubtful whether a prosecution for homicide could be maintained in either; Hawkins, book 1, chap. 31, §§ 11, 12. If a mortal injury, or poison is given or administered maliciously in the state, and death ensues therefrom out of the state, the act which caused the death, and the malice which influenced the act, the two great essential elements of felonious homicide, have been per 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

(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 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.

Felonious striking or the state.

Proof of offences committed near

Proof of offences com-mitted during journeys.

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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 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 misdethereof 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 follow on the same first to be acquitmisdemeanor 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 inny from giving any variat upon such trial and direct such as the out to be fedischarge the jury from giving any verdict upon such trial, and direct such person to be looy, 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 compe thereof, or if fraudulently obtained, to a pecuniary remuneration or compensation there-tent. 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(e) in any case, shall be a waiver of all errors and defects in, or relative

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

51. Tbid. § 51.

52. Ibid. § 52. 53. Ibid. § 53.

(a) The 50th and 51st sections are new, and intended to facilitate the convlction of offenders, and avoid unuccessary 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 erime; and on the other hand, where the indictment charges an attempt to commit a crime and the proof establishes that although the proofs are perfect of an attempt to commit the crime; and on the other hand, where the indictment charges an attempt to commit a crime, and the proof establishes that the crime has actually been committed, the American courts have generally held that the prisoner must be acquitted, because the misdemeanor charged, is merged in the felony proved. The operation of the first of these doctrines is best exemplified by decided cases. Lord Hale, in his Pleas of the Crown, vol. 1, p. 508, thus recites one of these cases: "A. hath his keys 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 hanged in the pocket of A., whereby A. had still in law the possession of his purse, so that *licd, cpil non asportavit.* So, where a thief went into a shop, took up some goods, intending to steal them, but before he had removed them from the spot on which they lay, discovered they were tied to the counter by a cord; upon being tried for stealing, it was held that the property never was either com-pletely severed from the possession of the owner, nor completely in the possession of the prisoner, and he was acquitted." Sleigh's Criminal Law 29. In regard to the other doctrine sought to be changed by this section, viz.: that a misdemeanor

charged is merged in a felony proved, it has been frequently held in this country that where, on an indictment for an assault, attempt or conspiracy, with intent to commit a felony, it appeared that the felony was actually committed, it was the duty of the court to charge the jury, that the misdemeanor had merged, and that the defendant must be acquitted. Wharton's American Criminal Law $\frac{36}{2}$ 564, 2294. In Eugland, 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.) S29. 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. (b) This section is taken from the act of 29th March 1809, 5 charged is merged in a felony proved, it has been frequently

(b) This section is taken from the act of 29th March 1809, 5 Sm. 48; and the 31st section of the act of 31st May 1718, 1 Sm 123. Report on the Penal Code 51.
(c) See 2 S. & R. 300. 4 P. L. J. 512.
(d) A trial on the merits is a waiver of all irregularities and

(d) A trial on the merits is a waiver of all irregularities and defects in the mode of summoning and returning the jurors. 5 C. 429. After a trial it is too hate to object to mistakes in the process as to the Christian and surname of some of the jurors by whom the verdict was rendered. 10 H. 94. If a person, not on the panel, is called, and permitted to sit, the irregularity is cured by this section. 3 H. 236. But if a stranger answer to the name of one of the panel, and is sworn as a juror. It is a mistrial, and not within the statute. Com. r. 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 Ash. 90.

Ash. 90.

260 Criminal Procedure. Case: 10-56971, 04/30/2015, ID: 9521526, DktEntry: 257, Page 127 of 172 or appertaining to the said precept, venire, drawing, summoning and returning of jurors.(a)

54. If any person shall be committed for treason or felony, or other indictable offence. of the trial 54. If any person shall be committee for the data of the next term, session of over and of prisoners 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.

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)

Witnesses prisoned expt in certain cases.

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)

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

55. Ibid. § 55. 56. Ibid. § 56.

(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

This been involuted in the information of the point of the the source of the thermal procedure. Report on the Penal Cole 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 mismang 2 Y 264.

366. Not where the trial is delayed by the prisoner. 3 X 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 tried. 5 C. 129.

(c) 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 substring and drawing them has is not aprilided to a mality in selecting and drawing them, he is not entitled to a discharge. 5 C. 129.

(g) This section is a transcript of the 3d section of the act of 18th February 1785, 2 Sm. 277. The words, "or other indictable offence," after the word "felony," have been introduced in order to harmonize the language of the law with the actual practice under it. which has been to extend the provisions of the 3d section of the habeas corpus act. not only to commitments for treason or felony, but to commitments for all criminal offences. Ex parte Walton, 2 Wh 501. The only change in the provision of this section is the substitution of the words, "the constitution of the United States," for the words, "the confideration," of the original act. The original section has also been left unrepended, so as to avoid any unnecessary interference with this important law. The commissioners consider its introduction into this act is judicious, composing, as it does, so important an element in our criminal jurisprudence. Report so important an element in our criminal jurisprudence. Report on the Penal Code 51.

(", 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.
(k) A hill of aventions to the administer or potentiate of set.

57. Ibid. § 57

(k) This section is taken from the act of 22d April 1856, P. L. 506. Report on the Penal Code 52.
(h) 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 maslaughter, is not the subject of consideration on a writ of error, although the intervention of the subject of consideration on a writ of error, although the intervention of the subject of consideration of a writ of error. The prisoner must show that a substantial error was committed on the trial, in the admission or rejection of evidence, which he has been injured; it is not sufficient that as the stant of the charge of the other technical error has taken place. 5 C. 429.
(m) The supreme court is limited to a review of the points so the court. Com. v. Jacoby. 6 Pittsburgh Leg. J. 178.
(a) Sections 57 to 61 are taken from the 1st, 2d, 3d, 4th and for sections of the act of 6th November 1856, P. L. 785. The charges made therein, consist in striking out the whole of the provise to the 1st section, and so much of the 4th section sign and that his application for a writ of error is not for the purpose of delay, and to correct the manifest inconsistency in the provise of murder or manslau, ther, making an oah that his application for a writ of error is not for the purpose of delay, and to correct the manifest inconsistency in the provise of the out of murder or voluntary manslaughter, to enter hail to appear and abide the sentence of the out, when by the previous part of the section, uo writ of error can issue until after conviction and sentence. The commissioners believe that the oath demanded will stop few, if any persons convicted of murder or voluntary manslaughter, from the set in the way of a party so situated. Experiments alongs the code in the way of a party so situated. Experiments alongs that ereen in civil proceedings, such oaths have but lifts influence in preventing liftgation; how much less must the proves

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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 mons 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 hang in any district, the application shall be made and cause shown there. regulated. 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 or the defendefendant, and shall determine, by the verdict, that the prosecutor shall pay the $costs(h)^{daut's costs}$. 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 indictiments charging a party rayment of with felony, returned "ignoramus" by the grand jury, shall be paid by the county; and costs genethe costs of prosecution accruing on bills of indictment charging a party with felony, rally. 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.
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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 provise they would be inclined to suppose that the provise was proviso, they would be inclined to suppose that the proviso was one of those amendments hastly 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 proteome for reducting memolymether. It is defined 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 re-marked, the line between murder and voluntary manslaughter is often so nicely characterized that it requires much technical 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 insinuating itself into peual legislation and administration; the reasoning on this subject might be extended, but the commissioners think they have said enough to recommend their proposed modifica-62.
(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 proceeding the section is taken from the penal Code 53.
(c) This section is taken from the act of 9th February 1820, jury have no power over the costs. 6 W. 530. Nor where on proceeding the proceeding the proceeding the proceeding the proceeding the section is taken from the act of 9th February 1820, proceeding the proceeding

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

an indictment for a felony, a count for a misdemeanor is joined. an indictment for a reloady, a count for a misdementor is joined. 2C. 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-secutor. 2 Gr 66. secutor. 2 Gr. 66.

(c) If the jury acquit the defendant, and say nothing as to a costs, the county is not liable. 3 P. R. 365.
(d) This does not include the costs of a former bill, on which

(d) This does not include the costs of a former bill, ou which judgment was arrested. 2 C. 171. (e) No person can be sentenced to pay costs as prosecutor, unless named by the jury. 7 W. 485. But where the grand jury ignored a bill for assault and battery, and directed the person upon whom it was alleged to have been committed, to pay the costs, it was held sufficient, although they omitted to designate him as prosecutor. Com. c Carr. Quarter Sessions, Phila., 23 October 1847. MS. The act does not apply to persons concerned in prosecutions in their official capacity; 2 A m. L. R.

Phila., 23 October 1847. MS. The act does not apply to persons concerned in prosecutions in their official capacity; 2 Am. L. R. 243; 11 Leg. Int. 58; and hence, in a prosecution for keeping a disorderly house, the jury cannot impose the costs on the cou-stable 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 5th December 1804. I Sm. 204; and the act of 12th April 1859. P. L. 528. The only change made in these laws is, that the like privilege of giving security for the payment of costs in ten days is given to lue de-fendant, who, although acquitted, is ordered to pay the costs, as is given to the prosecutor in case he is ordered to pay the costs. Report on the Penal Code 53. (h) If the jury acquit the defendant, and direct the costs of

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

66. In every case in which it shall be given in evidence upon the trial of any person

67. The same proceedings may be had, if any person indicted for an offence shall, upon

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

69. If the kindred or friends of any person who may have been acquitted as aforesaid

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

70. The estate and effects of every such lunatic shall, in all cases, be liable to the

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

friends, or as the case may be, to such guardians, overseers or supervisors.

65. In all cases where two or more persons have committed an indictable offence, the Costs where separate 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.

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 in- specially whether such person was income at the time of the specially 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 petendant 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)Where defendant is arraignment, be found to be a lunatic, by a jury lawfully impannelled for the purpose; found insane or if, upon the trial of any person so indicted, such person shall appear to the jury, upon arraignment. charged with such indictment, to be a lunatic, the court shall direct such finding to be recorded, and may proceed as aforesaid.

Where prisoner brought up to be discharged ap-pears to be insane.

Insane defendant to be on the ground of insanity, or in the default of such, the guardians, overseers or superdelivered to friends, &c. visors of any county, township or place, shall give security in such amount as shall be

How expen ses to be paid county for the reimbursement of all costs and expenses paid by such county in pursuance in such cases.

Civil actions against felons.

Executions titution.

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

72. The imprisonment awarded as part of the punishment of any offender, shall not upon sen-tences of res. 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.
66. Ibid. § 66.	68 Thid \$ 68	70 Ibid § 70.

(a) Sec 10 C. 440.

(a) See 10 C. 440. (b) This includes convictions for drunkenness and vagrancy. 4 C. 173. 5 C. 38. Provided the defendants be sentenced to hard labor, and the commitments follow the sentences as 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 8. & R. 541. Nor where the case is determined by nolle pro-sequi 12 S. & R. 94. 6 H. 493. Or the indictment is quashed. 8 it. 487. But it extends to cuses 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. 49. (c) This does not include costs of an attachment against a

may be had as aforesaid.

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

witness, for contempt. 2 S. & R. 292.

(d) Unless the discharge be a legal one, the county is not liable. 6 P. L. J. 237. (c) This section is a consolidation of the 11th and 15th sec-

71. Ibid. § 71. 72. Ibid. § 72.

(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 Penal Code 54. (h) Sections 66 to 70 are taken from the 58th, 59th, 60th, 61st and 62d sections of the act of 13th June 1836, P. L. 603. Report on the Penal Code 54. (i) This section is new; its object is sufficiently manifest with-

(i) This section is new; its object is sufficiently manifest with-out further explanation Report on the Penal Code 54.

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county, requiring him to levy the sums due upon such recoveries as aforesaid, of the lands and tenements, goods and chattels of such offenders, returnable to the next term or session of the court where such conviction was had, which shall be executed accordingly; (a) and the lands, goods and chattels thereby seized shall be sold and conveyed by the said officers, and such sales shall be as available and effectual in law as any other sales of land taken and sold for the payment of debts, by virtue of writes of execution awarded out of the courts of common pleas in the respective counties (b)

tion awarded out of the courts of common pleas in the respective counties.(b) 73. If any person who hath been, or shall be legally indicted in any court of criminal Outlawry. jurisdiction within this commonwealth, of treason, felony of death, robbery, burglary, sodomy or buggery, or as accessories before the fact to any of the same offences, did not or will not appear to answer to such indictment, or having appeared, shall escape before trial, the same indictment, record and proceedings shall be removed by writ of certiorari Certiorari. into the supreme court of this 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, Advertise to cause public advertisement to be made in one or more of the public newspapers of ment. this state, once a week, in six succeeding weeks, between the teste and return of the said second writ of 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 direc-tions 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,

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Sentence.

lawry.

How execution to be awarded.

When outlawry may be reversed.

Costs.

Scatences of separate or solitary confinement.

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 pro-vided 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)75. No person shall be sentenced to imprisonment at labor, by separate or solitary

Sentences of year, and

less than one confinement, for a period of time less than one year, except in the counties where, in the simple im 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 skilfully and ably drawn, as to require no amendment of importance. Although proceedings in onlawry 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.

This section also provides that in all cases where the seutence 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 offender is convicted. 2. That no person shall be sentenced a 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-(c) Whilst the 74th and 75th sections, except the proviso to the 74th section, are new in form, no material alteration is that sentences of imprisonment at labor by separate or solitary confinement, where the renter convicts of a like description are authorized to be imprisoned, in the state penitentiary of the proper district, or in such county prisons as are now, or may hereafter be author by separate or solitary confinement for a less period of time than one year, shall be included to the counties in whose prisoned, and in those counties, such convicts may be sent to the county prisons as are now, or may hereafter be author in such county prisons as are now, or may hereafter be author by separate or solitary confinement for a less period of time than one year, shall be in the state penitentiary of the proper district, or in such county prisons as are now, or may hereafter be author section prohibits sentences of imprisonment at labor by separate or solitary confinement for a less period of time than one year, shall hereafter be erected for such confinement and APP.

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 afore-Accessories. said; the said supreme court to pronounce the judgment of outlawry against the principal offender, previously to the declaration of outlawry against the accessory, against whom, in all other respects, it shall be lawful to carry on the proceedings together, and at the same time the said supreme court shall declare the legal punishment for the same crime; and wherever imprisonment shall be a part of the sentence for any of the said offences, the term thereof shall commence from the time the person outlawed shall, subsequent to his outlawry, actually be in the custody of the sheriff of the county where the offence was or shall be committed, which sentence shall be fully and particularly entered upon the records of the said supreme court; and the said sentence of outlawry 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 (α) 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

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

76. Whenever, hereafter, any person shall be condemned to suffer death by hanging, Exceution 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 for the use of the respective counties in which such fines shall have been imposed as state, for the aforesaid, as is now directed by law.(e)use of the county.

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

77. Ibid. § 77.

78. Ibid. 5 78.

will a former indictment, on which a nolle prosequi was entered.
3 McLean, 469.
(c) The limitation need not be specially pleaded; it may be taken advantage of on the general issue. 4 C. 259. See 3 Cranch C. C. 442. 5 Cranch C. C. 38, 60, 368.
(d) This section considerably extends the existing laws relating to the limitation of criminal prosecutions; these only relate to misdemeanors, in all of which, prosecutions must be commenced within two years; if the alleged offender is accessible to justice, except in forgeries, perjuries and misdemeanors by bank officers, the limitations in the latter cases being six years; the present section extends the principle to all crimes, murder and 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 of the accuser, and the accused heart in a costs of merel element 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. I Cranch C. C. 485. Nor will a former indictment, on which a nolle prosequi was entered. looked upon with an unfavorable eye by courts and juries, but the very existence of this feeling in criminal tribunals is a strong argument in itself in favor of reasonable limitations in criminal prosecutions. In the more serious class of felonies and misdemennors, the limitation has been extended to five years; in those of less malignity, the limitation of two years has been adopted. The existing laws on this subject are the lst section of the act of 10th April 1848, P. L. 428; the 7th section of the act of 16th April 1849, P. L. 664; the 36th section of the act of 25th April 1850, P. L. 575; the act of 10th March 1852, P. L 124; and the act of 24th April 1857, P. L. 305. The act of 1852, which provides for a general limitation of two years in all cases of misdemeanors, forgeries and perjuries excepted, may be regarded as having repealed all antecedent laws; the act of 1857, it ough purporting by its title to be a repeal of the act of 1852, is only a modification thereof, extending the limi-tation in cases of prosecutions for misdemeanors of bank or other corporation officers to five years. Report on the Penal other corporation officers to five years. Report on the Penal Code 55.

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

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Cumberland Road.

Rond accepted from the United States.
 Appointment of superintendents. Term. Vacancies, how filled. Oath of office. Bond.
 Superintendent in Fayette and Somerset counties.

a. Superintendent in Taylette and comerse couldes.
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.
8. Rates of toll increased. Exemptions.
9. Suits for collection of tolls. Plea of non-joinder not to be eccived. Vehicles may be detained till tolls be paid.
10. Drivers to report number of passengers. Penalty for nereceived.

glect. Book of entries to be evidence of unpaid tolls.
 Estimates to be made of tolls, not reported. Commutacollected by action.

- the courts. 15. Tolls to be collected although no gates be passed. To be 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 quar
- terly. Commissioners to render annual accounts, on oath. 18. Tolls to be applied to preservation of road. Limitation
- of power to increase tolls. Directors to be set up. Penalty for violation.
 Penalty for delaying travellers, or demanding excessive

tolls

- 21. Penalty for injuring or obstructing road. 22. Toll-gatherers to keep accounts.

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

tions. Evidence. 13. Penalty for fraudulent evasion of toll. 14. Commissioners to establish rules. Subject to approval of

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

Appointment 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,

Act 1 April 1835, § 3. P. L. 102.
 Act 22 April 1856, § 1. P. L. 523.

Act 1 May 1861, § 1. P. L. 678.
 Act 22 April 1856, § 2. P. L 523.

Ibid. 3.
 Aot 4 April 1831, § 2. P. L. 419.

(a) See infra 3.

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(b) See act 8 April 1848. P. L. 395-7

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

Id. 2 28. 1 Va. Cas. 151-2.

Code Va., p. 815, \$ 29. 10 Gratt. 755.

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.

27. When a person is convicted of selling, or offering or exposing for sale, at retail, spirituous liquors, wine, porter, ale, or beer, or drink of like nature, and it is alleged in the indictment or presentment on which he is convicted, and admitted, or by the jury found. that he has been before convicted of the like offense, he shall be fined as provided in the third section of chapter thirty-two, and may, at the discretion of the court, be confined in jail not exceeding six months.

Acts of 1868, p. 124, ch. 149, § 1.

28. No criminal prosecution for any felony or misdemeanor shall be maintained in the courts of this state against any person for any act done in the suppression of the late rebellion; and it shall be a sufficient defense to such prosecution, to show that such act was done in obedience to the orders, or by the authority, of any civil or military officer of this state, or of the re-organized government of Virginia, or of the government of the United States; or that said act was done in aid of the purposes and policy of said authorities, in retarding, checking, and suppressing the said rebellion.

CHAPTER CLIII.

FOR PREVENTING THE COMMISSION OF CRIMES.

SEC.

SEC.

1. Conservators of the peace; power to bind to good behavior. 2.) Duty of, on complaint that a crime is in-

3. 5 tended. 4. Proceedings when accused appears.

5. Right of accused to appeal.

6.] Power of court upon such appeal, and when

the accused is committed. 7. (

Code of Va., p. 817, 21.

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

Code Va., p. 817, 2 2.

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

Id. p. 818, § 3. Munf. 458.

3. If it appear proper, such justice shall issue a warrant, reciting the complaint, and requiring the person complained of forthwith to be apprehended and brought before him or some other justice.

8. Person going armed with deadly weapon, when required to give recognizance, etc.
Affray, etc., in the presence of constable.
In presence of justice; duty of justice where person brought before him, etc.

11. Proceedings where person suspected of un-

lawful retailing of spirituous liquors.

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4. When such person appears, if the justice, on hearing the par- code va., p. s18, ties, consider that there is not good cause for the complaint, he shall discharge the said person, and may give judgment in his favor against the complainant for his costs. If he consider that there is good cause therefor, he may require a recognizance of the person against whom it is, and give judgment against him for the costs of the prosecution, or any part thereof; and, unless such recognizance be given, he shall commit him to jail, by a warrant, stating the sum and time in and for which the recognizance is directed. The justice giving judgment under this section for costs may issue a writ of fieri facias thereon, if an appeal be not allowed; and proceedings thereupon may be according to the two hundred and twenty-seventh section of chapter fifty.

5. A person from whom such recognizance is required may, on Id. 25. 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. g. 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. 29. his county, make an affray, or threaten to beat, wound, or kill 234-5, 21. another, or to commit violence against his person or property; or contend with angry words to the disturbance of the peace; or improperly or indecently expose his person; or appear in a state of gross intoxication in a public place; such constable, as such conservator, may, without warrant or other process, or further proof, arrest such offending person and carry him before some justice of the township in which such offense is committed, who, upon hearing the testimony of such constable and other witnesses, if any are then and there produced, if, in his opinion the offense charged be proved, shall require the offender to give a bond or recognizance, with security, to keep the peace and be of good behavior for a term not exceeding one year.

10. If any offense enumerated in the preceding section be com- 1d. p. 235, § 2.

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mitted in the presence of a justice within his county, or the offender being brought before him, the commission thereof be proved to his satisfaction, he may, besides requiring a bond or recognizance with security, as provided in the preceding section, impose a fine upon the offender not exceeding five dollars. If such bond or recognizance be not then and there given, or such fine be not then and there paid, the said justice shall commit the offender to the jail of his county, there to remain until such bond or recognizance be given, and such fine be paid; but no imprisonment under this section shall continue more than ten days, at the end of which the sheriff or jailor shall discharge the prisoner, unless he has been commanded by sufficient authority to detain him for some other cause.

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-
- auest. 10. Penalty on justice for neglect of duty.
- 11. Inquest may be taken on Sunday.

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days' imprisonment. jail nor less than one day nor more than ten days, or both, in the discretion of the court or jury before whom the trial is had.

AN ACT REGULATING THE RIGHT TO KEEP AND BEAR ARMS.

ART. 6511. [1] If any person shall go into any church or religious assembly, any school-room or other place where persons are assembled for educational, literary, or scientific purposes, or into a ball room, social party, or other social gathering, composed of ladies and gentlemen, or to any election precinct on the day or days of any election, where any portion of the people of this state are collected to vote at any election, or to any other place where people may be assembled to muster or to perform any other public duty, or any other public assembly, and shall have about his person a bowie-knife, dirk, or butcher-knife, or firearms, whether known as a six-shooter, gun, or pistol of any kind, such person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than fifty or more than five hundred dollars, at the discretion of the court or jury trying the same: Provided, That nothing contained in this section shall apply to locations subject to Indian depredations: And provided further, That this act shall not apply to any person or persons whose duty it is to bear arms on such occasions in discharge of duties imposed by law.

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 this act, who may offer to prove, by way of defense, that he was

12 Aug., 1870; took effect 12 Oct., 1870. Vol. 21, part 1, p. 63. Persons not to bear arms at public assemblies. Social intercourse and elections not to be made dangerous.

Art. 6512.

Kinds of weapons prohibited.

Fine \$50 to \$500. Notes, 111, 167.

Scalp-lifting country excepted.

Armed officials.

12 April, 1871; took effect 12 June, 1871. Vol. 21, part 2, p. 25. Carrying arms a misdemeanor, punishable by fine and forfeiture, unless. &c. Patriots and militiamen excepted. Art, 6511.

Fine \$25 to \$100 for first offense.

Imprisonment for second offense. Notes 111, 167.

People at home and officials excepted.

Legislators not "civil officers."

Art. 6512. Justification must be immedi-

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in danger of an attack on his person, or unlawful interference ate and pressing 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 difficulty first commenced by the accused, it shall not be considered as a legal defense.

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 punished 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, and shall forfeit to the county the weapon or weapons so found 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 any county of the state which may be designated in a proclamation of the governor as a frontier county, and liable to incursions of hostile Indians.

ART. 6516. [5] All fines collected under the provisions of this act shall be paid into the treasury of the county, and appropriated this act must be paid into the keeping in repair and maintenance of public 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 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 de-On all such trials the accused shall have the right of a trial Jury trial and appeal allowed. lay. 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

dauger;

concealed.

Impending danger.

meetings armed an off use to be

arms prohibited.

Fine \$50 to \$100 for first offense, and imprison-

Governor may exempt frontier counties by proclamation.

Art. 6517.

arrest offenders, &c.

Appeal bond.

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CRIMINAL CODE.

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.

ART. 6518. [7] Any officer named in the sixth section of this act who shall refuse or fail to arrest any person whom he is required to arrest by said section on his own information, or where knowledge is conveyed to him of any violation of the first or third sections of this act, shall be dismissed from his office on conviction in the district court, on indictment or information, or by such other proceedings or tribunal as may be provided by law, and, in addition, shall be fined in any sum not exceeding five hundred dollars, at the discretion of the court or jury.

ART. 6519. [8] The district courts shall have concurrent jurisdiction under this act, and it is hereby made the duty of the several judges of the district courts of this state to give this act especially in charge to the grand juries of their respective counties.

ART. 6520. [9] It is hereby made the duty of the governor to publish this act throughout the state; and this act shall take effect and be in force from and after the expiration of sixty days after its passage.

TITLE XIII.—OF OFFENSES AGAINST PUBLIC POLICY AND ECONOMY.

Arts. 2035-2038.

2 Dec., 1871; took effect from passage. Vol. 21, part 3, p 82. Officers to publish semi-annual returns; punishment for failure. Arts. 5032-6011.

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. CHAPTER I.—ILLEGAL BANKING AND PASSING SPURIOUS MONEY. 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

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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.

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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, (See Acts 1872-3, ch. 226, § 168.) dirk, bowie knife, razor, slung shot, billy, metallic or other false Acts 1882, ch. 135. knuckles, or any other dangerous or deadly weapon of like kind or 7 Gratt. 597. 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-

OFFENCES AGAINST THE PEACE.

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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.

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 And all persons who shall be present, aiding and abetcontrary. ting, 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 bim to punishment; but no such wit-

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punished, as if he had feloniously stolen such cotton.

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

Adulterating sugar.

for circulation.

Signing bills for circula-

tion.

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. § 3268. Any person, private corporation, or association, Making or emitting bills

§ 3267. Any person who mixes any foreign matter or

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

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

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 for.

Concealed weapons.

The same.

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§ 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.

§ 3276. Any person, who in any newspaper, handbill, or Publishing other advertisement, written or printed, publishes or pro- another as a coward, &c. 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 poisons without substance, 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 revit prescribed in section 1057pp knowingly sells any vinous tailer trad-

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ing with slaves.

or spirituous liquors to any slave; or knowingly sells to or purchases from any slave any article or commodity, without the permission of the master or overseer of such slave; or knowingly permits the same to be done by his partner, clerk. or any other person about his premises; or knowingly permits any gaming to be carried on on his premises, must, on conviction, be imprisoned in the penitentiary not less than two or more than five years.

Selling or giving liquor to slaves.

The same.

Trading with slaves. 19 Ala., 19.

§ 3283. Any person who sells, gives, or delivers to any slave any vinous or spirituous liquor, except on an order in writing, signed by the overseer or master of such slave, specifying the quantity to be sold, given, or delivered, must, on conviction, be fined not less than fifty dollars.

§ 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

§ 3287. Any person keeping spirituous liquor for sale, who

§ 3288. Any justice or magistrate, whenever he has good

proves the offence, must bind him over to answer therefor at the next circuit court, and on his failing to give bond must

§ 3289. Any person who employs or knowingly permits

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.

Evidence on indictment.

Employing slave or free employs any slave or free person of color in drawing off or negro to draw off or selling such liquor, must, on conviction, be fined not less than sell. twenty-five or more than fifty dollars.

Duty of magistrate in relation to laws reason to believe, or upon information on oath that any of against rethe laws of this state against retailing or trading with slaves tailing or the laws of this base a gang person, must forthwith issue a trading with have been violated by any person, must forthwith issue a slaves. warrant of arrest against such person, and if the evidence

Permitting slave or free any slave or free person of color to sample any cotton, must, negro to on conviction, be fined not less than fifty or more than one sample cotton. thousand dollars.

commit him.

Owner may.

§ 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 courts in this state, in theppained of another person, without name of an-

Prosecuting suits in the

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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.

§ 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

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

be made; And provided, also, that the only questions to be sub-Title net exmitted 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.	
4417. On unmarried person.	4437. Nuisances.
4418. Incest.	4438. Disinterring bodies.
4419. Adultery.	4439. Bastardy.
4420. Lewdness.	4440. Retailing without license.
4421. Lewd houses.	4441. Illegal marrying.
4422. Disorderly houses.	4442. Illegal voting.
4423. Gaming houses.	4443. Buying or selling votes.
4424. Gaming tables.	4444. Minor voting.
4425. Gambling.	4445. Adultery with negro.
4426. Gaming with minors.	4446. Whipping wife.
4427. Gaming with clerks and bank off	r's. 4447. Interfering with religious worship.
4428. Players-witnesses.	4448, Retailing near church.
4429. Judge's charge.	4449. Working slaves on Sabbath.
4430. Suspected houses.	4450. Running freight trains on Sunday.
4431. Unwholesome provisions.	4451. Violating Sabbath.
4432. Unwholesome bread, &c.	4452. Fines from Sabbath-breakers.
4433. Spreading small pox.	4453. Bonds in case of vagrancy.
4434. Violating quarantine.	4454. Att'y or Sol'r-duty in such case.

§4415. SEC. 1. Polygamy, or bigamy, shall consist in know-Polygamy ingly having a plurality of husbands, or wives, at the same time.

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MISCELLANEOUS.

shall be responsible for the payment of the expenses of his retention in jail.

Rewards for the Apprehension of Escaped Prisoners. Act of February 1, 1860.

SECTION 1. When any person shall make his escape from any county of this Territory after having been sentenced by the court to suffer any penalty, it shall be the duty of the court to inform immediately the governor thereof, giving a description of such fugitive.

§ 2. The governor is hereby authorized to offer a reward, to be paid out of the funds of the Territory, to any person who shall find and deliver such fugitive: *Provided*, that such reward shall be at the will of the governor.

Reward for Accused Persons. Act of 1874, Ch. 12.

SECTION 1. In cases of murder or other felony, when the person or persons accused of the crime shall be at large, the governor, when in his judgment it shall be necessary to secure the apprehension of the accused, shall be authorized to issue his proclamation offering a reward, not exceeding five hundred dollars, for the apprehension and delivery of the accused to the proper office.

§ 2. The auditor of public accounts is hereby authorized to draw a warrant on the treasury of the Territory, in favor of the person entitled to a reward, under the provisions of the preceding section, for the amount thereof, upon the presentation by such person of his account certified and approved by the governor.

Deadly Weapons. Act of 1869, Ch. 32

SECTION 1. It shall be unlawful for any person to carry deadly weapons, either concealed or otherwise, on or about their persons within any of the settlements of this Territory, except it be in the lawful defense of themselves, their families or their property, and the same being then and there threatened with danger, or by order of legal authority, or on their own landed property, or in execution of an order of court.

§ 2. Deadly weapons, in the meaning of this act, shall be construed to mean all kinds and classes of pistols,

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 Case: 10-56971, 04/30/2015, ID: 9521526, DktEntry: 257, Page 150 of 172

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

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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 city, town 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 resitherein, to bear upon his person, concealed or openly, any fire arm or other deadly weapon, within the limits of any city, town or village.

> That if any person not a resident of any town, city or Sec. 2. 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.

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Non - resident to be first no-tified.

Violation of this act a mis-demeanor.

Penalty.

In force.

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LAWS OF ARIZONA.

SEC. 3. This Act shall take effect from and after its passage.

Approved March 18, 1889.

No. 12. AN ACT

Concerning the Transaction of Judicial Business on Legal Holidays.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. No Court of Justice shall be open, nor shall any Judicial business be transacted on any Legal Holiday, except for the following purposes:

1. To give, upon their request, instructions to a Jury when deliberating on their verdict.

2. To receive a verdict or discharge a Jury.

3. For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature; provided, that the Supreme Court shall always be open for the transaction of business; and provided further, that injunctions, attachments, claim and delivery and writs of prohibition may be issued and served on any day.

SEC. 2. All Acts and parts of Acts in conflict with this Act are hereby repealed.

SEC. 3. This Act shall be in force and effect from and after its passage.

Approved March 18, 1889.

No. 13.

AN ACT

Defining and Punishing Certain Offenses Against the Public Peace.

Be it Enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 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 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.

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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. S. 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, 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.

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 of locomotives, engines and cars upon the railroads within the city; to compel such railroads to erect and maintain safety gates at street crossings;

Eleventh. To regulate, restrain or prohibit bathing in any Bathing, etc. 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

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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,

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

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CHAPTER 108.

CARRYING PISTOLS, BOWIE-KNIVES, ETC.

SECTION

SECTION

- Penalty imposed for carrying pistols, bowie-knives, etc.
 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

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

- 1. No water-craft to unload on Sunday.
- 2. No vehicle to be laden on Sunday.
- 3. No grocery or other place of ordinary business to be kept open on the Sabbath; tavern-

SECTION

keepers and apothecaries excepted.

4. Vendors of ice, ice-cream, soda water, cigars and tobacco excepted.

5. No games allowed on Sunday.

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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 Case: 10-56971, 04/30/2015, ID: 9521526, DktEntry: 257, Page 160 of 172

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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 limits. Case: 10-56971, 04/30/2015, ID: 9521526, DktEntry: 257, Page 161 of 172

ORDINANCES OF THE CITY OF SALINA.

ORDINANCE No. 268.

An Ordinance relating to the carrying of deadly weapons.

Be it ordained by the Mayor and Councilmen of the city of Salina:

SECTION 1. That it shall be unlawful for any person to carry on or about his person any pistol, bowie knife, dirk, or other deadly or dangerous weapon, anywhere within the limits of the city of Salina, save and except as hereinafter provided.

SEC. 2. This ordinance shall not apply to cases when any person carrying any weapon above mentioned is engaged in the pursuit of any lawful business, calling or employment and the circumstances in which such person is placed at the time aforesaid, are such as to justify a prudent man in carrying such weapon, for the defense of his person, property or family, nor to cases where any person shall carry such weapon openly in his hands, for the purpose of sale, barter, or for repairing the same, or for use in any lawful occupation requiring the use of the same.

SEC. 3. Any person violating any of the provisions of this ordinance shall, upon conviction thereof before the police court, be fined in any sum not less 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.

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Attest: E. E BOWEN, City Clerk.

I hereby certify the above and foregoing to be a true copy of an ordinance passed by the mayor and councilmen of the city of Salina on the 24th day of June, 1879. See page 97 of the Journal B for the record of the final vote on its passage.

CITY SEAL.

E. E. BOWEN, City Clerk.

THE CITY OF SYRACUSE.

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three months, or to both such fine and imprisonment.

§ 5. Any person who shall immoderately ride or 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-^{Penalty.} tentiary of the county for not less than ten nor more than thirty days.

§ 6. Any person who shall solicit alms in the Soliciting alms. 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 Penalty. 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 gongs and or cry any auction in any street, lane for alley, or bells. upon any sidewalk, or upon any piazza, step or

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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.

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REVISED ORDINANCES OF THE TOWN OF CHECOTAH

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 handle, as a weapon.

Section 4. To be drunk or in a state of intoxication in any public or private place within the town limits.

Section 5. To use rude, boisterous, offensive, obscene or blasphemous 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, or-

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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.

Section. interference 194. Court of Common Council 195. Unauthorized with lamps prohibited, etc.; may order lamps to be set penalty. up.

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

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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 I. 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





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be notified of this Ordinance by the police or any citizen, and after thirty minutes from the time of notification, shall be held liable to the penalties of this article, in case of its violation.

SEC. 4. The city marshal and policemen of the city shall arrest, without warrant, all persons found violating the provisions of this article, and are hereby authorized to take any such weapon from the person of the offender and to imprison the offender for trial, as in case of violations of other Ordinances of said city.

SEC. 5. This ordinance shall be in force and take effect from and after its passage.

Revised, passed and adopted March 3, 1893.

Сная. Е. BLydenburgh, President of Board.

Approved, John C. Davis,

Mayor.



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OF THE CITY OF WICHITA.

SECTION.

- 80. Selling Wearing Apparel by Club Drawing.
- 81. Stealing Parts of a House.
- 82. Moving Houses with Unpaid Tax.
- Time for Hauling Slops Along Street.
- 84. Dead Animals, Disposition of.
- 85. Traction and Threshing Engine on Paved Streets.
- 86. Manure not to be Thrown in Streets or Alleys; Limits; Provisions to Make Pen for.
- 87. Privy Vaults to be Cleaned and not to be Transferred.
- 88. Stables and Water Closets to be on Line of Alley.
- 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.

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- 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 46

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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 Case: 10-56971, 04/30/2015, ID: 9521526, DktEntry: 257, Page 170 of 172

(13.)

ORDINANCE NO. 20.

UNLAWFULLY CARRYING ARMS.

Be it ordained by the city council of the city of Mc-Kinney:

Sec 1. If any person in the limits of the city of McKinney shall carry on or about his person. saddle, or in his saddle bags, any pistol, dirk, dagger, slung shot, sword cane, spear or nuckles made of any metal or of any hard substance Bowie knife or any other knife manufactured or sold for the purposes of offense or defense, he shall be punished by fine not less than twenty-five nor more than two hundred dollars.

Sec. 2. The preceding section shall not apply to a person in actual service as a militiaman, nor to a peace officer or a policeman or person summoned to his aid, nor to a revenue or other civil officer engaged in the discharge of official duty, nor to the carrying of arms on one's own premises or place of business, nor to persons traveling, nor to one who has reasonable ground for fearing an unlawful attack upon his person, and the danger is so iminent and threatening as not to admit of the arrest of the party about to make such attack, upon legal process.

ORDINANCE NO. 21.

INDECENT PUBLICATION AND EXPOSURES.

Be it ordained by the city council of the city of Mc-Kinney:

That if any person within the limits of the city of Mc-Kinney, shall make, publish or print any indecent and obscene print, picture or written composition manifestly designed to corrupt the morals of the youth, or shall designedly make any obscene and indecent exhibition of his own or the person of another in public, he shall be fined not exceeding one hundred dollars.

SEC. 2. Be it further enacted, That this Act take effect from and after its passage, the public welfare requiring it. Passed December 12, 1871.

> JAMES D. RICHARDSON, Speaker of the House of Representatives. JOHN C. VAUGHN, ·

> > Speaker of the Senate.

Received at Executive Office December 15, 1871, and approved December 15, 1871.

JOHN C. BROWN,

Governor.

CHAPTER XC.

AN ACT to preserve the peace and prevent homicide.

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That it shall not be lawful for any Not lawful person to publicly or privately carry a dirk, sword cane, to carry dirk Spanish stiletto, belt or pocket pistol or revolver other stiletto, or . than an army pistol, or such as are commonly carried and pistol. used in the United States Army, and in no case shall it be lawful for any person to carry such army pistol publicly or privately about his person in any other manner than openly in his hands, and any person guilty of a violation of the provisions of this section, shall be guilty of misd'meanor a misdemeanor, and subject to presentment or indictment, and, on conviction, shall pay a fine of not less than ten, nor more than fifty dollars, and may be imprisoned in the county jail not more than three months: Provided, Proviso. *however*, the Court may commute the imprisonment altogether, and in lieu thereof, require the person convicted to give bond with approved security in not less than the sum of five hundren dollars, conditioned that he keep the peace for six months after such conviction.

SEC. 2. Be it further enacted, That it shall be the duty of all peace officers in the State, including Sheriffs, Deputy Sheriffs, Constables, Coroners, and Justices of the peace offic'rs Peace, to see that the first section of this Act be strictly enforced, and it is hereby made their duty to report without delay any violation thereof, to the grand juries of their respective counties, and it shall be the duty of the grand juries to send for witnesses in all cases where they have good reason to believe there has been a violation

To do so a

Duty of

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LIII.—CARRYING WEAPONS.

SECTION

0001	
1907.	Of what kind prohibited; exceptions.
1908.	Weapons excepted, how to be carried; unlaw-
	ful carrying a misdemeanor.
1909.	Sale of weapons a misdemeanor; exception.
1910.	Unlawful sale or carrying, how punished.

SECTION

1911. Justices failing to proceed against offenders, how punished.1912. Officer failing to make arrest, how punished.

1913. In what courts offenders to be prosecuted.

SECTION 1907. Any person who shall wear or carry in any manner whatever as a weapon any dirk or bowie knife, or a sword, or a spear in a cane, brass or metal knucks, razor, or any pistol of any kind whatever, except such pistols as are used in the army or navy of the United States (jjj), shall be guilty of a misdemeanor. *Provided*, that officers whose duties require them to make arrests, or to keep and guard prisoners, together with the persons summoned by such officers to aid them in the discharge of such duties, while actually engaged in such duties, are exempted from the provisions of this act. *Provided*, *further*, that nothing in this act be so construed as to prohibit any person from carrying any weapon when upon a journey or upon his own premises (**).

SEC. 1908. Any person, excepting such officers or persons on a journey and on their premises as are mentioned in section 1907, who shall wear or carry any such pistol as is used in the army or navy of the United States, in any manner except uncovered and in his hand, shall be deemed guilty of a misdemeanor (kkk).

SEC. 1909. Any person who shall sell, barter or exchange, or otherwise dispose of, or in any manner furnish to any person, any dirk or bowie knife, or a sword or a spear in a cane, brass or metal knucks, or any pistol of any kind whatever, except such as are used in the army or navy of the United States, and known as the navy pistol, or any kind of cartridge for any pistol, or any person who shall keep any such arms or cartridges for sale, shall be guilty of a misdemeanor.

SEC. 1910. Any person convicted of a violation of any of the provisions of this act shall be punished by a fine of not less than fifty nor more than two hundred dollars.

SEC. 1911. Any justice of the peace in this state, who, from his own knowledge or from legal information, knows, or has reasonable grounds to believe, any person guilty of a violation of the provisions of this act, and shall fail or refuse to proceed against such person, shall be deemed guilty of a non-feasance in office, and, upon conviction thereof, shall be punished by the same fine and penalty provided in section 1910, and shall be removed from office (*).

SEC. 1912. Any officer in this state whose duty it is to make arrests, who may have personal knowledge of any person carrying arms contrary to the pro-

⁽jjj) See Wilson v. State, 33-557; Holland v. State, Ib., 560.

^(**) An indictment need not negative the exceptions. Walker v. State, 35-386.

⁽kkk) SECS. 1907 and 1908 are not unconstitutional. Haile v. Stale, 38-564.

^(*) See State v. Graham, 38-519.